

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10622 SENATE LABOR & COMMERCE

SB

151

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/20/01

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-28-01

Labor and Commerce Committee considered

SENATE BILL NO. 151

"An Act relating to the Bristol Bay Salmon Classic; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOR	4/27/01		0	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>William Clutley</i>	✓			
<i>Thomas D. Hansen</i>			✓	
<i>[Signature]</i>	✓			
CHAIR: <i>Russell E. Kelly</i>		✓		

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 151
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Bristol Bay Salmon Classic BRU: Revenue Operations
 Component: Tax Division
 Sponsor: Senator Hoffman
 Requester: Senate Labor and Commerce Component Number: 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Alaska Statute 05.15.690(41) of the state's charitable gaming laws allows certain organizations to conduct "salmon classic" games of chance. This legislation would add the Bristol Bay Native Corporation Education Foundation to the list, allowing the Education Foundation to conduct a fund-raising salmon classic with prize money awarded to the person who guesses closest to the total number of salmon harvested commercially in the five Bristol Bay fishing districts between June 1 and September 30 each year.

This legislation would not result in any additional cost or enforcement issues to the Charitable Gaming Section at the Tax Division.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
 Division: _____ Date/Time April 27, 2001, 9 a.m.
 Approved by: Larry Persily, Deputy Commissioner Date 04/27/2001
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office



Memo from Senator Lyman Hoffman



Date: April 24, 2001

To: Senator Randy Phillips
Senate Labor and Commerce Committee

From: Senator Lyman Hoffman *LH*.

Re: Request for a hearing for SB 151 - Bristol Bay Salmon Classic

I request that Senate Bill 151 - Bristol Bay Salmon Classic - be scheduled for a hearing in the Labor and Finance Committee.

Thank you for your consideration



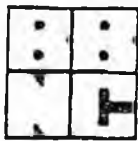
Senator Lyman Hoffman

Senate Bill 151 Bristol Bay Salmon Classic

Sponsor Statement

Senate Bill 151 would add the Bristol Bay Native Corporation (BBNC) Education Foundation to existing law which authorizes salmon classics under AS 05.15.690(41) and allow the foundation to raise money for scholarships.

The BBNC Education Foundation has been active in supporting the educational goals of shareholders since their inception in 1991. They are a 501 (c) (3) organization with a successful history in fundraising for educational scholarships. With the downturn in fishing and other impacts on the economy of the region, the challenges of fundraising have grown. The ability of the Foundation to organize the Bristol Bay Salmon Classic would provide an opportunity for individuals to share the load by purchasing a ticket and joining in the fun of guessing how many salmon will be harvested in the five Bristol Bay commercial fishing districts. Classics of various types have been successful in other regions of the state, and the BBNC Education Foundation is confident the effort will be a source of both entertainment for those following the fisheries and revenue for young people needing scholarship assistance to meet their education goals.



Bristol Bay Native Corporation Education Foundation

800 Cordova Street, Suite 200, Anchorage, Alaska 99501-6299 / (907) 278-3602 / fax (907) 276-3925

March 27, 2001

Senator Lyman F. Hoffman
Alaska State Legislature
State Capitol Office Room 7
Interdepartmental Mail Stop 3100
Juneau, AK 99801-1182

Dear Senator Hoffman.

Please allow me to introduce the Bristol Bay Native Corporation Education Foundation. The foundation was established in 1991 to promote the education of Alaska Native shareholders. In 1992, the U. S. Internal Revenue Service recognized the foundation as exempt from federal income tax under section 501 © (3) of the Internal Revenue Code.

Bristol Bay Native Corporation, other organizations/businesses, shareholders and private individuals have contributed to the foundation scholarship fund since 1992. Over \$435,000 has been awarded to scholarship recipients since 1993. During the 2000-01 school year 150 recipients were awarded scholarships ranging from \$250-\$1500. The number of applicants for scholarships has increased steadily over the past few years; especially since commercial fishing income for Bristol Bay area residents has decreased due to several successive poor fishing seasons.

The BBNC Education Foundation has a fundraising campaign target of \$250,000 for 2001. In our fundraising efforts we utilize the availability of our raffle permit to generate additional scholarship funds. We believe that initiating a "Bristol Bay Salmon Classic" game of chance, which we would sponsor, would assist us in our efforts to raise additional funds for increasing demands for scholarship assistance. Tickets would be sold and a prize of money would be awarded for the closest guess of the total number of salmon harvested commercially in the five Bristol Bay commercial fishing districts between June 1 and September 30, as determined by the Department of Fish and Game.

We deeply appreciate your support in developing and sponsoring the legislation needed that would assist us in raising more scholarship funds.

Please do not hesitate to contact me at (907) 274-3611, if you have any questions, or need additional information.

Sincerely,

BBNC Education Foundation

Frank W. Hill
Mr. Frank W. Hill
President/Chairman

SB

165



SENATOR ALAN AUSTERMAN

Alaska State Legislature

Interim: 112 Mill Bay Road, Kodiak, Alaska 99615 (907) 486-8872 • Session: State Capitol, Juneau, Alaska 99801 (907) 465-2487
senator_alan_austerman@legis.state.ak.us

Sponsor Statement – Senate Bill 165

"An Act imposing a tax on employment; and providing for an effective date."

SB 165 would impose a tax of \$100 a year on each employed individual age 19 or older, including the self-employed. Under this bill, the employer would deduct \$50 from the employee's salary on each of their first two regular payrolls after January 1 of the calendar year. A provision has been added to prevent this tax from being taken out more than once when the employee provides proof to their new employer that the tax has already been satisfied.

Preliminary estimates given to me from the Department of Revenue indicate that the state would collect between \$35 and \$36 million a year in new revenue generated by this legislation. Approximately \$2 million a year would be required to administer the increased workload by staff in that division if this measure becomes law.

The tax collected under AS 43.45.021 would be deposited into the state's general fund, but accounted for separately. In turn, the legislature may then appropriate the amounts collected under this section for education.

This authorization is not intended to create a dedication of funds in violation of art. IX, sec. 7, of the Constitution of the State of Alaska.



SENATOR ALAN AUSTERMAN

Alaska State Legislature

Interim: 112 Mill Bay Road, Kodiak, Alaska 99615 (907) 486-8872 • Session: State Capitol Building, Juneau, Alaska 99801 (907) 465-2487

MEMORANDUM



DATE: March 29, 2001

TO: Senator Randy Phillips, Chair
Senate Labor & Commerce Committee

From: Senator Alan Austerman

RE: Request for Scheduling—Senate Bill 165

I respectfully request that the Senate Labor & Commerce Committee schedule a hearing on SB 165 at your earliest convenience.

This bill would impose a tax on employment; and provide for an effective date. Attached is a copy of the bill and a sponsor statement. Letters of support will be provided at a later date.

Please contact Suzanne Hancock of my staff at 3820 as needed.

Thank you for your consideration.

APR. 3. 2001 1:49PM

SSD DISTRICT OFFICE
SITKA SCHOOL DISTRICT
www.ssd.k12.ak.us

NO. 544 P. 2

PO Box 179
Sitka, Alaska 99835
Phone: (907) 747-8622
Fax: (907) 966-1260



April 2, 2001

Senator Alan Austerman
State Capitol
Juneau, AK 99801-1182

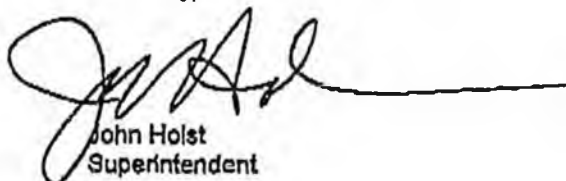
Dear Senator Austerman:

It is a pleasure to endorse your latest bill, SB 165, Head Tax.

There has been far too little discussion about a long-term fiscal plan which must include new sources of revenue. I see this bill simply as a re-instatement of the old "school tax", adjusted for inflation over the time it was originally instituted.

I applaud you for the leadership you are showing by being involved with colleagues who share your interest in the development of a fiscal plan. I am certain that the Sitka School District Board of Education will support your efforts in any way they can.

Sincerely,



John Holst
Superintendent

"Educating Today's Children to Become Tomorrow's Leaders"

Introduced by:	Manager Jensen
Requested by:	Assembly
Drafted by:	Borough Clerk
Introduced:	04/05/2001
Adopted:	04/05/2001

**KODIAK ISLAND BOROUGH
RESOLUTION NO. 2001-23**

**A RESOLUTION OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
SUPPORTING SENATE BILL 165 CREATING AN EDUCATION HEAD TAX
AS PART OF SENATE BILL 1 AS A COMPREHENSIVE APPROACH
TO FILL ALASKA'S MOUNTING BUDGET GAP**

WHEREAS, Senate Bill 165 would impose an annual tax of \$100 on each Alaskan worker age 19 or older, including the self-employed; and

WHEREAS, the collected revenue would be deposited into the state's general fund and accounted for separately. In turn, the legislature may then appropriate the collected revenue, as set forth in this section, to education funding; and

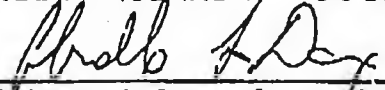
WHEREAS, the Department of Revenue would collect between \$35 and \$36 million annually in new revenue; and

WHEREAS, Senate Bill 1 needs to generate \$29 million to increase the base student allocation for school funding; and the revenue raised would cover the \$29 million costs proposed in Senate Bill 1 which would increase funding for education;

NOW, THEREFORE, BE IT RESOLVED BY THE KODIAK ISLAND BOROUGH ASSEMBLY that the Kodiak Island Borough Assembly urges the Twenty-Second Legislature to adopt Senate Bill 165.

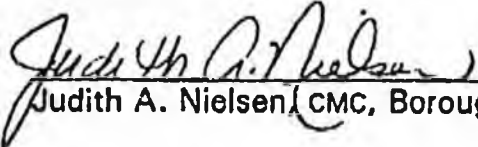
**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS FIFTH DAY OF APRIL, 2001**

KODIAK ISLAND BOROUGH

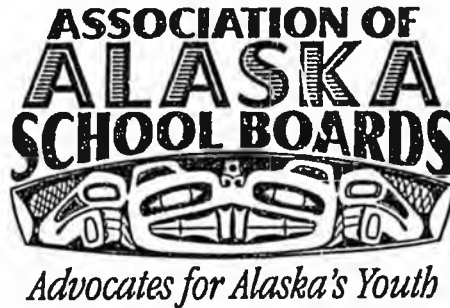


Gabrielle LeDoux, Borough Mayor

ATTEST:



Judith A. Nielsen, CMC, Borough Clerk



Position Paper
SB 165 Education Tax on Employment

April 2001

The Association of Alaska School Boards (AASB) supports legislation that will enhance revenue generating measures of the State of Alaska. SB 165 Education Tax on Employment is one such measure.

Decreased oil production and a dwindling Constitutional Budget Reserve continue to fuel discussion of a long range fiscal plan for Alaska. Over the last five years state policymakers have tightened their collective budget belt. Now it is time to consider the other side of the coin—enhancing state revenues.

AASB's goal is to obtain a stable source of funding for the state's largest constitutionally mandated responsibility—education.

Alaska lawmakers have it within their grasp to address three essential components of education funding:

1. Appropriations based on need (Adequacy Study)
2. Appropriate distribution of funds (School Cost Study)
3. Maintaining buying power (inflation proofing formula/ Funding Task Force)

An education tax on employment, generating in the neighborhood of \$35 million annually, would help underwrite efforts to stabilize education funding.

The vast majority in the education community and the public support recent education reforms—standards and testing of those standards. Alaska has made remarkable gains in these areas. Schools are reporting significant changes in the way they do business. Alaska schools are requesting the support and resources necessary to ensure that every classroom is prepared to deliver on the promise that no child is left behind.

Forward thinking will maximize our financial resources *and* address the fiscal gap. Forward thinking can create a plan for a future that doesn't include cutting essential education services to our children. SB 165 is a step in the right direction.



Alaska State Legislature

Please enter into the record my testimony to the Senate Labor & Commerce
 committee name
 committee on SB 165, dated 4-12-01
 bill/subject

I support SB 165 for Education.
 Our schools have had so many cuts
 in the past years, they are now down
 to the bone. The children are our future
 and deserve to have good educational
 programs in order pass the exit exams and
 become informed citizens in our society.
 This tax would reach across the population
 and not be just targeted at property owners.
 Thank you

Signed: Betsy Meyrick
 Testifier

Committee for Better Education
 Representing (Optional)

P.O. Box 1373 Kodiak, AK 99615
 Address

907-486-5231
 Phone No.



STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
DIVISION OF PUBLIC SERVICES

DATE: 4/13/01

Please accept the enclosed original(s) of written testimony for the Senate Labor & Commerce teleconference hearing that was scheduled on 4/12/01.

A copy of this testimony was transmitted to your committee via fax on 4/12/01.

Thank you,

Lorna Steelman
Kodiak LIO

SB

168

22-LS0814\L
Utermohle
4/20/01

CS FOR SENATE BILL NO. 168(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans made by the commercial fishing loan program."

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

3 * Section 1. AS 16.10.310(a) is amended to read:

4 (a) The department may

5 (1) make loans

6 (A) to individual commercial fishermen who have been state
7 residents for a continuous period of two years immediately preceding the date
8 of application for a loan under AS 16.10.300 - 16.10.370, who have had a
9 crewmember or commercial fishing license under AS 16.05.480 or a permit
10 under AS 16.43 for the year immediately preceding the date of application and
11 any other two of the past five years, [AND] who actively participated in the
12 fishery during those periods, and whose application for similar financing
13 has been declined by the Alaska Commercial Fishing and Agriculture
14 Bank

15 (i) for the purchase of entry permits;

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(ii) to upgrade existing vessels and gear for the purpose of improving the quality of Alaska seafood products; or

(iii) to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual commercial fishermen's entry permits, to the extent allowed under (e) of this section;

(B) to an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, for the construction and purchase of vessels, or, to the extent allowed under (e) of this section, to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual's entry permits, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370, and either

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

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

(C) for the purchase of quota shares for fisheries in or off the state by individual commercial fishermen [WHO]

(i) who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370;

(ii) who for any two of the past five years, possessed a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 and actively participated in a fishery for which the license or permit was issued;

(iii) who qualify as transferees for quota shares under applicable law; and

- 1 (iv) whose application [ARE NOT ELIGIBLE] for
2 similar financing [FROM OTHER RECOGNIZED COMMERCIAL
3 LENDING INSTITUTIONS] to purchase quota shares has been
4 declined by a private commercial lending institution;
- 5 (2) designate agents and delegate its powers to them as necessary;
- 6 (3) adopt regulations necessary to carry out the provisions of
7 AS 16.10.300 - 16.10.370, including regulations to establish reasonable fees for
8 services provided;
- 9 (4) establish amortization plans for repayment of loans, which may
10 include extensions for poor fishing seasons or for adverse market conditions for
11 Alaska products;
- 12 (5) enter into agreements with private lending institutions, other state
13 agencies, or agencies of the federal government to carry out the purposes of
14 AS 16.10.300 - 16.10.370;
- 15 (6) enter into agreements with other agencies or organizations to create
16 an outreach program to make loans under AS 16.10.300 - 16.10.370 in rural areas of
17 the state;
- 18 (7) allow an assumption of a loan if
- 19 (A) the applicant has been a state resident for a continuous
20 period of two years immediately preceding the date of the request for an
21 assumption; and
- 22 (B) approval of the assumption would be consistent with the
23 purposes of AS 16.10.300; an applicant for a loan assumption may not be
24 disqualified because the applicant does not meet the loan eligibility
25 requirements of (1) of this subsection;
- 26 (8) prequalify loan applicants for a limited entry permit loan or a quota
27 shares loan and charge a fee not to exceed \$200 for prequalification;
- 28 (9) charge and collect the fees established under this subsection;
- 29 (10) refinance a debt obligation incurred by a borrower or borrowers
30 under this section if the borrower or borrowers otherwise qualify for a loan under
31 AS 16.10.300 - 16.10.370 and if the borrower's or borrowers' application for

1 similar refinancing of the debt obligation has been declined by a private
2 commercial lending institution; the department shall collect a refinancing loan
3 origination charge of one-half percent of the amount of the debt obligation that has
4 been refinanced when the first refinancing payment is due;

5 (11) refinance debt obligations, not to exceed \$300,000, incurred by a
6 borrower or borrowers for the purchase of a commercial fishing vessel or gear if the
7 borrower or borrowers otherwise qualify for a loan under AS 16.10.300 - 16.10.370
8 and if the borrower's or borrowers' application for similar refinancing of the
9 debt obligations has been declined by a private commercial lending institution;
10 the department may collect a refinancing loan origination charge as provided by
11 regulation.

