

Presentation: 30 Years of Limited Entry

Presenter: Frank Homan, Chairman, State of Alaska Commercial Fisheries Entry Commission

Several early attempts at fishery limitation occurred in the 1960s. Each ran into the Alaska Constitution provision of *No Exclusive Right of Fishery*, Article VIII, Section 15. In 1972, the people of Alaska voted to amend the State Constitution to allow for a restriction on entry to Alaska's fisheries for certain purposes: conservation, prevention of economic distress, and promotion of aquaculture. The amended section reads as follows (amendment underlined).

“No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.”

The Limited Entry law was enacted in 1973. Some key features of the program were to 1) require issuance to natural persons only, 2) prohibit permit leasing, 3) prevent the use of permits as collateral for loans, and 4) allow for free transferability. The Limited Entry law also defined entry permits as a use-privilege that can be modified by the legislature without compensation. Free transferability has resulted in maintaining high percentages of residents within Alaska's fisheries and has been upheld by Alaska's Supreme Court. Permit holders are free to transfer their permits to family members or any other individual who is able to participate in the fishery by means of gift, inheritance or sale.

Through 2005, a total of 16,264 limited entry permits have been issued in 65 fisheries. Over 80 percent of permits issued were initially issued to Alaska residents. As of year-end 2005, there were 14,536 remaining entry permits. Between initial issuance and the end of 2005, 1,728 had been eliminated, primarily due to cancellation of non-transferable permits (non-transferable salmon hand troll permits account for over 1,000). Distribution of permits at year-end 2005 was as follows:

- 23% held by nonresidents,
- 38% held by rural Alaskans who live in the area of their permit fishery,
- 6% held by rural Alaskans who live in an area that is not local to their permit fishery,
- 24% held by Alaskans who live in an urban community local to their permit fishery, and
- 9% held by Alaskans who live in an urban community that is not local to their permit fishery.

This distribution has changed over time. Total permit holdings by nonresidents has risen since initial issuance. The reason is mainly due to migration (Alaskan permit holders

moving out of state), however, and not permit sales from Alaskans to non-Alaskans. Permit holdings by nonresidents have declined as the net result of transfer activity by nearly 100 permits since initial allocation.

The most significant decline in permit holdings among Alaska resident types is from rural Alaskan permit holders living in an area local to their fishery (ARLs). Migrations of permit holders within and outside Alaska have led to a net decline in permit holdings by rural and urban Alaskans local to their fishery. Permit holdings of ARLs have also declined due to net transfer activity. Total permit holdings by ARLs have declined by 605 permits due to net transfer activity, 728 as the net result of migration, and 600 due to cancellation. However, of all permits held by Alaskans, Alaska rural residents hold more than 50%.

Across all years and fisheries, permits have been transferred at a rate of 9%. The annual transfer rate has ranged from 6% to 13%, with lower rates in recent years and higher rates in earlier years of Limited Entry. According to 1980 through 2005 Commercial Fisheries Entry Commission transfer survey data, nearly 50% of those permits that have transferred to rural Alaskans local to their fishery have been transferred as gifts. Approximately 50% of transfers to rural Alaskans local to their fishery are from immediate family. The same resident type has received only 45% of their permit transfers through sales. All other resident types have received their permits as gifts at a rate of 27-29% and through a sale type transaction at a rate of 65-67%. Of those permits sold to Alaskans, 27% (2,836) have been financed by state authorized lenders. This is an option only available to Alaska residents, and it has clearly been helpful to Alaskan fishermen purchasing permits.

A finer breakdown of permit holdings within Alaska shows the highest numbers of permits were issued to fishers residing in the following locations: Ketchikan, Anchorage, Juneau, Cordova, Petersburg, Kodiak, Sitka, Wrangell, Togiak, and Dillingham. Over time there has been little change in the communities holding the highest number of entry permits. As of year-end 2005, the list of communities with the highest number of permits is roughly the same. Homer is now in the top ten communities, replacing Dillingham.

Some communities have had large declines in permit holdings due to cancellation, migration, or transfer. Communities with the greatest decline of permits (a decrease more than 100 permits) are Ketchikan, Juneau, Cordova, and Dillingham. Increases in permit holdings have occurred at the highest level (more than 100 permits) in Homer, Kasilof, Petersburg, and Wasilla.

Communities with the highest number of permits per capita are Elfin Cove, Point Baker, Meyers Chuck, Ugashik, Togiak, Kasilof, Nelson Lagoon, and South Naknek. Residents in each of these communities held a total number of permits summing to more than 30 percent of the community's 2000 US Census population.

The Limited Entry law has withstood constitutional challenges despite severe constitutional constraints. Limited Entry has been beneficial to Alaska's fisheries in

several ways. Implementation of Limited Entry protected Alaska's fisheries from an influx of new fishermen from West Coast fisheries where fishing opportunities have been severely reduced by court decisions and stock conditions. Net economic benefits have accrued that may not have existed under open access.

Despite the successes, the program has many limitations. Traditional Limited Entry was designed for Alaska's salmon fisheries which are characterized by owner/operator participants and escapement goal management. The system has been less useful in the context of fisheries managed through guideline harvest levels or quota. If fishermen would like to develop different types of programs to better fit their fisheries, legislation will be needed to allow for implementation.

As refinements are explored, fishermen need to be aware of legal constraints on options. Several Alaska Supreme Court decisions enforce equal protection and equal access clauses of the State Constitution. In particular, *Ostrosky* (1983) and *Johns* (1988) provide the primary governing principle for the limited entry system as follows:

“[T]o be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation.”

A recent case of significant importance is the *Grunert* (2005) decision, in which the court states that allowing persons who are not actually fishing to benefit from the fishery resource is “inconsistent with the Limited Entry Act's purpose and policy.” And finally, *Enserch* (1989) and *McDowell* (1989) decisions point to the strength of the equal protection and equal access clauses of Alaska's Constitution. The Court has held that discrimination, for or against people, on the basis of where they live is not permissible.