12 * Sec. 2. The uncoded law of the State of Alaska enacted in sec. 3, ch. 127, SLA 2000, is
13 repealed and reenacted to read:

14 Sec. 3. AS 16.10.310(a) is amended to read:

15 (a) The department may

16 (1) make loans

17 (A) to individual commercial fishermen who have been state
18 residents for a continuous period of two years immediately preceding the date
19 of application for a loan under AS 16.10.300 - 16.10.370, who have had a
20 crewmember or commercial fishing license under AS 16.05.480 or a permit
21 under AS 16.43 for the year immediately preceding the date of application and
22 any other two of the past five years, who actively participated in the fishery
23 during those periods, and whose application for similar financing has been
24 declined by the Alaska Commercial Fishing and Agriculture Bank

25 (i) for the purchase of entry permits; or

26 (ii) to upgrade existing vessels and gear for the purpose
27 of improving the quality of Alaska seafood products; [OR

28 (iii) TO SATISFY PAST DUE FEDERAL TAX
29 OBLIGATIONS THAT MAY RESULT IN THE EXECUTION ON
30 AND INVOLUNTARY TRANSFER OF THE INDIVIDUAL
31 COMMERCIAL FISHERMEN'S ENTRY PERMITS, TO THE

EXTENT ALLOWED UNDER (e) OF THIS SECTION;]

(B) to an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels [, OR, TO THE EXTENT ALLOWED UNDER (e) OF THIS SECTION, TO SATISFY PAST DUE FEDERAL TAX OBLIGATIONS THAT MAY RESULT IN THE EXECUTION ON AND INVOLUNTARY TRANSFER OF THE INDIVIDUAL'S ENTRY PERMITS], if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370, and either

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

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

(C) for the purchase of quota shares for fisheries in or off the state by individual commercial fishermen

(i) who have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 - 16.10.370,

(ii) who for any two of the past five years, possessed a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 and actively participated in a fishery for which the license or permit was issued;

(iii) who qualify as transferees for quota shares under applicable law; and

(iv) whose application for similar financing to purchase quota shares has been declined by a private commercial lending institution;

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

1 (3) adopt regulations necessary to carry out the provisions of
2 AS 16.10.300 - 16.10.370, including regulations to establish reasonable fees for
3 services provided;

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

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

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

13 (7) allow an assumption of a loan if

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

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

21 (8) prequalify loan applicants for a limited entry permit loan or a quota
22 shares loan and charge a fee not to exceed \$200 for prequalification;

23 (9) charge and collect the fees established under this subsection;

24 (10) refinance a debt obligation incurred by a borrower or borrowers
25 under this section if the borrower or borrowers otherwise qualify for a loan under
26 AS 16.10.300 - 16.10.370 and if the borrower's or borrowers' application for similar
27 refinancing of the debt obligation has been declined by a private commercial lending
28 institution; the department shall collect a refinancing loan origination charge of one-
29 half percent of the amount of the debt obligation that has been refinanced when the
30 first refinancing payment is due;

31 (11) refinance debt obligations, not to exceed \$300,000, incurred by a

1 borrower or borrowers for the purchase of a commercial fishing vessel or gear if the
2 borrower or borrowers otherwise qualify for a loan under AS 16.10.300 - 16.10.370
3 and if the borrower's or borrowers' application for similar refinancing of the debt
4 obligations has been declined by a private commercial lending institution; the
5 department may collect a refinancing loan origination charge as provided by
6 regulation.

7 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** AS 16.10.310(a), as amended by sec. 1 of this Act, applies to
10 persons who apply for a loan or for debt refinancing under the Commercial Fishing Loan Act
11 on or after the effective date of this Act.



2550 Denali Street, Suite 1201
Anchorage, Alaska 99503-2737
(907) 276-2007 Fax (907) 279-7913

April 20, 2001

Edward E. Crane
President

TO: Senator Randy Phillips
FAX 907-465-4979

FROM: Ed Crane

Thank you for the call today. There is no problem with "similar" versus "identical."

I'm very uncomfortable to appear to be attacking the existence and purposes of the CFRLP, when it is actually its administration and practices which are troublesome. It isn't productive to be debating those practices in the legislative arena, and it's a waste of your and your colleagues' time.

Frankly, I think the crux of the matter is the complete lack of oversight and accountability of the Division of Investments. The statute charges it with performing a basic business function, but it's administered with a bureaucratic mentality. Hence, we wind up with such things as you heard today: "How can it not make sense? Our regulations allow it!"

We are not stupid here at CFAB, nor are we amateurs with regard to our mandated mission. Over time, we have seen enough of the CFRLP's tracks on a routine basis to be convinced that their practices and philosophies are *not* helping to develop "staying power" to a significant part of Alaska's economy which is already under tremendous stress. We did not begin this process simply because we wanted to find a way to get a piece of someone else's pie. We started with a simple and straightforward request to Governor Knowles that there be some administrative attention and consideration "to certain practices and general directions of the Division of Investments in its administration of the commercial fishing loan fund." That was not at all productive, and the nature and tone of the subsequent discussions led us to request the legislation at hand.

From CFAB's standpoint, we would be quite comfortable if SB168 were to sit in the Senate Labor and Commerce Committee until next January *if* it were possible to direct or arrange that, in the interim, the state's bank examiners will make an examination of the Division of Investment's commercial fishing loan portfolio and the administration of it. I don't know if that's a possibility - I recognize the Division of Legislative Audit might be an instinctive preference (and probably easier to accomplish), but we believe there must be an evaluation of the business practices and of the quality of the loan portfolio rather than simply a determination that self-generated regulations have not been violated. Of course, the report of such an examination should be made available to your committee. Could this be accomplished?

Thanks!

Alaska Commercial Fishing and Agriculture Bank



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Senate Labor & Commerce Committee

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
(907) 465-4949
(907) 465-4979 Fax
Toll Free Anchorage Area
800-478-4950

Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949
(907) 694-4948 Fax

April 12, 2001

Letter of Intent for SB168
Commercial Fishing Loan Program

It is the intent of the Legislature that SB168 place an obligation upon CFAB for timely consideration of all loan applications. It is further intended that the Division of Investments and CFAB establish an effective and efficient procedure for the transfer of loan applications and supporting information so that no loan applicant is unnecessarily inconvenienced.

To: Kim Ross - FYI 465-4979
From: Ed Crane

X-From: cdfu@ptialaska.net Wed Apr 18 17:43:29 2001
Date: Wed, 18 Apr 2001 17:49:57 -0800
To: cdfu@ptialaska.net
From: Sue Aspelund <cdfu@ptialaska.net>
Subject: CFAB bill; BOF confirmation hearing

CFAB BILL:

SB 168, the bill which would require that before any fisherman could access the State fishing loan programs they must first be declined funding for like financing by CFAB, is going to be heard in Senate Resources TOMORROW afternoon. If you oppose this legislation, as CDFU does, we need e-mails and POM's sent to the Senate Resources Committee.

We are opposed to this legislation for several reasons:

- 1) CFAB loans cost more than State loans.
- 2) CFAB loans are not available to most entry-level fishermen without an established credit history.
- 3) Due to the nature of the fisheries, most fishermen don't fit the "standard" financing criteria from private sources, so very much need access to loan programs structured to their particular needs.
- 3) It is an extra unnecessary hoop for fishermen to jump through to secure financing.

If you are e-mailing, please send messages to the following:

<Senator_Loren_Leman@legis.state.ak.us>
<Senator_John_Torgerson@legis.state.ak.us>
<Senator_Alán_Austerman@legis.state.ak.us>

CDFU has POM's available for your signature here at the office. The text of our POM is:

"This is bad legislation which unfairly burdens the potential clients that CFAB was originally designed to assist! Many commercial fishermen do not qualify for traditional loans due to our industry's unique circumstances. This bill only exacerbates the difficulties many fishermen face to secure financing for fishing-related activities."

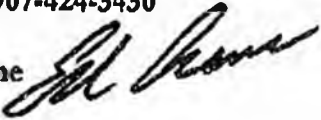


2550 Denali Street, Suite 1201
Anchorage, Alaska 99503-2737
(907) 276-2007 Fax (907) 279-7913

April 19, 2001

Edward E. Crane
President

TO: Sue Aspelund, CDFU
FAX 907-424-3430 (5 pages)

FROM: Ed Crane 

We are extremely disappointed with the position your organization has taken, and the mischaracterizations you have expressed, concerning SB 168.

Please see the attached background paper. It is accurate in every aspect.

Presumably you are guided, at least in part, by the perception that you are being supportive of fishermen. Which fishermen? Just under 99 percent of CFAB's member-owners (51 of whom have Cordova area addresses) are fishermen who, in the aggregate, own nearly \$20 million of equity. The ultimate realizable value of that equity is dependent on anything and everything that affects CFAB's operations and circumstances. Our Board of Directors and management have a fiduciary responsibility to protect and advance the interests of those CFAB owners. Fortunately, that responsibility is totally consistent with our efforts and intent to keep CFAB strong in order to provide services to future borrowing members. How would you explain your position to one of your members or neighbors who owns several thousand dollars of CFAB equities?

You are right that many applicants cannot meet CFAB's standards, and we can in fact decline certain applications very quickly. We have absolutely no intent or desire to prevent the state from being a source of "non-standard" financing. We have recently made considerable effort, including at the highest level of state government, to have addressed some of the Division of Investment's irrational and overly aggressive practices. We were scoffed at. Hence, SB 168.

Alaska Commercial Fishing and Agriculture Bank

Sue Asplund
April 19, 2001
Page 2

How do you objectively rationalize a state agency, with subsidies totaling hundreds of thousands of dollars annually, directly and aggressively competing with a private entity owned by fishermen (and which, by the way, pays state corporate income tax?).

Incidentally, a year ago the Division of Investments was advertising for the sale of 20 limited entry permits acquired through then-recent lien foreclosures. We reviewed CFAB's records at that time, and found that in the preceding 27 months (1/98 through 3/00) we had foreclosed two limited entry permit liens. I won't claim that means anything - but it certainly does not support the generalized assertion that "fishermen are better off with state loans."

BACKGROUND – SB 168

In AS 16.10.300 the 1972 legislature declared it to be the policy of the state to promote the continued maintenance of commercial fishing gear and vessels throughout the state by means of long-term low interest loans. Implementation of this policy is through the Commercial Fishing Revolving Loan Fund administered by the Division of Investments in the Department of Community and Economic Development.

That policy was confirmed by the 1978 legislature with the creation of the Alaska Commercial Fishing and Agriculture Bank (CFAB). The approach was different, however. CFAB was established as a private and cooperatively-structured institution in which the state was the initial stockholder. It was intended that CFAB would be able to borrow private funds for re-lending to commercial fishing and agriculture, leveraging the state's capital investment by many multiples.

With respect to commercial fishing loans, CFAB was granted statutory authorities which were essentially identical to those in the Commercial Fishing Loan Act (AS 16.10.300 – 16.10.370). Interestingly, the earliest versions of the 1978 CFAB legislation also provided for repeal of the Commercial Fishing Loan Act. This provision, however, did not survive the legislative process.

CFAB's early years and efforts were inauspicious. A range of circumstances resulted in its near-failure in the mid-1980's, and it appeared that most or all of the state's investment (\$32 million) could be lost.

However, CFAB recovered over time. The state's investment was retired (repaid) by CFAB over the 1991-1998 period, and CFAB's present ownership (with about \$19.5 million of equity) rests solely with its current and former borrowers. Over its 21-year life, CFAB has made several hundreds of millions of dollars in loan advances while the state has never had more than the initial \$32 million at risk. On a scale, this has been a remarkably efficient implementation of state policy.

In late 1995 the Division of Legislative Audit investigated and explored certain aspects of CFAB in connection with then-pending legislation. The related report (No. 08-4525-96) included a single recommendation; that the potential for CFAB to assume or acquire the Commercial Fishing Revolving Loan Fund functions and/or assets, on some basis, be explored. Although both the Division of Investments and CFAB were receptive to the recommendation, neither was enthusiastic, and the matter was not seriously pursued.

In the Legislative auditor's findings in support of that recommendation, there was discussion about the apparent advantages to borrowers who qualified for CFAB financing over those who chose, or were compelled by circumstances, to borrow from the state. The auditors relied on then-current data to illustrate their points.

Over the ensuing five years, the differences may have become more pronounced. Because CFAB is a cooperative, its directors and management are obligated to operate the institution efficiently and for the benefit of its past and present borrower-members (who are also stockholders). The primary financial manifestations of accommodation of this obligation are the allocation of patronage refunds ("rebates") to borrowers and the payment of dividends to stockholders who are no longer borrowers. Over the ten-year period June 1, 1990 through May 31, 2000, CFAB received \$34,366,700 in interest and fee income from its borrowing members. It has returned \$4,642,200 to members in cash through the mechanisms mentioned above, and holds \$1,634,300 in allocated accounts which, circumstances permitting, will also be paid in cash to members over the next few years. Effectively, for each \$100.00 collected from members \$13.50 has been returned and another \$4.80 is earmarked for return. Since during those ten years the interest rates of CFAB and the Commercial Fishing Revolving Loan Fund have been essentially the same, it is clear that any resident fisherman CFRLF borrower who could have obtained CFAB financing has been disadvantaged.

The legislation will not result in denial of financing to anyone who might otherwise have qualified, and holds potential benefits for many resident fishermen. It does not affect those elements of the Commercial Fishing Loan Act which are directed toward residents who cannot qualify for conventional financing. It holds the potential, over time,

for a significant reduction in utilization of the Commercial Fishing Revolving Loan Fund and for incremental transfers to the General Fund. Finally, it removes an element of direct and subsidized competition by the state with a successful and private institution created at significant risk to the state.



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*Not for
distribution*

April 19, 2001

Edward E. Crane
President

TO: Kathy Hansen, Executive Director
Southeast Alaska Fishermen's Alliance
FAX 907-586-5648

(6 pages)

FROM: Ed Crane

A handwritten signature in dark ink, appearing to read 'Ed Crane', is written over the printed name.

Hi, Kathy,

I saw your letter to Senator Phillips, and understand your misgivings. I'd like to address a few points.

Regarding redundant applications - we'd like to avoid this. There is a letter of intent associated with SB 168 (see first attachment). In the past - several years ago - when the Commercial Fishing Loan Act required an applicant to be declined by two private institutions before obtaining a state loan, CFAB and DOI routinely exchanged applications. We see no reason that can't be done again.

CFAB also has a pre-qualification process. An applicant who has pre-qualified with CFAB would have no reason to go to the state. If he/she is declined by CFAB, the application is all ready for the state.

We would take issue with the assertion that the state is "more willing to work with" problem situations. There is documented evidence to suggest otherwise. It's not really a rational matter to discuss from either standpoint, though, because few people want to stand up and say, "I was sick and wounded, and here's what my lender did for me." I will point out that each year CFAB is subject to an outside audit as well as to an examination by

Alaska Commercial Fishing and Agriculture Bank

Kathy Hansen, Executive Director
April 19, 2001
Page 2

the state bank examiners. Each of them issues a report which, in part, addresses CFAB's practices. There is no outside or professional review of the Division of Investments.

A simple change of interest rate is a loan "modification" and not a "refinancing." There is no reason for SB 168 to affect the practice you cite in your fifth paragraph.

Please review the enclosed background paper. It is accurate in every respect. Sometimes it is overlooked that CFAB is owned by fishermen (including some of your members!). Those fishermen, in the aggregate, own near \$20 million of equity. Does the state not have some obligation to protect that fishermen's equity which is no less important than the obligation to "make it easy" for fishermen to be financed?

In our view, the primary consideration for SB 168 lies in the final sentence of your first paragraph. What is the objective rationale for a state agency, with subsidies totaling hundreds of thousands of dollars annually, to directly and aggressively compete with a private entity owned by fishermen (and which, by the way, pays state corporate income tax)?

Kathy, I'm afraid we must take issue with the comment in your final paragraph, also. There may be occasions when that particular scenario unfolds; we have been unable to identify any such occasion in recent years. Moreover, the existing statute demands such a process for "Section C" loans - from our perspective, it appears the Division has consistently ignored that.



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February 9, 2001

Edward E. Crane
President

F. Terry Elder, Director
Division of Banking, Securities and Corporations
Post Office Box 110807
Juneau, Alaska 99811-0807

Dear Mr. Elder,

We have reviewed House Bill No. 106 and Senate Bill No. 66, which we presume to reflect intents, purposes or priorities of the Division of Banking, Securities and Corporations.

We do not, and would not, offer any commentary on these bills in total; however, we are puzzled by the inclusion of CFAB in their effects through the reference to AS 44.81 in Sections 5 and 44 of each of them. We are particularly apprehensive about the immediate apparent conflict with AS 44.81.010 (a) which, in relevant part, exempts CFAB from the provisions of AS 06.05. That exemption is logically supported, at least in part, by CFAB's uniqueness as an institution and by the limited and detailed authorities embodied in AS 44.81 itself.

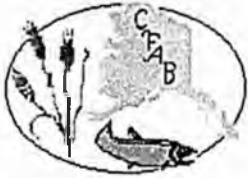
Beyond that, an initial and cursory analysis of the affected statutes as and if amended by HB 106 or SB 66 suggests that there would be no resulting changes to CFAB's structure, operations, or authorities but there would be considerable potential for new reporting requirements or other complications which could only be translated into new costs for its borrower-owners.

We would be grateful if your office might provide us with some understanding of this matter. There may be objectives of which we are unaware, and we would be happy to consider alternative ways in which we might assist in meeting those objectives.

Very truly yours,

Edward E. Crane
President

Alaska Commercial Fishing and Agriculture Bank



MEMORANDUM

TO: File - "2001 Banking Legislation"

FROM: Ed Crane *Ed Crane*

DATE: February 22, 2001

Terry Lutz (Div'n of Banking, etc.) called today about 1:45 p.m. He discussed my February 9 letter, and the references to CFAB in Sections 5 and 44 of HB106/SB66. His initial comments were to the effect that the reference to AS44.81 should be removed from Section 44 of the legislation, but that in Section 5 should remain. He appeared to not acknowledge the apparent conflict mentioned in my letter. He said the only effect of including the reference to CFAB in Section 5 would be to make CFAB subject to the confidentiality requirements in the legislation (Section 3).

I called Terry's attention to AS44.81.260, the "Confidentiality of Records" section of CFAB's statute. He was unaware of it, and said that AS44.81 had not been reviewed prior to incorporating the reference to it into HB106/SB66. After looking at AS44.81.260, he said that he would talk to Terry Elder and recommend the Section 5 reference be deleted.

Terry committed that he would let me know definitely as to the conclusion of this matter.

(4) "primary fish buyer" means a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any fishery resource in intrastate, interstate, or foreign commerce. (§ 2 ch 102 SLA 1977; am § 3 ch 94 SLA 1982)

Revisor's notes. — In 1999, "commissioner of labor" was changed to "commissioner of labor and workforce development" in this section in accordance

with § 90, ch. 58, SLA 1999.

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

Article 8. Commercial Fishing Loan Act.

Section

- 300. Declaration of policy
- 310. Powers of the department
- 315. Allocation of loans
- 320. Limitations on loans
- 325. Guarantors
- 333. Loans for purchase of Alaska limited entry permits
- 335. Default and foreclosure
- 337. Deficiencies and transfer of entry permits after foreclosure

Section

- 338. Entry permits as collateral
- 339. Regulations
- 340. Creation of fund
- 342. Special account established
- 350. Administration of fund
- 353. Waiver of confidentiality
- 355. Disposal of property acquired by default or foreclosure
- 360. Definitions
- 370. Short title

Cross references. — For management of wild and enhanced stocks of fish, see AS 16.05.730.

Legislative history reports. — For House Resources Committee report in connection with ch. 134, SLA 1972 (SCS CSHB 102 am FCC), see 1971 House Journal, p. 399; for House Finance Committee report,

see 1972 House Journal, p. 554; for legislative letter of intent in connection with the amendments to this article made by ch. 7, SLA 1983 (SCS CSHB 15(Fin)), see 1983 House Journal, p. 432, or 1983 Senate Journal, p. 621.

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

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

(1) make loans

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

(i) for the purchase of entry permits;

(ii) to upgrade existing vessels and gear for the purpose of improving the quality of Alaska seafood products; or

(iii) to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual commercial fishermen's entry permits, to the extent allowed under (e) of this section;

(B) to an individual for the repair, restoration, or upgrading of existing vessels and gear, for the purchase of entry permits and gear, for the construction and purchase of vessels, or, to the extent allowed under (e) of this section, to satisfy past due federal tax obligations that may result in the execution on and involuntary transfer of the individual's entry permits, if the individual has been a state resident for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370, and either

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

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

(C) for the purchase of quota shares for fisheries in or off the state by individual commercial fishermen who

(i) have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370;

(ii) for any two of the past five years, possessed a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 and actively participated in a fishery for which the license or permit was issued;

(iii) qualify as transferees for quota shares under applicable law; and

(iv) are not eligible for financing from other recognized commercial lending institutions to purchase quota shares;

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

(3) adopt regulations necessary to carry out the provisions of AS 16.10.300 — 16.10.370, including regulations to establish reasonable fees for services provided;

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

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

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

(7) allow an assumption of a loan if

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

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

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

(9) charge and collect the fees established under this subsection;

(10) refinance a debt obligation incurred by a borrower or borrowers under this section if the borrower or borrowers otherwise qualify for a loan under AS 16.10.300 — 16.10.370; the department shall collect a refinancing loan origination charge of one-half percent of the amount of the debt obligation that has been refinanced when the first refinancing payment is due;

(11) refinance debt obligations, not to exceed \$300,000, incurred by a borrower or borrowers for the purchase of a commercial fishing vessel or gear if the borrower or borrowers otherwise qualify for a loan under AS 16.10.300 — 16.10.370; the department may collect a refinancing loan origination charge as provided by regulation.

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

(c) In determining whether an individual commercial fisherman is reasonably likely to be able to repay a loan made under AS 16.10.300 — 16.10.370, the commissioner shall consider the individual commercial fisherman's income from commercial fishing and from all other sources.

(d) *[Repealed, § 9 ch 62 SLA 1994.]*

(e) The department may not make a loan to an individual under (a)(1) of this section to satisfy past due federal tax obligations unless the individual has filed past and current federal tax returns with the federal government and has executed an agreement with the federal government for repayment of past due federal tax obligations. During an

individual's lifetime, the individual may receive only one loan to satisfy past due federal tax obligations under (a)(1) of this section, whether under (a)(1) of this section as it now reads or under any other former version of (a)(1) of this section. A loan made under (a)(1) of this section to satisfy past due federal tax obligations may not exceed \$30,000. (§ 1 ch 134 SLA 1972; am § 2 ch 54 SLA 1973; am § 2 ch 128 SLA 1975; am § 2 ch 190 SLA 1976; am § 13 ch 105 SLA 1977; am §§ 1, 2 ch 83 SLA 1978; am § 1 ch 72 SLA 1979; am § 7 ch 113 SLA 1982; am § 1 ch 7 SLA 1983; am §§ 1, 2, 34 ch 79 SLA 1985; am §§ 21, 22 ch 36 SLA 1990; am § 1 ch 54 SLA 1993; am §§ 1, 3, 9 ch 62 SLA 1994; am § 2 ch 73 SLA 1994; am §§ 1, 2 ch 127 SLA 2000)

Delayed amendment of subsection (a) and repeal of subsection (e). — Under secs. 4 and 6, ch. 127, SLA 2000, effective August 1, 2002, subsection (e) will be repealed. Under secs. 3 and 6, ch. 127, SLA 2000, effective August 1, 2002, subsection (a) will be amended to read: "(a) The department may

"(1) make loans

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

"(i) for the purchase of entry permits; or

"(ii) to upgrade existing vessels and gear for the purpose of improving the quality of Alaska seafood products;

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

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

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

"(C) for the purchase of quota shares for fisheries in or off the state by individual commercial fishermen who

"(i) have been state residents for a continuous period of two years immediately preceding the date of application for a loan under AS 16.10.300 — 16.10.370;

"(ii) for any two of the past five years, possessed a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 and actively participated in a fishery for which the license or permit was issued;

"(iii) qualify as a transferee for quota shares under applicable law; and

"(iv) are not eligible for financing from other recognized commercial lending institutions to purchase quota shares;

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

"(3) adopt regulations necessary to carry out the provisions of AS 16.10.300 — 16.10.370, including regulations to establish reasonable fees for services provided;

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

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

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

"(7) allow an assumption of a loan if

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

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

"(8) prequalify loan applicants for a limited entry permit loan or a quota shares loan and charge a fee not to exceed \$200 for prequalification;

"(9) charge and collect the fees established under this subsection;

"(10) refinance a debt obligation incurred by a borrower or borrowers under this section if the borrower or borrowers otherwise qualify for a loan under AS 16.10.300 — 16.10.370; the department shall collect a refinancing loan origination charge of one-half percent of the amount of the debt obligation that has been refinanced when the first refinancing payment is due;

"(11) refinance debt obligations, not to exceed \$300,000, incurred by a borrower or borrowers for the purchase of a commercial fishing vessel or gear if the borrower or borrowers otherwise qualify for a loan under AS 16.10.300 — 16.10.370; the department may collect a refinancing loan origination charge as provided by regulation."

Revisor's notes. — In 1997, to reconcile §§ 2 and 10, ch. 62, SLA 1994 with § 2, ch. 73, SLA 1994 the provisions of (a)(1)(C) and the references to a quota share loan in (a)(8) added by ch. 73, SLA 1994 were retained despite the delayed reenactment of subsection (a) by § 2, ch. 62, SLA 1994. For the same reason, "to" was inserted at the beginning of (a)(1)(A) and (B).

Cross references. — For legislative purpose and intent in connection with the 1994 amendment of (a) of this section, see § 1, ch. 73, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1990 amendment, effective May 12, 1990, rewrote paragraph (a)(3) and added paragraph (a)(9).

The 1993 amendment, effective September 1, 1993, added paragraph (a)(10).

The first 1994 amendment, effective May 26, 1994,

in subsection (a), added the item (1)(A)(i) designation, added items (1)(A)(ii) and (1)(A)(iii), inserted "or to the extent allowed under (d) of this section, to satisfy past due federal tax obligations that may result in the execution upon and involuntary transfer of the individual's entry permits" in the introductory language in subparagraph (1)(B), added paragraph (11), and made minor stylistic changes; and added subsection (d).

The second 1994 amendment, effective June 7, 1994, in subsection (a), made minor stylistic changes in the introductory language in paragraph (1) and in subparagraphs (1)(A) and (1)(B), added subparagraph (1)(C), and inserted "or a quota shares loan" in paragraph (8).

The 2000 amendment, effective August 1, 2000, in subsection (a) added division (1)(A)(iii) in the introductory language of subparagraph (1)(B) inserted the language beginning " , or, to the extent" and ending "individual's entry permits," and made stylistic changes; and added subsection (e).

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

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

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

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

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

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

- (1) may not exceed a term of 15 years, except for extensions under AS 16.10.310(a)(4);
- (2) may not bear interest exceeding 10 ½ percent;
- (3) must be secured by a first priority lien and appropriate security agreement;
- (4) may not exceed 90 percent of the appraised value of the collateral used to secure the loan; and

(5) may not be made to a person who has a past due child support obligation established by court order or by the child support enforcement division under AS 25.27.160 — 25.27.220 at the time of application.

(b) [See delayed amendment note.] A lien in favor of the state is not required for loans guaranteed fully by the federal government under 46 U.S.C. 1271 — 1279b (Federal Ship Financing Act of 1972), as amended. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the United States and so long as 46 U.S.C. 911-984 (Ship Mortgage Act, 1920) as amended, and 46 U.S.C. 801-842 (Shipping Act, 1916), as amended, remain ambiguous with respect to whether or not a state or state agency qualifies as a citizen of the United States for purposes of those Acts, the first lien requirement of this section may

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

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

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

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

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

Legislative history reports. — For House letter of intent in connection with the 1994 amendment of (a) of this section by § 2, ch. 73, SLA 1994 (HCS CSSB 132(RES)), see 1994 House Journal 2253.

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

be satisfied by the recordation and endorsement of a first preferred ship mortgage under 46 U.S.C. 911-984, and by perfection of a security interest under AS 45.29 (Uniform Commercial Code — Secured Transactions), if the approval of the Secretary of Transportation is obtained under 46 U.S.C. 839 for the transfer to the department of the interest in a vessel documented under the laws of the United States. In the case of a security agreement given to secure a loan made under AS 16.10.300 — 16.10.370 and covering a vessel documented under the laws of the United States, the first lien requirement of this section may also be satisfied by use of a trust deed and bond issued under it, if the trustee is a citizen of the United States and obtains a first preferred ship mortgage on the vessel under 46 U.S.C. 911 — 984, and the approval of the Secretary of Transportation is obtained under 46 U.S.C. 839 and 961 for the transfer of the bond or bonds to the department if the trustee is not a trustee approved by the Secretary of Transportation under 46 U.S.C. 808, 835 and 961.

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

(d) The total of balances outstanding on loans made to a borrower under AS 16.10.310(a)(1)(A) may not exceed \$300,000. The total of balances outstanding on loans made to a borrower under AS 16.10.310(a)(1)(B) may not exceed \$100,000. The total balances outstanding on loans made to a borrower under AS 16.10.310 (a)(1)(C) may not exceed \$300,000. The total of balances outstanding on all loans, including debt refinancing under AS 16.10.310(a), made to a borrower under AS 16.10.300 — 16.10.370 may not exceed \$300,000.

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

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

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

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

(i) If a loan is made to a borrower under AS 16.10.310(a)(1)(A), a subsequent loan may not be made to the borrower under AS 16.10.310(a)(1)(B). If a loan is made to a borrower under AS 16.10.310(a)(1)(B), a subsequent loan may be made to the borrower under AS 16.10.310(a)(1)(A) if the total of the balance outstanding on loans received by the borrower under AS 16.10.310(a)(1)(A) and (B) does not exceed \$300,000.

(j) All principal and interest payments, and any money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on loans made under AS 16.10.300 — 16.10.370, shall be paid into the commercial fishing revolving loan fund. (§ 1 ch 134 SLA 1972; am § 3 ch 54 SLA 1973; am § 3 ch 128 SLA 1975; am § 1 ch 154 SLA 1977; am § 3 ch 83 SLA 1978; am §§ 2 — 7 ch 72 SLA 1979; am §§ 8 — 12, 72 ch 113 SLA 1982; am §§ 4 — 7, 34 ch 79 SLA 1985; am § 4 ch 116 SLA 1986; am § 23 ch 36 SLA 1990; am § 4 ch 62 SLA 1994; am §§ 3, 4 ch 73 SLA 1994)

Delayed amendment of subsection (b). — Until July 1, 2001, the reference to "AS 45.29" in subsection (b) reads "AS 45.09".

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

In 2000, "AS 45.29" was substituted for "AS 45.09" in accordance with § 35, ch. 113, SLA 2000.

Effect of amendments. — The 1990 amendment, effective May 12, 1990, added subsection (j).

The first 1994 amendment, effective May 26, 1994, added the last sentence in subsection (d).

The second 1994 amendment, effective June 7, 1994, added the third sentence in subsection (d) and made a section reference substitution in the second sentence in subsection (i).

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

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

Sec. 16.10.325. Guarantors. A person may act as guarantor if the borrower has insufficient collateral to secure a loan for the purposes described in AS 16.10.310(a)(1)(B) or (C). The loan agreement shall specifically describe the property of the guarantor to be used as collateral by the borrower and shall be signed by the guarantor and the borrower. The department shall provide the guarantor with a copy of all notices sent to the borrower by the department. If the loan is for the purchase of an entry permit or quota shares, the guaranty by the guarantor may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit or quota shares. (§ 13 ch 113 SLA 1982; am § 5 ch 73 SLA 1994)

Effect of amendments. — The 1994 amendment, effective June 7, 1994, added an internal reference at

the end of the first sentence and inserted "or quota shares" in two places in the fourth sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

Cited in *Anderson v. Anderson*, 736 P.2d 320 (Alaska 1987).

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

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

(2) the date upon which the default occurred;

(3) the amount of the debtor's outstanding principal and interest as of the date of the default notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

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

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

(6) a statement that, under AS 16.10.310(a)(4), the debtor may reinstate the note by submitting to the commissioner a plan of repayment if the commissioner accepts the debtor's plan of repayment;

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

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

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

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

(d) If requested by the debtor, the commissioner may waive any of the time limits in (a) of this section for a period not to exceed 60 days if

(1) the debtor demonstrates good cause for the waiver; and

(2) the commissioner sets out in writing the reasons for approving the waiver.

(e) Except as otherwise provided in (c) and (d) of this section, if the debtor fails to reinstate or satisfy the note within the time specified in (a)(5) of this section, the debtor's interest in the permit is terminated by operation of law without further notice.

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

(g) If a limited entry permit that has been pledged as security under AS 16.10.333 or 16.10.338 is revoked under AS 16.43.970, the debtor's interest in the permit is terminated by operation of law without further notice as of the date that the revocation takes effect.

(§ 4 ch 83 SLA 1978; am § 9 ch 72 SLA 1979; am §§ 3, 4 ch 7 SLA 1983; am § 9 ch 79 SLA 1985; am §§ 1 — 4 ch 84 SLA 1991; am § 3 ch 110 SLA 1998)

Effect of amendments. — The 1991 amendment, effective June 28, 1991, in subsection (a), rewrote paragraphs (3) and (6), in paragraph (5), substituted "120 days" for "60 days" and made a stylistic change,

and inserted "of the note" in paragraph (7); rewrote subsections (d) and (e); and added subsection (f).

The 1998 amendment, effective June 19, 1998, added subsection (g).

Sec. 16.10.337. Deficiencies and transfer of entry permits after foreclosure.

(a) Upon a foreclosure on an entry permit as provided in AS 16.10.335 or the termination of a debtor's interest in an entry permit under AS 16.10.335(g), the commissioner shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the department directly incurred in administering the loan.

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

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

(d) Nothing in this section affects the right of the commissioner to institute legal action for a deficiency resulting from a default on a note given under AS 16.10.333. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 4 ch 83 SLA 1978; am § 72 ch 113 SLA 1982; am § 5 ch 7 SLA 1983; am § 4 ch 110 SLA 1998)

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

effective June 19, 1998, inserted "or the termination of a debtor's interest in an entry permit under AS 16.10.335(g)" in subsection (a).

Effect of amendments. — The 1998 amendment,

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

(b) If a limited entry permit is pledged for security for a loan made under AS 16.10.310(a)(1)(B) for the repair, restoration, upgrading, construction, or purchase of a vessel and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the commissioner's acceptance the borrower may sell the vessel, apply the sales proceeds to the debt, and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited entry permit that has been pledged for security for the loan.

(c) If a limited entry permit is pledged for security for a loan made under AS 16.10.310(a)(1)(C) for the purchase of quota shares and the borrower thereafter fails to make a payment or defaults, the commissioner shall, in addition to the notice provided under AS 16.10.335(a), notify the borrower that subject to the commissioner's acceptance the borrower may sell the quota shares, apply the sales proceeds to the debt, and renegotiate payment of the balance due on the loan to avoid the immediate loss of the limited entry permit that has been pledged for security for the loan. (§ 10 ch 72 SLA 1979; am § 5 ch 84 SLA 1991; am § 6 ch 73 SLA 1994)

Effect of amendments. — The 1991 amendment, effective June 28, 1991, added subsection (b).

The 1994 amendment, effective June 7, 1994, added subsection (c).

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

Sec. 16.10.340. Creation of fund. (a) There is a commercial fishing revolving loan fund to carry out the purpose of AS 16.10.300 — 16.10.370.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering AS 16.10.300 — 16.10.370.

(c) If the commissioner determines that the fund contains money that is excess to that needed to carry out the purpose of AS 16.10.300 — 16.10.370, then the commissioner may use the excess money to carry out the purpose of AS 16.10.500 — 16.10.560. (§ 1 ch 134 SLA 1972; am § 2 ch 177 SLA 1976; am § 24 ch 36 SLA 1990; am § 5 ch 62 SLA 1994)

Effect of amendments. — The 1990 amendment, effective May 12, 1990, added subsection (b).

The 1994 amendment, effective May 26, 1994, added subsection (c).

Editor's notes. — Section 63, ch. 113, SLA 1982, provides: "All assets of the fishermen's mortgage and note fund (AS 16.10.650) (now repealed) are trans-

ferred to the commercial fishing revolving loan fund (AS 16.10.340). Repayments of principal and interest on loans made from the fishermen's mortgage and note fund shall be deposited into the commercial fishing revolving loan fund by the commissioner of the Department of Commerce and Economic Development as they are received."

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

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

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

Sec. 16.10.350. Administration of fund. (a) The commissioner shall administer the loan fund.

(b) The commissioner shall annually prepare a report detailing the number and nature of reinstatements authorized by AS 16.10.335(a)(5) and notify the legislature that the report is available. (§ 1 ch 134 SLA 1972; am § 6 ch 84 SLA 1991; am § 20 ch 21 SLA 1995)

Effect of amendments. — The 1991 amendment, effective June 28, 1991, added subsection (b).

The 1995 amendment, effective August 8, 1995, in subsection (b), substituted "prepare" for "submit,"

deleted "to the legislature" following "a report" and added "and notify the legislature that the report is available" at the end.

Sec. 16.10.353. Waiver of confidentiality. (a) The commissioner may release information about a borrower's loan to any individual when release of the information has been authorized by the borrower.

(b) A person obtaining a loan under AS 16.10.300 — 16.10.370 after June 28, 1991 may, by signing a form prepared for the purpose, designate the names of persons and organizations to whom a copy of the notice required by AS 16.10.335 must be sent. (§ 7 ch 84 SLA 1991)

Sec. 16.10.355. Disposal of property acquired by default or foreclosure. The department shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.300 — 16.10.370 or former AS 16.10.650 — 16.10.720. Disposal shall be made in a manner that serves the best interests of the state, and may include the

amortization of payments over a period of years, but may not be by lease. (§ 11 ch 79 SLA 1985)

Sec. 16.10.360. Definitions. In AS 16.10.300 — 16.10.370

- (1) "commission" means the Alaska Commercial Fisheries Entry Commission;
- (2) "commissioner" means the commissioner of community and economic development;
- (3) "debtor" means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections;
- (4) "department" means the Department of Community and Economic Development;
- (5) "quota share" means a transferable license, permit, or right issued by the federal government that conveys a right to engage in a fishery in or off Alaska and to take a specified portion of the annual harvest quota for that fishery. (§ 1 ch 134 SLA 1972; am § 5 ch 83 SLA 1978; am § 7 ch 73 SLA 1994)

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

In 1999, "commissioner of commerce and economic development" was changed to "commissioner of community and economic development" and "Department of Commerce and Economic Development" was changed to "Department of Community and Economic

Development" in accordance with § 88, ch. 58, SLA 1999.

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

Effect of amendments. — The 1994 amendment, effective June 7, 1994, added paragraph (5).

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

Article 9. Salmon Hatcheries.

Section

- 375. Regional salmon plans
- 380. Regional associations
- 400. Permits for salmon hatcheries
- 410. Hearings before permit issuance
- 420. Conditions of a permit
- 430. Alteration, suspension, or revocation of permit
- 440. Regulations relating to released fish

Section

- 443. Department assistance and cooperation
- 445. Egg sources
- 450. Sale of salmon and salmon eggs: use of proceeds; quality and price
- 460. Inspection of hatchery
- 470. Annual report
- 480. Contracts for the operation of state hatcheries

Cross references. — For legislative findings and purpose related to AS 16.10.375 — 16.10.560, see § 1,

ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

Sec. 16.10.375. Regional salmon plans. The commissioner shall designate regions of the state for the purpose of salmon production and have developed and amend as necessary a comprehensive salmon plan for each region, including provisions for both public and private nonprofit hatchery systems. Subject to plan approval by the commissioner, comprehensive salmon plans shall be developed by regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations formed under AS 16.10.380. (§ 2 ch 161 SLA 1976; am § 2 ch 154 SLA 1977)

Sec. 16.10.380. Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that it

- (1) is comprised of associations representative of commercial fishermen in the region;
- (2) includes representatives of other user groups interested in fisheries within the region who wish to belong; and

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 26, 2000

Mr. Edward E. Crane, President
Alaska Commercial Fishing and Agriculture Bank
2550 Denali Street, Suite 1201
Anchorage, AK 99503-2007

Dear Mr. ^{Ed}Crane:

Thank you for your letter regarding the Alaska Division of Investments and their administration of the Commercial Fishing Revolving Loan Fund (CFRLF). I asked the Department of Community and Economic Development (DCED) to look into the concerns you expressed. While the department agrees that the commercial fishing industry is facing many challenges at this time, they do not feel that the policies or practices employed by the Division of Investments are adversely affecting Alaska harvesters' efforts to meet those challenges.

I am enclosing a copy of DCED's explanation to me. I hope this information helps explain the thinking behind the policies and practices with which you have concerns. These policies are consistent with the mission of the CFRLF. They were crafted primarily to assist nonstandard borrowers participating in a rapidly changing and very challenging industry. The department recognizes the importance of CFAB's contributions as a private lender and values the cooperative relationship that has existed over the years. Both programs are critical in helping Alaskans compete in the marketplace. The department would be happy to meet with you and further discuss these issues or other aspects of the CFRLF at your convenience.

Sincerely,


Tony Knowles
Governor

Enclosure

cc: Commissioner Deborah Sedwick, DCED
Greg Winegar, Director, Division of Investments, DCED

RECEIVED

DEC 29 2000

OFFICE OF THE GOVERNOR *Tony Knowles, Governor*

Alaska

**Department of Community
and Economic Development**

Memorandum

TO: The Honorable Tony Knowles,
Governor
State of Alaska

DATE: December 28, 2000

PHONE: 465-2500

Sedwards
FROM: Deborah B. Sedwick,
Commissioner

SUBJECT: Commercial Fishing Revolving
Loan Fund.

Thank you for the opportunity to respond to the letter from Ed Crane, President of Alaska Commercial Fishing and Agriculture Bank dated November 15, 2000.

The primary mission of the Commercial Fishing Revolving Loan Fund (CFRLF) is to promote a predominantly resident fishery by means of providing long-term low interest loans. The department is meeting this very important public purpose. The Alaska Division of Investments (division) is meeting its public fiduciary responsibility. I believe that any characterization of them as a welfare agency is unfounded. The CFRLF has a very good repayment history, has received no general fund appropriations since fiscal year 1985, and has appropriated over \$69 million out of the loan fund, with most of those dollars returning to the General Fund. The CFRLF is completely self-supporting and continues to provide an important financing mechanism for Alaska harvesters.

The department feels it is important to point out that the markets served by CFAB and the CFRLF are not "identical." While there is some overlap, one of the primary purposes of the CFRLF is to provide loans to Alaska commercial fishing harvesters that do not have access to financing from private sources. In creating the CFRLF, the Legislature felt it was important to help Alaskans maintain control of their fisheries, in spite of the fact that many did not meet standard lending criteria. While this does increase the overall risk of the CFRLF portfolio, the Division of Investments has developed policies that are intended to strike a balance between maintaining a healthy loan fund and being flexible enough to help borrowers through difficult times. This has required a certain amount of creativity on their part, but these efforts were crafted for non-standard borrowers and are

not intended to be used in the private sector. The department has addressed each of your specific concerns below:

1. **The division emphasizes collateral over debt service as an underwriting criteria.**

The division utilizes several criteria in addition to collateral in its decision-making process. 3 AAC 80.015 stipulates that loan officers will evaluate an applicant's eligibility, financial and credit history, operating plan, ability to repay and collateral when making lending decisions. No one factor is given extra weight.

2. **The division treats Commercial Fisheries Entry Commission (CFEC) sales data as appraisals.**

The division does not rely solely on CFEC information as a basis for determining value. Although the CFEC information is the most extensive sales data available and is given substantial weight, division loan officers may adjust the loan value of a permit based on factors such as asking price information from brokerage houses, run projections and market conditions.

3. **When the division defers interest as a condition of a loan extension, they do not capitalize that interest but rather place it in a non-interest-bearing account.**

This policy was implemented several years ago to help borrowers that were unable to make loan payments because of dramatically changed market conditions. Prior to this change, when the division granted extensions the past due interest was capitalized, which had the effect of charging interest on interest. This practice compounded the borrower's problem and increased the likelihood of a default. The division has always considered foreclosure a last resort and implemented this change to help borrowers through difficult times and reduce the number of defaults. The interest is not forgiven. Some borrowers are paying it back on an annual basis and others will pay it at maturity.

4. **The division implemented a new program that rewards borrowers that make their full payments early or on time.**

The "Pay on Time" program went into effect in August of this year, with the adoption of 3AAC 80.055(P). This program provides a 1 percent interest rate reduction for the following year to borrowers that make their payments timely. It is similar to a program used by the Division of Agriculture called the "Good Borrower Credit." The purpose is to reward borrowers that consistently timely pay and to increase cash flow to the loan

fund by offering an incentive. The program also saves the division money by reducing the number of extensions, soft collection contacts, workouts and other collection activity associated with borrowers that do not pay on time. The division has received very positive feedback from borrowers concerning this program, and several have indicated that they made an extra effort to come up with additional funds to make a full payment because of this incentive.

5. The division is providing loans to Alaska harvesters who wish to finance the purchase of commercial fishing vessels used in British Columbia fisheries.

In the past year the division has made three loans for a total dollar amount of \$95,389 to qualified Alaska harvesters to purchase Canadian owned vessels. This level of activity does not represent a large enough segment of the market to erode values as suggested in your letter. In addition, the CFRLF statutes do not authorize the division to deny loans based on the origin of the asset being purchased. The primary purpose of the fund is to promote a predominantly resident fishery by providing Alaska harvesters with access to affordable capital so that they can maintain and upgrade their fishing operations. This purpose does not include making business decisions for borrowers concerning where they can or cannot purchase vessels, gear or other equipment in the most cost efficient manner. Decisions such as these are clearly the responsibility of the borrower. The division is responsible for insuring that loans involving these vessels are properly secured and that has been accomplished.

6. The division is disregarding the limitation contained in AS 16.10.310(a)(1)(c)(iv). This limitation states that loans to purchase quota shares under the CFRLF cannot be made if the applicant is eligible for financing from other recognized commercial lending institutions.

The division fully abides by this limitation. Application packages, brochures and policies all clearly explain this requirement. Applications are carefully reviewed to see if other financing is a possibility. In cases where that appears to be an option, applicants are referred to other lenders such as banks, CFAB, or the National Marine Fisheries Service (NMFS) program. Although you indicate that you are not aware of applicants being referred to CFAB by the Division, this in fact happens on a regular basis. Division loan officers and staff from Alaska Business Development Center, a Division contractor, routinely refer applicants that appear to be bankable to other lenders, including CFAB. The division has no control over which alternatives these applicants pursue; however, it appears that the NMFS program attracts many of these referrals because they offer the most attractive interest rates and loan terms.

During the past year the division made a total of 15 quota share loans. This compares with over 1,100 transfers that took place in 1999 according to NMFS statistics. The division obtained bank turn down letters on several of these, including one from CFAB. In cases where a turn down was not required, the assigned loan officer explained why the application would not qualify for other financing. The division does not require turn down letters in every case because of the extra time, money and paperwork involved in going through a futile process that eventually ends up in a denial.



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November 15, 2000

Edward E. Crane
President

The Honorable Tony Knowles
Governor, State of Alaska
Post Office Box 110001
Juneau, Alaska 99801-0001

Dear Governor Knowles,

This is to ask that you direct your attention and consideration, and the attention and consideration of your administration, to certain practices and general directions of the Division of Investments in its administration of the commercial fishing loan fund.

Our concerns are focused on three general areas, which are not mutually exclusive:

1. Activities which may appear to provide immediate and/or short-term advantage to individual harvesters but which, in the aggregate, tend to mask the effects of changing dynamics and economics in the Alaska seafood business (the salmon fishery in particular) and to confuse and delay the process of adjustment which is both inevitable and necessary.
2. Activities which suggest a lack of fiduciary regard for the public funds involved and which effectively cast the Division into a role as a welfare agency rather than as a commercial lender.
3. Activities which we view as inappropriately disadvantageous to CFAB and to other private lenders, and which are inconsistent with the relevant statute.

* * * * *

Before addressing specifics, we think it's appropriate to provide a context by summarizing our institutional beliefs with respect to the current and future circumstances of the Alaska salmon business, as follows.

The Alaska salmon business has been subjected to significant and continuing stresses since the late '80's or early '90's. These stresses have been the effects of new product competition (i.e., farmed salmon), changing world markets, increased capital and operating costs, and shrinking or unreliable processing capacities, etc. These stresses have

Alaska Commercial Fishing and Agriculture Bank

The Honorable Tony Knowles
Governor, State of Alaska
November 15, 2000
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been exacerbated or amplified by localized run failures and by increasing demand for sportfishing utilization of the resource.

There is little structure or integration in the Alaska salmon business, and that is clearly manifested at the most basic level, where the fundamental operating unit is a single harvester (who, theoretically, competes with all other harvesters). It is extremely difficult, if not impossible, for any single participant to make - or promote - the changes necessary to accommodate or overcome the stresses.

Although these circumstances promise a forced, and likely painful, period of adjustment for CFAB's constituents and for the institution itself, we have confidence in the long-term future. The resource is renewable and generally healthy, it is a desirable source and form of protein in many markets worldwide, and its raw product production costs remain at nominal levels.

Because the salmon business is influenced not only by economic and biological factors, but also - at least to some extent - by political and social priorities within Alaska, we find it not possible to project a specific process through which changes will occur, or even a likely time-frame. But we feel quite certain that the Alaska salmon business of the future will involve fewer participants (at all levels and in all segments), enhanced operational efficiencies, reduced overall capitalization, and a much greater incidence of integration and mutualization of interests. Fewer households - resident or otherwise - will depend upon the salmon fishery as a primary source of cash income. Harvesters who are diversified will continue to be particularly advantaged.

CFAB's lending policies and underwriting standards are based firmly on those beliefs. CFAB deals in the future, and its loans are funded by other people's money. We are committed to seeking and accommodating those harvester applicants whose histories, capacities, perspectives, and other qualities suggest strongly that they are adjusting to, and can continue to adjust to, the dynamics of their operating environment. Our effort and intent are to finance "survivors" rather than "victims."

* * * * *

Our first concern is with the Division's longstanding emphasis on collateral "value" - as opposed to debt servicing prospects - in its loan underwriting. This is of particular concern with regard to limited entry permits and to the practice of treating summaries of permit transactions compiled and published by the Commercial Fisheries Entry Commission as "appraisals" for collateral purposes. Those published data are indeed valuable for reference, and CFAB utilizes them as such. However, a cursory analysis of the process by which they are developed, and a review of the extreme ranges of such data for any permit type over a period of years, make clear that they are not "appraisals" nor are they in any other sense indicators of future values. Through its fundamental reliance on them as

The Honorable Tony Knowles
Governor, State of Alaska
November 15, 2000
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a primary criterion for loan amounts, the Division of Investments has effectively "floored" the cost of permits to Alaska harvesters, has supported the overcapitalization of salmon fisheries, has confused or altered the economic trends in some fisheries, and has contributed significantly to the common mindset which has viewed limited entry permits as "investments" rather than as "tickets to fish."

We are also concerned with what we understand to be a longstanding and perhaps increasingly utilized practice with respect to seriously delinquent loan accounts. We are referring to the practice of "rolling up" delinquent and currently uncollectible interest into a new and separate, non-interest-bearing, note to be paid following the maturity of the basic (reamortized) note. This has been characterized to us as "creative financing"; we cannot think of a more offensive term. Cash flow, principally in the form of collected interest, is critical to any lender. A borrower who can realistically be projected to generate cash to service a reamortized debt certainly can use that cash to pay delinquent interest. We do not understand the rationale by which a lender of public funds concludes to forego the opportunity to collect delinquent and/or current interest. No private lender could survive such a practice on any significant scale. In addition, it is disruptive to private lenders, as evidenced by the number of CFAB delinquents who ask "Why can't you just do it like the state does?"

A more recent development of concern is the Division's implementation of its "Pay-on-Time Program." This program ostensibly rewards a borrower whose payment is received within fifteen days of the due date by means of an interest rate reduction for the ensuing payment period. This makes a mockery of sound credit practices. We know of no responsible lender who will make a loan to a borrower who cannot be projected and presumed to make timely payments. The loan will be priced accordingly. Repayment failures or delinquencies are dealt with as provided by loan terms. The lending of public funds in the context of such gimmickry - in which every borrower receives a rate decrease for performance or incurs a fee for the lack thereof, and no borrower is therefore subjected to the contracted cost of borrowing - is disruptive to a market in which many private and responsible lenders attempt to function.

A concern which we have reason to believe is shared by others - both harvesters and their lenders - relates to Division financing of what are coming to be known as "B.C. Boats." This issue arises primarily due to the congruence of two phenomena: (1) the availability, at "distress" prices, of fairly large numbers of harvesting vessels formerly used in British Columbia fisheries, and (2) a relatively recent change (apparently imposed by national policy) in the ways in which the U.S. Coast Guard's Alaska Region requires application of the rules of admeasurement.

The underlying specifics of the matter are complex, but a generalized summary is as follows. A foreign-built vessel (as are most of the "B.C. Boats") cannot be documented with a fisheries endorsement by the Coast Guard. However, a vessel which - without regard

The Honorable Tony Knowles
Governor, State of Alaska
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to its "real" length, displacement, capacity, or weight, etc. - can be found under the admeasurement rules to represent five net tons or less of carrying capacity does not require Coast Guard documentation and therefore no fisheries endorsement. It may simply be registered with the State of Alaska, which has no restrictions on foreign origin (or foreign ownership). The admeasurement rules are "quirky," to say the least (for example, a refrigerated fish hold is presumed to represent no carrying capacity!), and some surprisingly large vessels can be certified as having less than five net tons of carrying capacity.

Obviously, we have no clear insight into the files and activities of the Division of Investments. However, we have seen evidence that suggests the Division has financed at least several of the vessels in question, and we have been told by applicants and inquirers that the Division has expressed no reservations about financing such vessels for eligible Alaska fishermen. We think that posture is imprudent and improper, as well as politically provocative. The introduction of any significant number of "B.C. Boats" into Alaska fisheries will inevitably result in erosion of the values of existing vessels, including those which are collateral for CFAB loans, loans of other lenders, and loans of the Division itself, to say nothing of those whose owners are currently attempting to sell them in order to exit the fishing business. We have already detected an undercurrent of resentment among Southeastern Alaska harvesters directed toward the number of "B.C. Boats" in those fisheries.

We know of no other lender who seems willing to make any meaningful number of loans for such vessels (CFAB has committed to finance one such vessel - a small one, in a situation we concluded to be unusual). It may not be possible to exclude such vessels from Alaska's fisheries, but their intrusion should not be supported by public funds.

A final concern relates to what appears to us to be a cavalier disregard for the statutory limitation on loans for the purchase of quota shares. AS 16.10.310(a)(1)(c)(iv) provides that the Division may make such loans only to individual commercial fishermen who "are not eligible for financing from other recognized commercial lending institutions to purchase quota shares." In Alaska there are several institutions, including CFAB, who strive to make such loans. Observation over time suggests to us that this limitation has not been observed. The Division has told us "... we ... carefully review each application received to see if private sector financing is a possibility. In cases where that appears to be an option we refer the applicant to private lenders such as CFAB. If the applicant is denied by your organization or other private lender and can provide a denial letter we will reconsider their request under the Commercial Fishing program." We strongly protest any process which presumes to foresee CFAB's judgments and application of its lending standards. Furthermore, we have no record, and no recollection, of any such referral on any occasion over the past five years. We are aware of no other private lender which has received such a referral. We believe this is an abuse which speaks for itself and which would not be countenanced in a more visible segment of commerce.

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Governor Knowles, we stress that our concerns are with the specific practices discussed above. We take no issue with the existence of, or purposes of, the commercial fishing loan fund. There is also a long and well-established history of a cooperative and mutually supportive relationship between the Division of Investments and CFAB. Nevertheless, as a small privately-owned institution focused primarily on a market identical to that of the Division, burdened by the requirement for accountability to its owners and by the necessity to meet its own obligations (which have included nearly \$175,000 in State of Alaska income taxes over the past five years) through "real world" policies and strategies, we feel compelled to seek a higher level of responsibility and foresight in the administration of the commercial fishing loan fund.

Very truly yours,



Edward E. Crane
President

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane, should perform an analysis to determine whether CFAB should assume the Alaska Commercial Fishing Revolving Loan Fund functions and/or purchase, in whole or part, that fund's loan portfolio.

As discussed in the Report Conclusions section, retention of the Commercial Fishing and Agriculture Bank's (CFAB's or Bank's) enabling statutes, AS 44.81, would ensure CFAB would remain a source of capital for Alaska resident fishers, a financing mechanism for the purchase of limited entry permits, and an organization whose charge is to serve a public purpose in the development of the aquatic and agriculture industries of the State. In addition, we believe the Bank could be utilized to take over all or part of the functions of the Commercial Fishing Revolving Loan Fund (CFRLF) through optimum use of its access to capital from the Federal Farm Credit System. This would decrease the demand on CFRLF and allow excess funds to be deposited into the General Fund.

CFRLF makes loans under AS 16.10.310(a)(1) sections (A), (B), and (C) as follows:

- Section A Loans. These loans are to individual resident commercial fishers for the purpose of purchasing a limited entry permit, upgrading of existing vessels and gear, or satisfying past due federal tax obligations that may result in the execution upon and involuntary transfer of the fisher's limited entry permits.

To qualify, the applicant must have held a limited entry permit or commercial fishing or crew member license for the year preceding the application and two other years out of the last five years. He/she must have fished in Alaskan waters during those qualifying years. The applicant does not have to demonstrate that he/she cannot obtain financing from a private lending institution or CFAB. The lending limit is \$300,000 less any loan balances outstanding with CFRLF, excluding Section C loans. If an applicant receives a loan under this section, he/she does not qualify to borrow under Section B. In addition, tax obligations are limited to \$30,000 and are a one time only loan.

- Section B Loans. These loans are to individual resident commercial fishers for purposes similar to Section A loans. However, to qualify, the applicant must not have occupational opportunities available other than commercial fishing due to either a lack of training or a lack of employment opportunities in the area of residence or must be economically dependent on commercial fishing for a livelihood and for whom

commercial fishing has been a traditional way of life in Alaska. There is a regulatory requirement¹⁷ that the fisher must be determined not to be eligible for an alternative source of financing. The lending limit is \$100,000 less any other Section B outstanding loan balances with CFRLF. The lending limit for tax obligation loans under this section is the same as for Section A loans.

- Section C Loans. These loans are for the purpose of purchasing quota shares for fisheries in or off the State by individual resident commercial fishers who for any two of the past five years possessed a crewmember or commercial fishing license or permit and who actively participated in the fisheries for which the license or permit was issued. In addition, the fisher must qualify as a transferee for quota shares under the applicable law. As with the Section B loans, the fisher must be determined not to be eligible for an alternative source of financing, which for these loans is required by statute¹⁸ in addition to the regulatory requirement.

In addition to the above loans, in FY 95 CFRLF implemented a refinance program for vessel or gear loans made by other lenders (including CFAB). The fishers must meet the eligibility requirements of Section A, B, or C loans. The lending limit is \$300,000 less any other outstanding loan balances with CFRLF.

According to legislative committee minutes, the refinance program was necessary to allow CFRLF borrowers to take advantage of the new lower interest rate of 8% in effect at the time of the discussions. In addition, the refinance program allows the fishers to combine debt service on permit loans held by CFRLF and vessel loans held by private lending institutions. This restructuring provides a more reasonable repayment schedule and in some cases a lower overall interest rate, as the private lending institution vessel loan interest was higher than CFRLF's interest rate. Refer to Appendix A for the interest rates charged by CFRLF between FY 91 and November 1995.

There appears to be duplicative lending services provided by CFRLF and CFAB for the Section A loans. Both lending organizations can make loans to creditworthy individual fishers for the purpose of purchasing a limited entry permit. As of November 22, 1995, CFRLF had outstanding Section A loans secured with limited entry permits totaling \$40.8 million, while as of October 31, 1995, CFAB held \$18.7 million in loans secured with limited entry permits. The \$40.8 million represented approximately 57% of CFRLF's total outstanding loan portfolio.

Prior to FY 95, CFRLF was authorized to make Section A loans only for the purchase of limited entry permits. In the 1994 legislative session, a bill was adopted authorizing Section A loans for the purposes of upgrading existing vessels and gear and to satisfy past due federal tax obligations. These loans can be secured by limited entry permits, vessels, gear, other assets or any combination thereof. CFAB was already making loans to upgrade vessels and gear that could be secured by any of the aforementioned assets. The current version of HB 284 would

¹⁷See 3 AAC 80.055(b).

¹⁸See AS 16.10.310(a)(1)(C)(iv).

give CFAB the authority to make loans for past due tax obligations secured by limited entry permits.

In FY 95, CFRLF's new authority for Section A loans resulted in about \$269,000 in new loan originations. The total loan originations for the fiscal year were \$18.7 million with \$6.4 million or (34%) of that being Section A loans. CFRLF originated \$4.9 million in refinancing loans from other lenders during FY 95. Of that amount, approximately \$1.7 million were loans held previously by CFAB.

As noted previously, CFAB's loan portfolio is shrinking and if that trend continues the Bank will be at a break even point in approximately two years. The state bank examiners reported that "[c]ompetition for quality loans with other financial institutions and the State of Alaska, Division of Investments, continues to remain strong."

We compared CFAB's loan portfolio for seafood harvesters¹⁹ from 1991 through October 1995 with the loan portfolio of CFRLF. See Appendix A for a schedule of that comparison. From FY 91 through FY 95, CFAB's loan portfolio for seafood harvesters declined from \$37 million to \$25.1 million, a 32% decrease. While CFRLF's loan portfolio remained steady at an average of \$66 million between FY 91 and FY 94, its FY 95 loan portfolio increased by approximately \$7 million over that average.

We are uncertain why CFRLF has continued to hold a larger market share of loans than CFAB. It does not appear to be due to interest rates. In fact, as shown in Appendix A, the interest rates for CFRLF limited entry permit loans have generally been greater than on similar CFAB loans. In four of the past six years, CFRLF interest rates were 1% higher, while in the remaining two years CFAB rates were 1.5% higher. Further, CFAB's rates may be reduced for borrowers/owners who are current on their loan payments through patronage refunds. As discussed in the Organization and Function section, the FY 95 patronage refund effectively reduced the average interest rate paid by 1.1%. CFAB declared and distributed patronage refunds in four of the five last fiscal years.

The market share differential could be due to a perceived difference in credit policies. Delinquency rates have been comparable (within about 2%) for FY 91 through FY 93. Then, for FY 94 and FY 95 CFAB's delinquency rate has been about 5% higher than CFRLF's rate. Further analysis is difficult without reviewing CFRLF's loans, as one reason for a lower delinquency rate could be the practice of modifying loans without collecting the interest due. Thus, through a mere paper transaction a loan can be removed from the delinquency status. CFAB does modify some loans without collecting the interest. The extent of that practice for FY 92 through FY 95 can be seen in Exhibit 3 in the Report Conclusions section of this report. CFRLF does not track the dollar amount of this type of loan modification.

¹⁹CFAB makes loans to commercial fishing processors and agriculture harvesters, processors, suppliers, and marketers, including those in the timber industry. CFRLF only makes loans to individual seafood harvesters.

These and other issues must be reviewed and analyzed by management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane (CoBank) representatives. Among the options to be considered, we recommend inclusion of the following:

A. Delete CFRLF's authority to make new Section A loans

The legislature could delete CFRLF's authority to make Section A loans from AS 16.10. The existing loan portfolio of Section A loans would continue to be serviced by CFRLF. CFAB's annual loan originations potentially could increase by approximately \$7 million. As estimated by CFAB, this amount of increased loan volume would not significantly increase its operating expenses as shown below.

Exhibit 5					
CFAB's Estimates of Effect of Increased Loan Volume ²⁰					
Number of Loans	100	200	300	400	500
New Loan Volume	\$10,000,000	\$20,000,000	\$30,000,000	\$40,000,000	\$50,000,000
New Borrowings by CFAB	\$ 9,500,000	\$19,000,000	\$28,500,000	\$38,000,000	\$47,500,000
New Operating Expenses	\$3,750	\$42,500	\$111,250	\$195,000	\$243,750
New Net Proceeds	\$165,000	\$295,000	\$395,000	\$480,000	\$600,000
New Personnel	None	1 support	1 loan officer and 1 support	2 loan officers and 1 support	2 loan officers and 2 support

As CFRLF's existing portfolio of Section A loans pays down, any funds in excess of the lower loan demand and the annual statutory transfer²¹ for the needs of the Fisheries Enhancement Revolving Loan Fund could be transferred to the General Fund of the State through legislative action.

B. Delete CFRLF's Section A loan authority and sell these loans to CFAB

This alternative would be the same as alternative No. 1, except CFAB would purchase the existing Section A loan portfolio from CFRLF using borrowed funds from CoBank. A due diligence review of the CFRLF loans would have to be conducted by CFAB and CoBank representatives to determine the quality of the loan portfolio. Those loans meeting CFAB's credit policies and approved by CoBank could be purchased at a negotiated price. As of November 22, 1995, CFRLF's Section A loan portfolio totaled \$44.2 million.

²⁰This schedule was prepared by CFAB staff and presented by CFAB president, Ed Crane, at the board of directors' December 7, 1995, meeting. We did not review any of the underlying assumptions for the amounts presented, nor did we perform any audit procedures in regard to the calculations of those amounts.

²¹Alaska Statute 16.10.340(c) states that if the commissioner determines that CFRLF contains money that is excess to that needed to carry out its purpose, then the commissioner may use the excess money to carry out the purpose of the Fisheries Enhancement Revolving Loan Fund.

As stated in the Background Information section, the Line of Credit Agreement that CFAB has with CoBank requires that CFAB maintain an equity balance (total assets over total liabilities) of not less than \$20,000,000 with a leverage ratio (total assets to total equity) of no greater than 3.5 : 1. Given CFAB's total capital balance of \$26.6 million and that CFAB had an outstanding payable balance to CoBank of \$4.5 million as of May 31, 1995, CFAB could have borrowed approximately another \$57 million from CoBank.

This alternative would provide the General Fund of the State with a lump-sum payment for the Section A loan portfolio. However, a sufficient amount would have to be retained in CFRLF to ensure that the fund could meet its annual loan demand for new Sections B and C loans.

C. Abolish CFRLF and sell all Section A, B, and C loans to CFAB

Under this alternative, the legislature would repeal the Alaska Commercial Fishing Loan Act (AS 16.10). CFAB would receive the authority to make all the loans currently made by CFRLF. A due diligence review of the CFRLF loans would have to be conducted by CFAB and CoBank representatives to determine the quality of the total loan portfolio held by CFRLF. The loans made under Section B and C are considered higher risk as they are made to fishers who do not qualify under normal lending credit policies. For the existing and new loans made by CFAB under these sections, the State may have to agree to continue a share in the risks of these loans. Both the terms of the purchase agreement and the value of the purchase would have to be negotiated.

As of November 22, 1995, CFRLF's total loan portfolio balance was \$71.4 million. Depending on the terms of the purchase, the State might need to use a portion of the proceeds to purchase additional Class C stock in CFAB in order to comply with CoBank's required leverage ratio. A financial analysis would need to be prepared to determine the benefits to the State of increasing CFAB's equity in order to leverage more CoBank funds.

The vice president of CoBank stated that the alternatives merited consideration and CoBank would assist in reviewing them. CFAB and CFRLF have not yet taken a position regarding these alternatives.

In an early version of the bill adopted in 1978 to establish CFAB, there was a clause to repeal the Commercial Fishing Loan Act upon the creation of CFAB. However, this verbiage was deleted from the bill that was ultimately adopted by the legislature. Perhaps the deletion was due to the uncertainty of the success of CFAB as a viable lending institution for the commercial fishing and agriculture industries of the State. CFAB has proven to be a successful lending organization and we believe it is time to reappraise the need for both CFRLF and CFAB.

APPENDIX A

Commercial Fishing and Agriculture Bank

Comparison of CFAB and CFRLF Loan Activity for Seafood Harvesters
(millions)

	1991		1992		1993		1994		1995		10/31/95	11/22/95	
	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	CFAB	CFRLF	
Loan Balances	\$37.0	\$67.0	\$35.4	\$67.0	\$33.3	\$65.5	\$29.1	\$64.9	\$25.1	\$73.4	\$23.5	\$71.4	
CFRLF Section A Loan Balances	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$44.2	N/A	\$40.8	
Delinquent	4.3%	2.8%	12.7%	14.9%	8.7%	6.4%	16.2%	11.1%	10.4%	5.9%	12.8%	3.9%	
Loan Originations	\$15.0	\$13.8	\$4.0	\$6.7	\$4.2	\$10.2	\$1.8	\$7.3	\$3.6	\$18.7	N/A	N/A	
Section A Loan Originations	N/A	\$10.5	N/A	\$5.8	N/A	\$7.7	N/A	\$4.5	N/A	\$6.4	N/A	N/A	
Interest/Fee Income Note	\$5.1	\$7.3	\$3.9	\$5.8	\$3.7	\$8.3	\$3.1	\$5.5	\$2.9	\$6.7	N/A	N/A	
Interest Rate Range	Low	10.50%	10.50%	10.00%	10.50%	9.50%	8.00%	9.50%	8.00%	9.50%	10.50%	9.50%	10.50%
	High	12.00%	10.50%	11.50%	10.50%	11.00%	8.00%	11.00%	8.00%	11.00%	10.50%	11.00%	10.50%
Interest Rate for Limited Entry Permit Loans	9.50%	10.50%	9.50%	10.50%	9.50%	8.00%	9.50%	8.00%	9.50%	10.50%	9.50%	10.50%	

Notes:

- Only loans to seafood harvesters are included in this comparison schedule. As CFRLF only makes loans to seafood harvesters, CFAB's loans to other categories of borrowers have been excluded for comparison purposes.
- CFAB amounts are gross loan receivables as of May 31 of each year and as of October 31, 1995. CFRLF amounts are presented net of estimated uncollectable amounts as of June 30 of each year and as of November 22, 1995.
- CFAB's delinquency rate represents loans 90 days or more past due, while CFRLF uses a 60 day or more past due standard.
- CFAB's interest rate is based on the blended interest rates of its borrowings from CoBank plus 1.5% to 3% depending on the type of collateral obtained. Per AS 16.10.320(a)(2), CFRLF loans "may not bear interest exceeding 10.5 percent." From January 1, 1990 to November 28, 1992, the maximum statutory interest rate was charged. Subsequently, based on a departmental policy change, the rate of interest was set at 2 percent over the prime rate, with a maximum of 10.5 percent.

N/A - Not applicable or not available.

Sources:

- CFAB's annual reports, internal documents, and accounting records.
- State of Alaska's comprehensive annual financial reports.
- Department of Commerce and Economic Development, Division of Investments' reports, internal documents, and accounting records.



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February 16, 1996

Edward E. Crane
President

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FEB 20 1996

LEGISLATIVE AUDIT

Randy S. Welker, Legislative Auditor
Legislative Audit Division
Post Office Box 113300
Juneau, Alaska 99811-3300

Dear Mr. Welker,

Mr. Alan Otness, Chairman of CFAB's Board of Directors, and I have discussed the substance of the preliminary audit report transmitted to him by your letter of February 8. He has directed that I provide this written response. The audit report, presumably in its final version, will be discussed by the entire Board of Directors at its next meeting.

Response to Recommendation

We concur with the logic of the recommendation. Perhaps it is more accurate to say that we agree with the recommendation in total but would urge that it be received and analyzed with extreme care and thoroughness by potential decisionmakers and other third parties.

1. We believe that certain CFRLF activities -- particularly, but not exclusively, Section B loans as referenced in the audit report -- serve a very real and extremely important socio-economic need in Alaska, to an extent which may not be fully appreciated by urban Alaskans. It is perhaps misleading to unqualifiedly refer to those activities as "lending," but their maintenance is critical to the economic fabric of many rural communities. We believe that rational credit standards would not permit CFAB to replicate those CFRLF activities; but we also believe those activities should not be curtailed.

2. While the concept embodied in the recommendation is not totally new and has been the subject of casual discussion over several years, there has not been any analysis of the factors which might be legally relevant to the transfer (on any basis) of loan assets between two non-traditional lenders such as CFRLF and CFAB. The world of commercial law for lenders and lienors is more complex and peril-ridden than a casual observer might suspect. This is not to presume or to suggest any particular difficulty; rather, it is to warn against any premature assumption that a transfer would be "simple."

Randy S. Walker, Legislative Auditor
February 16, 1996
Page 2

3. We have little clear knowledge of the Division of Investment's circumstances and activities. We do have the impression that the CFRLF is a major piece of those activities and that the gross revenue generated by the CFRLF covers a good deal of the Division's "overhead" and, effectively, permits the administration of many other and smaller loan programs and activities. If that impression is correct, any abruptly-imposed or -effected transfer of assets might adversely impact the State's overall interests even though there were "benefit" to CFAB.

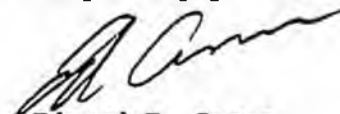
Other Matters

There are two other matters mentioned in the report on which we would like to comment.

First -- As reported, HB 284 as introduced included provision for a "permanent" State of Alaska investment of \$1.0 million. As of this writing, that provision remains in Section 9 of HB 284. We do anticipate that, at the earliest and/or most logical procedural opportunity, HB 284 will be amended to make the changes discussed on pages 17-18 of the report. We mention this only because the report language may inadvertently suggest that HB 284 has already been amended.

We would also like to comment on the several references to CFAB's declining loan volume. That decline is a fact and is indeed of concern to CFAB's Board and management. We would caution, however, that loan volume (i.e., the measurement in dollars only) is but one aspect of CFAB's overall health, and we do not consider the recent trends in total to suggest a critical situation. As a matter of fact, there are strong arguments that -- at least from the sole standpoint of financial effectiveness -- a loan portfolio of \$25 to \$30 million represents CFAB's "optimum" size. Nevertheless, we do want to build CFAB's loan volume and are frustrated that a lender can only obtain new volume by finding/developing new markets or by holding a "sale" (i.e., lowering standards). The aggregate histories of financial institutions demonstrate the folly of the latter approach, while the former is denied to CFAB. It would certainly be nice if your office's report in total, and the discussion of CFAB's development and evolution in particular, could lead today's legislature to recognize that its predecessor iterations have created a "good thing" whose values and services might logically be extended to inadequately-served participants of other Alaska resource-based industries!

Very truly yours,



Edward E. Crane
President

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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February 23, 1996

Mr. Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
FEB 23 1996
LEGISLATIVE AUDIT

Dear Mr. Welker:

Re: Alaska Commercial Fishing and Agriculture Bank preliminary audit report dated January 12, 1996.

This letter is in response to the above-referenced preliminary audit report.

Recommendation No. 1

The report recommends that "The management of CFAB and the Division of Investments, in conjunction with the Cooperative Bank of Spokane, should perform an analysis to determine whether CFAB should assume the Alaska Commercial Fishing Revolving Loan Fund functions and/or purchase, in whole or part, that fund's loan portfolio."

We have significant concerns with the concept of transferring the functions and/or selling the assets of the CFRLF to CFAB, but are certainly willing to participate in an analysis as recommended in the report. An independent third party, however, may be able to provide a more objective analysis. It would also be important that this analysis not only consider the financial ramifications, but also look at the long-term effect on several important public policy issues.

Our primary concern with this concept is that it attempts to solve a short-term problem at the expense of an extremely successful program. The CFRLF has been helping Alaskan's participate in the fishing industry since the early 1970's. It has received approximately \$60 million in total appropriations during that time, but has not requested any appropriations since 1985. In fact, over \$58 million has been appropriated from the CFRLF (most of it back to the General Fund) in the last ten years. The Fund is completely revolving and has committed nearly \$294 million in 4,600 loans since its inception. A House Research Agency report from October of 1989 described the CFRLF program as "one of the healthiest loan programs ever

created by the State." Admittedly, we have had to modify a number of these loans over the years and use creative financing techniques to help applicants through difficult times. This, however, is one of the real advantages of maintaining this program in the public sector. The primary public purpose of helping Alaskans compete in the commercial fishing business continues to be the main focus. While we have accomplished this without sacrificing the financial integrity of the Fund, the fact remains that a private lender would not have the same degree of flexibility enjoyed by the CFRLF.

This short term fix is not likely to solve CFAB's declining portfolio problem. Permit purchases in general have been declining over the past six years. Loan applications for the CFRLF this fiscal year are running considerably behind last year and unless there are drastic changes in salmon prices, this trend will probably continue. In addition, the increased risk associated with the fishing industry because of current market conditions makes it more difficult for fishers to obtain loans from private sector lenders. A large number of borrowers receiving loans under the CFRLF would not be able to obtain financing through CFAB. This would adversely impact the public purpose of maintaining a predominately resident fishery. Although some of the loans made under Section A would qualify for CFAB financing, there does not appear to be enough of an overlap to justify eliminating the CFRLF. In addition, these stronger borrowers help balance the overall makeup of the CFRLF portfolio and continue a positive cash flow to the Fund.

CLARIFICATIONS

There are several items in the report that need further clarification. Page 25 contains a description of the loan purposes authorized under Sections A and B of AS 16.10.310(a)(1). Under Section A, loans to upgrade existing vessels and gear may only be made to improve the quality of Alaska seafood products (such as refrigeration). The vast majority of loans made under Section A continue to be for the purchase of limited entry permits. Under Section B, the report indicates that loans may be made for similar purposes. While it is true that loans to purchase limited entry permits, satisfy past due federal tax obligations, or upgrade vessels and gear to improve seafood quality may be made under either Section A or B, loans to purchase new or existing vessels and loans to purchase gear or upgrade vessels that are not specifically for the improvement of seafood quality may only be made under Section B.

On page 26 of the report, there is an explanation of the purpose of the vessel refinance program that was passed by the 1994 legislature (SB 251). The report indicates that the primary purpose of the refinancing section was to allow fishers an opportunity to take advantage of lower interest rates and more favorable loan terms which resulted in lower payments. This certainly was one of the primary considerations, however there was another factor worth mentioning. Following the 1993 season, the Division traveled to communities to work with fishers experiencing financial difficulties because of a disastrous season. While many of the fishers were extremely grateful for the assistance in restructuring loans, several indicated that in spite of our help they were in danger of losing their fishing operation because their private lender was unable or unwilling to restructure their vessel and gear debt. Refinancing is the last lending priority (3 AAC 80.055(a)) and as a result of increased demand in other areas, this portion of the program was closed down in March of 1995 and is projected to remain closed for the balance of FY 96.

On page 27, the report theorizes that the market share differential between the CFRLF and CFAB could be due to "a perceived difference in credit policies." Based on input from applicants and past experience with applications that have been forwarded to CFAB for consideration, the credit policy differences are more than just perceived. This is understandable as private sector lenders are more conservative by nature. Likewise, we utilize extension policies that are more creative than usually found in the private sector. Deferring interest to maturity, extending and reamortizing loans, utilizing oil spill assignments, and refinancing existing loans to a lower interest rate are all tools commonly used to help borrowers through difficult years. Generally, private lenders do not have the same degree of flexibility because of various financial requirements such as those mentioned in the last paragraph on page 6 of the report.

OPTIONS

Pages 28 and 29 deal with three options that are recommended for consideration by the report. They are as follows:

A. Delete CFRLF's authority to make new Section A loans

Many of the loans currently being made under Section A would not be made by CFAB. There are a number of applicants who qualify for both Section A and B and choose to apply under Section A because of the larger loan limit (\$300,000 vs. \$100,000). These are individuals that would not meet private sector lending criteria. In addition, there are other Section A borrowers who simply do not meet CFAB's more conservative lending criteria. Because CFAB and the CFRLF are the only two entities that can secure a loan with a limited entry permit, these individuals would be unable to obtain financing elsewhere. This would frustrate the primary public purpose of the CFRLF, which is to maintain and promote a predominately resident fishery.

Over the past 16 years, both the CFRLF and CFAB programs have provided financing to Alaskan fishers to accomplish this goal. These efforts have been successful, but it has taken both programs (one public, one private) to meet this goal. According to statistics provided by the Commercial Fisheries Entry Commission (CFEC Report Number 95-12N), Alaskan residents received 81.6% of permits issued between 1975 and 1994. By the end of 1994 Alaskans still held 77.6%. Less than half of this decrease was due to transfers. Revocation and migration were two other factors included in the decrease. According to CFEC, the CFRLF has provided financing for 27.6% and CFAB 3.5% of all permits purchased by Alaskans. Eliminating Section A loans from the CFRLF will eliminate a permit financing source for a large number of Alaskan fishers.

B. Delete CFRLF's Section A loan authority and sell these loans to CFAB

The problems associated with eliminating Section A loans from the CFRLF has been discussed under option A above. In addition, this option contemplates selling the existing Section A

portfolio to CFAB. It is unlikely that CFAB and its lender, CoBank, would be willing to purchase this portfolio without a substantial discount. As the report suggests, falling fish prices, declining permit values, and competition from foreign countries has substantially increased the risk of lending in an already volatile industry. As a result, we have had to modify a substantial number of these loans and utilize creative restructuring techniques to help fishers survive difficult seasons. In addition, a number of borrowers under this section would not have qualified financially for CFAB in the first place. Thus while the State may enjoy a one time lump-sum payment to the General Fund from the sale of this portfolio, it is likely that this payment will be a fraction of what could be reaped over the long-term if this portfolio was left intact.

Several other questions come to mind concerning the sale of existing CFRLF loans. Will CFAB's (CoBank's) policies provide the same kind of flexibility and creativeness utilized by the CFRLF to deal with some very difficult times forecasted in the immediate future? Will the borrowers become members of CFAB? Will they be required to purchase class A and class B stock? Where will the funds for those purchases come from? The impact on existing borrowers should also be considered.

C. Abolish CFRLF and sell all Section A, B and C loans to CFAB

The concerns relating to the elimination of Section A loans are mentioned above and many of those comments would also apply to elimination of the other portions of the CFRLF. Section B and C loans are only made to individuals that do not qualify for other financing and, for the most part, these loans would be considered high risk. Section B was actually created to fill a financing void in rural Alaska that was not adequately being met by the private sector. While CFAB was created to help serve a public purpose, it is by definition a private lender with fiduciary responsibilities to its members and its lender (CoBank). It is unlikely that they would be anxious to make loans to many of the fishers currently receiving loans under Sections B and C of the CFRLF. It is also unlikely that they would be interested in purchasing many of the loans contained in this portfolio without a substantial discount.

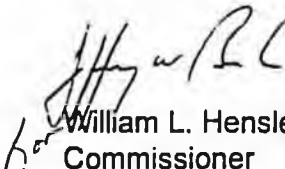
One further comment relating to the last paragraph on page 29 which contemplates the reason for not deleting the CFRLF at the time that CFAB was created. The report theorizes that the legislature was unsure as to whether CFAB would become a viable lending institution for the commercial fishing and agricultural industries in the State. There is an overall policy consideration of keeping limited entry permits in the hands of Alaskans and having two programs available (one public and one private) significantly increases the likelihood of successfully accomplishing this goal. As it turned out, this decision appears to have been a good one, as over 1,800 permits have been purchased with loans through the CFRLF. In addition, over 2,600 vessel and gear loans have been made, as well as 159 tax obligation loans which prevented the IRS from seizing the permits owned by these individuals. Many of these borrowers were located in rural areas of the State. They would be considered high risk and would not have been able to obtain financing through a private source.

SUMMARY

In conclusion, both the CFRLF and CFAB programs serve a valuable purpose. They both help Alaskan's compete in the fishing industry. As a private lender, CFAB has been able to help fishers that meet more traditional lending criteria. The CFRLF has been able to help fishers that fall outside normal private sector lending guidelines. It has taken both programs working toward a mutual goal to help stem the flow of limited entry permits from the hands of Alaskans. In addition, the CFRLF has been especially active in rural Alaska through various outreach programs. We are concerned that if the CFRLF program is severely restricted or eliminated, these public purposes will not be accomplished as effectively.

Thank you for the opportunity to comment on this report.

Sincerely,


William L. Hensley
Commissioner

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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Juneau, AK 99811-3300
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January 12, 1996

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK

January 12, 1996

Audit Control Number

08-4525-96

The objectives of this audit were to determine: the financial condition of the Alaska Commercial Fishing and Agriculture Bank (CFAB); the factors affecting the continuance or discontinuance of the financial and statutory relationship between the State and CFAB; the new general/lending powers proposed in House Bill 284; and to determine whether the activities associated with those powers are available through existing programs of other state agencies, quasi-state corporations, or private lending institutions within the State.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report. Audit results can be found in the Report Conclusions and the Findings and Recommendations sections.



Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we conducted an audit of the Alaska Commercial Fishing and Agriculture Bank (CFAB).

Objectives

The objectives of the audit were:

1. To determine the financial condition of CFAB.
2. To determine the factors affecting the continuance or discontinuance of the financial and statutory relationship between the State and CFAB.
3. To identify the new proposed general/lending powers included in House Bill 284 and to determine whether the activities associated with those powers are available through existing programs of other state agencies, quasi-state corporations, or lending institutions within the State.

Scope and Methodology

Our scope included a review of CFAB's audited financial statements for FY 91 through FY 95. We also reviewed the 1995 examination report by the Department of Commerce and Economic Development (DCED), Division of Banking, Securities, and Corporations' bank examiners. We interviewed the external auditors, KPMG Peat Marwick, and the DCED bank examiners and reviewed their procedures and workpapers to determine whether to place reliance on the results of their reviews.

We performed trend and ratio analyses of pertinent financial information contained in CFAB's accounting records and audited financial statements, including loan delinquencies.

A review was done of the enabling legislation (AS 44.81) for CFAB, including any subsequent statutory changes or proposed changes affecting its relationship with the State. A copy of the agreement between the Department of Revenue and CFAB regarding the repurchase of the Class C stock held by the State was reviewed to determine the terms of the repurchase. Discussions were held with CFAB's management and legal counsel. In addition, we reviewed management's correspondence files and the board meeting minutes for the calendar years 1993 through September 1995. We attended a meeting of CFAB's board of directors.

We also reviewed the enabling legislation (AS 16.10) for the Commercial Fishing Revolving Loan Fund (CFRLF) and the Alaska Commercial Fisheries Entry Commission (CFEC),

AS 16.43, to determine the effect of their authority and activities on CFAB's operations. In addition, we obtained pertinent loan portfolio information from CFRLF. Interviews with management of CFRLF and CFEC were conducted.

Decisions on legal cases between the Internal Revenue Service and the State regarding the seizure of limited entry permits from fishers for payment of back taxes were reviewed.

We attended certain segments of the Alaska Fish '95 conference and trade show for the fishing industry. Topics included were: individual fishing quotas, pending fish initiative, governor's policy on fisheries, the Board of Fisheries, and fisheries' market.

We reviewed HB 284 and the related legislative committee minutes. Discussions were held with CFAB management regarding the proposed expansion in general/lending powers.

The statutes and regulations of other state agencies and quasi-state corporations were reviewed to determine if they have the authority to provide similar financing/lending services. We interviewed the management of any of those organizations that appeared to provide such services. In addition, we held discussions with the management of the Alaska Fisheries Development Foundation, a private, nonprofit organization.

Our audit procedures also included a review of the Federal Farm Credit Act and agreements between the Cooperative Bank of Spokane (CoBank) and CFAB. Discussions were held with CoBank management as considered necessary.

ORGANIZATION AND FUNCTION

The Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank) was established in 1978 by the enactment of AS 44.81. The Bank was subsequently incorporated under AS 44.81 on May 4, 1979, and began its operations in April 1980. In 1981, CFAB's statutes were revised to clarify the original intent of the legislation. The original intent was for the Bank to exist as a private, cooperative corporation, while filling a crucial need of the State in making capital available to commercial fishers and farmers. Alaska Statute 44.81.010(a) now reads as follows:

There is established the Alaska Commercial Fishing and Agriculture Bank. The exercise by the bank of the powers conferred by this chapter is considered to be for a public purpose. The bank is exempt from the provisions of AS 06.05 (Alaska Banking Code) and AS 10.15 (Alaska Cooperative Corporation Act) in the exercise of powers granted by this chapter.

As discussed in the Background Information section, the initial capitalization of the Bank was provided by the State through the purchase of \$32 million of CFAB's nonvoting, preferred Class C shares of stock. Alaska Statute 44.81.010(b) requires that these shares be repurchased by the Bank within 20 years of their sale to the State. Currently, CFAB is in the process of repurchasing the Class C shares of stock under an agreement with the Department of Revenue. Due to the early retirement of the shares, CFAB is repurchasing the shares at a discount.

CFAB's policies and directions are established, within its statutory authority, by a seven-person board of directors that hires professional management and staff to operate the Bank. Five of the directors must be borrowers/owners of CFAB and are elected by the total membership of the cooperative Bank. The other two directors are appointed by the governor. All directors' terms are for three years. CFAB holds an ownership meeting each year. At this meeting, the borrowers/owners have the opportunity to vote on important matters, to receive reports from CFAB's directors and managers, and to elect new directors.

CFAB makes loans for most fishing or farming related purposes. The most common purposes are the purchase, modification, or refinancing of a vessel; purchase of a limited entry fishing permit; gear, engine, or equipment replacement or upgrade; general operating capital; and fish processing. There are no "standard" repayment terms or programs. In order to be eligible to be a CFAB borrower, an applicant must be engaged in the commercial fishing or farming industries. An individual applicant must be an Alaska resident, and a partnership must have majority ownership by Alaska residents. When the applicant is a corporation, the majority ownership and control must rest with Alaska residents.

Eligibility, however, is only the first step of the lending process. To obtain a CFAB loan, an applicant must be found by CFAB to be capable and creditworthy within the context of the specific loan request. The standards used by CFAB are essentially the same as those of any

responsible lender. However, CFAB's specialized purposes, and their experience, has allowed them to consider a broader range of applicant qualifications than most other lenders.

Borrowers, as members of the cooperative Bank, must purchase one share of Class A stock that has a par value of \$10. In addition, borrowers must purchase shares of Class B stock with a \$100 par value in an amount equal to 5% of the loan amount. The purchase costs of the Class B stock may be included in the loan amount. As of May 31, 1995, CFAB had outstanding \$28.2 million in net loan receivables, \$10,770 in Class A membership stock, and \$4.1 million in Class B preferred stock. Refer to Exhibit 1 in the Report Conclusions section for a summary of CFAB's FY 95 published financial statements.

In the disposition of the FY 95 net proceeds totaling \$1,439,066, CFAB's board of directors authorized a 7% dividend, totaling \$108,122, on the Class B preferred stock holdings of members whose related loans were paid in full at May 31, 1995. This was the sixth such dividend paid in the past seven years. In addition, \$650,000 of the proceeds were allocated to members/borrowers as a patronage refund¹ in accordance with CFAB's bylaws, with 50 % of that allocation being paid in cash. The remaining \$680,944 of net proceeds was transferred to CFAB's unallocated surplus account to be retained as capital.

¹A "patronage refund" is a return of a portion of the interest paid to CFAB by a member/borrower on a timely basis during a particular year. As a cooperative, CFAB may distribute a portion of its net proceeds (profits) back to its members/borrowers. This is an effective reduction in the interest paid by a member/borrower. For example, the patronage refund for FY 95 reduced the average interest rate charged during the year from 9.73% to 8.63%.

BACKGROUND INFORMATION

Improved access to capital by Alaskans with creation of CFAB

In the late 1970's the commercial fishing industry expressed dissatisfaction with the available credit sources to finance operations and the development of the industry. In response, the legislature commissioned a study in the fall of 1977 to evaluate the adequacy of the available financing sources for the commercial fishing industry in Alaska.

The study concluded that there was a need for improved access by the Alaska commercial fishing industry to sources of credit. Several alternatives to improve such access were discussed in the report. One of the options recommended was for the State to form a private, cooperative development bank for the Alaska commercial fishing industry that could leverage its capital with funds from the Federal Farm Credit System.

As a result of the study, in 1978 the legislature passed a bill that created the Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank). It was to provide financing for the commercial fishing and agriculture² industries within the State by leveraging its capital with funds from the Federal Farm Credit System as recommended.

The initial capitalization of CFAB was provided through appropriations from the State totaling \$32 million. For this initial funding the State was issued nonvoting, preferred shares of stock in CFAB that by statute are required to be repurchased within 20 years of their issuance. Upon the full repurchase of the Class C stock, the specific statutes for the creation of CFAB (AS 44.81) will lapse and the cooperative Bank is to continue to operate under the terms of its bylaws and under the Alaska Cooperative Corporation Act (AS 10.15).

Cooperative banks provide CFAB with necessary capital

The concept of CFAB was patterned after the Federal Farm Credit System (System) which provides a source of credit to farmers, ranchers, and producers or harvesters of aquatic products. The Federal Farm Credit Act of 1933 provided for the organization of thirteen Banks for Cooperatives (BCs). BCs were initially capitalized by the federal government and remained largely owned by the government until the Farm Credit Act of 1953 was passed. This act provided for a means of control of the entire System by its users and paved the way for the ultimate retirement of all the federal government capital investment in the System. The Federal Farm Credit Act of 1971 recodified all the prior laws governing the System, modernized its functions, broadened its lending powers (e.g., loans to producers and harvesters of aquatic products), and brought decision making closer to its borrowers.

²Although the study only looked at the need for improved access to credit for the commercial fishing industry in Alaska, the legislature believed an analogous problem existed for farmers.

BCs are cooperatives themselves. They are financial institutions whose business is to provide credit and related services to their agricultural and aquatic cooperative members. BCs obtain a major portion of their loan funds through the sale of securities backed by the notes of borrowers. These securities are sold through a fiscal agent with the aid of a nationwide group of securities dealers. Through the issuance of these securities, BCs provide their cooperative members with direct access to the nation's money markets which helps to ensure an adequate supply of dependable credit.

Any association of farmers, ranchers, or producers or harvesters of aquatic products which is operated on a cooperative basis for the mutual benefit of its members as patrons may be eligible to borrow from BCs.³ The cooperative must also meet the following requirements:

- At least 80 percent of the voting control of the cooperative must be held by farmers, ranchers, or producers or harvesters of aquatic products.
- The cooperative must do at least 50 percent of its business with or for its members.
- No member of the cooperative shall have more than one vote regardless of the amount of stock or membership capital he/she owns.
- The cooperative must restrict dividends on its stock or membership capital to either 10 percent per year or the maximum allowed by state law, whichever is less.

CFAB, as an eligible borrower, has a Line of Credit Agreement with the Cooperative Bank of Spokane (CoBank). The current agreement provides for borrowings up to \$10 million or an amount equal to CFAB's borrowing base,⁴ whichever is less. This agreement is periodically renegotiated.

The agreement has certain requirements to ensure CoBank, as a major creditor, is kept apprised of CFAB's financial condition. Those requirements include: providing copies of the annual audited financial statements, monthly financial statements, and Alaska Division of Banking, Securities, and Corporations annual bank examination reports; maintaining at all times a ratio of total assets to total equity of not greater than 3.5 : 1 and an excess of total assets over total liabilities of not less than \$20,000,000; and utilizing credit policies satisfactory to CoBank. In addition, as discussed in the Report Conclusions section, unless

³The association must be engaged in one or more of the following functions:

- Storing, packing, processing, or marketing farm or aquatic products.
- Purchasing, testing, grading, processing, furnishing, or distributing farm or aquatic supplies.
- Furnishing business services to farmers, producers or harvesters of aquatic products, or other eligible cooperatives.

⁴According to the Line of Credit Agreement, the "borrowing base" means the sum of: (1) 80 percent of the principal balance of loans pledged to CoBank classified as acceptable or other assets especially mentioned, (2) 50 percent of the principal balance of loans pledged to CoBank classified as substandard, and (3) other assets at percentages acceptable to CoBank. All principal balances exclude loans made to finance the purchase of Class B stock and further excludes the portion of the total loans exceeding 10 percent of CFAB's total net worth, if any.

otherwise agreed to in writing by CoBank, CFAB may not merge or consolidate with any other entity, or acquire all or substantially all of the assets of any person or entity, or form or create any new subsidiary or affiliate, or commence operations under any other name, organization, or entity, including any joint venture.

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REPORT CONCLUSIONS

The Alaska Commercial Fishing and Agriculture Bank (CFAB or Bank) was in a satisfactory financial condition as of the end of its 1995 fiscal year and had good quality loans. However, the Bank's shrinking loan portfolio is of concern.

We also conclude that if CFAB repurchased all of its stock from the State as scheduled, the statutory relationship (AS 44.81) between the State and CFAB would lapse and would:

- Delete CFAB's ability to provide limited entry fishing permit loans to fishers.
- Eliminate the statutory requirement that CFAB borrowers be Alaska residents.
- Delete CFAB's exemption from the Alaska Banking Code and the specified applicability of the Alaska Cooperative Corporations Act; thus, CFAB's continued operations would be in question.
- Delete CFAB's charge to serve a public purpose, as currently stated in AS 44.81, to enhance the development of the aquatic and agriculture industries of the State.

On the other hand, the continuance of AS 44.81 would ensure CFAB would remain a source of capital for Alaska resident fishers, a financing mechanism for the purchase of limited entry permits, and an organization whose charge is to serve a public purpose in the development of the aquatic and agriculture industries of the State. In addition, we believe the Bank could be utilized to take over all or part of the functions of Commercial Fishing Revolving Loan Fund (CFRLF) through optimum use of its access to capital from the Federal Farm Credit System.

Further, we conclude that the general/lending powers proposed in HB 284 do not duplicate activities of existing state agencies or quasi-state corporations; rather, they may augment those activities. In addition, the proposed additional powers do not alter CFAB's current competition with private lending institutions within the State. The proposed changes to CFAB's general/lending powers in House Bill 284 are shown in Exhibit 4 of this section. We also determined that there are certain controls in place through CFAB's membership involvement and its credit agreement with the Cooperative Bank of Spokane (CoBank) to monitor these new activities.

The following is a more detailed discussion of our conclusions.

CFAB's financial condition satisfactory, with some future concerns

As of May 31, 1995, CFAB held \$31,813,164 in assets which included net loan and other receivables totaling \$28,204,726. Total liabilities included \$4,478,930 in notes payable to

CoBank which are secured by substantially all of CFAB's loan receivables. CFAB had a leverage ratio (Total Assets:Total Capital) of 1.2 : 1 while the CoBank line of credit agreement allows a ratio as high as 3.5 : 1. In other words, CFAB could have theoretically borrowed and loaned out an additional \$57 million with its capital structure as of May 31,1995.

Net proceeds for FY 95 totaled \$1,439,000, which included income of \$1.1 million in recoveries of previously charged-off loans. Therefore, without those recoveries CFAB's net proceeds would have been only about \$339,000. Summary amounts from the published Balance Sheet and Statement of Proceeds are shown in Exhibit 1.

On July 1, 1991, the Alaska Department of Revenue and CFAB entered into an agreement for the repurchase of the Class C stock held by the State. As of June 30, 1995, CFAB had repurchased \$22 million of the \$32 million of stock. Those repurchases were discounted by \$9 million dollars, thus the actual cash outlay for CFAB totaled about \$13 million. The repurchases at a discount are in accordance with an agreement between the Department of Revenue and CFAB. The discount is being given due to the repurchases occurring before the statutory deadline.

<u>Exhibit 1</u>	
Summary of CFAB's FY 1995 Financial Statements	
<u>Balance Sheet</u>	
Total Assets	<u>\$31,813,164</u>
Total Liabilities	5,211,654
State Capital	10,000,000
Members' Equity/Capital	<u>16,601,510</u>
Total Liabilities and Capital	<u>\$31,813,164</u>
<u>Statement of Net Proceeds</u>	
Loan Revenues	\$ 3,973,958
Interest Expense	(344,628)
Operating Expenses	(1,617,358)
Income Tax Expense	<u>(572,906)</u>
Net Proceeds	<u>\$ 1,439,066</u>

The amount of the discount was credited to the Bank members' unallocated surplus capital account. Therefore, the \$9 million in discounts was a significant portion of the total net increase in members' equity of \$11 million between July 1991 and June 30, 1995.

CFAB is to continue repurchasing the Class C stock in \$250,000 increments on a monthly basis until fully repurchased. We estimate the remaining \$10 million in Class C stock will be repurchased at an additional discount of about \$2 million. This will bring the total cash discount received by CFAB to approximately \$11 million for the full repurchase of the \$32 million in Class C stock originally purchased by the State.

We reviewed the audit and examination procedures of CFAB's independent auditors and the bank examiners with the Department of Commerce and Economic Development (DCED), Division of Banking, Securities, and Corporations. The following summarizes the results of their reviews.

External auditors express concern over CFAB's shrinking loan portfolio

KPMG Peat Marwick (KPMG) issued an unqualified opinion on CFAB's financial statements, meaning the statements were fairly stated. In its management letter to CFAB's board of directors, KPMG reported that no matters involving material weaknesses in CFAB's

internal control structure were noted. Other issues brought to our attention either through a review of KPMG's workpapers and/or the auditors' presentation to the board of directors were as follows:

- CFAB's loan portfolio is shrinking and, according to KPMG, if the trend continues CFAB will be at a break-even point (i.e., revenues equaling expenses) in approximately two years. This may impact CFAB's ability to repay the \$10 million to the State under the current pay-back plan.
- CFAB's loan portfolio is concentrated in the extremely volatile industry of fishing and is considered a high level of risk. Over the past several years, prices paid for fish have been declining. Further, the value for limited entry fishing permits has also declined. This affects the ability of borrowers to pay back loans, as well as the value of the collateral securing the loans.
- In FY 95, CFAB made a significant recovery of one major loan loss in the amount of \$2,031,703, \$1.1 million of which was credited to income.

Bank examiners conclude CFAB's overall condition is fundamentally sound

The DCED bank examiner's report concluded that "[t]he bank's condition appears to be fundamentally sound, but general areas of importance are called to your [CFAB board of directors'] attention. . . ." The report further states the following:

Recommendations made at this examination are generally minor in nature and focus on the need to:

1. *Continue decreasing the level of nonaccrual and classified⁵ loans.*
2. *Improve director [CFAB board members] attendance and loan maintenance.*
3. *Promote quality loan growth to increase earnings.*
4. *Continue monitoring stress level on bank earnings from repurchase of Class C stock.*

The bank examiners conducted a full-scope examination using a financial presentation date of May 31, 1995, and an asset review date of July 31, 1995. The examination focused on an evaluation of the following five areas: capital adequacy, asset quality, quality of management, and earnings and liquidity. The examiners concluded the following regarding these areas:

⁵Nonaccrual loans are loans 90 days or more past due that no longer are accruing interest for financial reporting purposes. Classified loans are problem loans identified by the DCED bank examiners, when performing a quality review, that they believe should be adversely classified as either substandard, doubtful, or a loss. Classified loans may also be included in CFAB's nonaccrual loan amounts.

The bank is considered well capitalized. [CFAB has 49.86% ratio of leverage capital over average total assets, while commercial banks generally have only about a 5.5% ratio.]

The asset quality has continued to show improvement over the last two examinations. . . . Management has also devoted a considerable amount of effort toward addressing problem credits. . . . In conjunction with the decrease of problem credits, the bank has been unable to attract quality loans to replace these credits . . . and benefit [increase] earnings. . . . Competition for quality loans with other financial institutions and the State of Alaska, Division of Investments, continues to remain strong.

The management of the bank has remained stable and are [sic] considered capable. Bank policies are kept in a current condition, expenses are well controlled, the loan loss reserve is considered adequate, and loan loss recoveries are aggressively pursued.

Earnings continue to remain good but have been enhanced considerably by some sizable recoveries from prior loan charge offs. . . . The Net Income (After Tax) for fiscal year-end May 31, 1995 was \$1,439M and represented 4.32% of Average Assets. Removing the loan loss recoveries from earnings would have decreased Net Income to \$339M or 1.02 % of Average Assets, which is considered acceptable but marginal.

The principal source of CFAB's funds is CoBank Funds are made available to CFAB on a term basis through a master borrowing agreement that gives CoBank a first security interest in all of CFAB's assets which includes cash, certificates of deposit, securities, bonds, loans to members, accounts receivable, and chattel paper. . . . To meet any additional loan demand, CFAB has a seasonal line of credit with CoBank. The maximum available amount is determined annually prior to the beginning of CFAB's fiscal year. CoBank sets the maximum amount based upon certain criteria which include its evaluation of loan portfolio quality and capital ratio

Our review of CFAB's annual reports, audited financial statements, and bank examiners' report indicated that CFAB's interest income has been declining. Gross revenue declined by 8%, from \$3,124,000 in FY 94 to \$2,874,000 in FY 95. Additionally, CFAB's loan portfolio declined by \$5.1 million or 16.8% between FY 94 and FY 95. According to the executive message to members in the 1995 annual report,

. . . CFAB seems still to be not widely recognized by Alaska fishers. . . . CFAB is positioned to accommodate significantly more loans -- and loan volume -- with very little, if any, increase in operating expenses. This would effectively translate into reduced costs for all borrowing members.

Problem loans in decline since FY 92

We performed trend analyses of pertinent financial information contained in CFAB's accounting records and audited financial statements, including loan delinquencies. The nonaccrual loan balances (loans 90 days or more past due) for the past five years were as follows:

Exhibit 2						
Schedule of CFAB's Nonaccrual Loans for FY 91 through August 1995						
	5/31/91	5/31/92	5/31/93	5/31/94	5/31/95	8/31/95 ^b
Seafood Harvesters	\$ 1,626,012	\$ 4,537,728	\$ 2,927,282	\$ 4,651,964	\$ 2,644,757	\$ 2,060,334
Fish Processors	8,007,250	8,599,440	5,692,651	3,220,523	1,515,624	1,485,091
Agriculture and Timber	4,856,522	3,173,045	-0-	-0-	-0-	-0-
Total	\$14,489,784	\$16,310,213	\$8,619,933	\$7,872,487	\$4,160,381	\$3,545,425

Exhibit 3 shows the loan modification information for the past four fiscal years. We conclude that the trends for nonaccrual loans and loan modifications appear to be moving in the right direction (i.e., decreasing), in spite of the volatility and risk associated with the fishing industry. This observation was also made by KPMG and the DCED bank examiners.

CFAB one of two sources of credit for limited entry fishing permit program

Not only is CFAB the State's only mechanism to access capital from the Federal Farm Credit System, it is also one of only two sources of capital for Alaska residents to finance the purchase of a limited entry permit. Financing from CFRLF⁸ is the only alternative.

In 1972, Article VIII, Section 15 of the Alaska Constitution was amended to allow a limited entry program to be created by the State for fisheries resource conservation

Exhibit 3				
Schedule of CFAB's Loan Modifications for FY 92 through FY 95				
Modification Type	1992	1993	1994	1995
1	\$4,330,639	\$1,254,484	\$3,081,992	\$261,792
2	684,452	495,488	45,585	564,116
3	1,629,053	395,415	300,760	33,704
Total	\$6,644,194	\$2,145,387	\$3,428,337	\$859,612

⁶The \$3,545,525 excludes nonaccrual Class B preferred stock notes receivable, which reduces the overall amount of the nonaccrual loans. For instance, the \$4,160,381 at 5/31/95 could be reduced by \$900 if nonaccrual Class B notes were excluded. Due to immateriality, the totals for FY 91 through FY 95 were not adjusted to exclude the nonaccrual Class B notes receivable amounts.

⁷The following are the types of modifications that took place in the given years:

1. Modified loans with the payment of interest in full by the borrowers and the principal reamortized within the original loan terms.
2. Modified loans with the payment of interest in full and the reamortization of principal resulted in new and later final payment dates.
3. Modified loans with no payment or partial payment only of the interest due.

⁸CFRLF is administered by the Division of Investments, Department of Commerce and Economic Development.