

Investments in Fleet Reductions:  
Suggestions for Revisions of  
Alaska's Buy-back Statute  
CFEC Policy Discussion Draft 86-2

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## TABLE OF CONTENTS

I. Introduction . . . . .	1
II. Provisions of the current law . . . . .	6
III. Legislative Appropriation of Money . . . . .	11
Up-front Money . . . . .	12
Annual appropriations . . . . .	16
Combination; Up-front and annual appropriations . . . . .	17
Custodial funds . . . . .	17
Fund Accounting . . . . .	19
IV. Taxation . . . . .	25
Delegation of taxation authority . . . . .	25
Tax Options . . . . .	29
Fixed Fees . . . . .	29
Gross Revenues Tax . . . . .	32
Poundage Taxes . . . . .	33
Nonpayment of taxes . . . . .	37
V. Program Administration . . . . .	39
No vessel or gear purchases . . . . .	39
Permit Purchases: Two Alternative Objectives . . . . .	40
Removing the Maximum Number of Permits . . . . .	42
(1) The "Offer to Sell," variable purchase price approach: . . . . .	42
(2) The "Offer to Sell" cut-off purchase price approach: . . . . .	45
(3) The fixed purchase price approach: . . . . .	46
Removing the Maximum Current Capacity . . . . .	49
(1) The "Offer to sell" variable price approach: . . . . .	51
(2) The formula price approach: . . . . .	52
Conclusions and Recommendations . . . . .	53
The Fishermens' Buy-back Committee . . . . .	55
VI. When Should Buy-back be Implemented . . . . .	58
Problems with the "Optimum Numbers" Concept . . . . .	58
Decision to Investigate Buy-back . . . . .	61
Program Design by the Entry Commission . . . . .	62
The Fishermen Decide . . . . .	64
VII. Buy-back in Related Fisheries . . . . .	69
VIII. How to Stop the Program . . . . .	73
References . . . . .	74

APPENDIX: DRAFT STATUTORY CHANGES . . . . .	75
INTRODUCTION . . . . .	75
CHANGES TO THE TITLE 43: REVENUE AND TAXATION . . . . .	76
Sec.43.77.010. Permit Buy-back Taxes and Fees . . . . .	77
Sec.43.77.011. Three Percent Permit Buy-back Tax . . . . .	77
Sec.43.77.012. Two Percent Permit Buy-back Tax . . . . .	77
Sec.43.77.013. 3% Specific Buy-back Tax . . . . .	78
Sec.43.77.014. 2% Specific Buy-back Tax . . . . .	78
Sec.43.77.015. \$1,000 Permit Buy-back Fee . . . . .	79
Sec.43.77.016. \$500 Permit Buy-back Fee . . . . .	80
Sec.43.77.017. Permit Buy-back Fee of 2 Percent of Per- mit Price . . . . .	80
Sec.43.77.018. Permit Buy-back Fee of 4 Percent of Per- mit Price . . . . .	81
Sec.43.77.020. Election to Approve Permit Buy-back Tax or Fee . . . . .	82
Sec.43.77.025. Collection of Tax and Disposition of Pro- ceeds . . . . .	84
Sec.43.77.026. Liability for tax on salmon shipped from state . . . . .	86
Sec.43.77.030. Exemption from buy-back taxes and fees . . . . .	86
Sec.43.77.040. Termination of Buy-back Taxes . . . . .	87
Sec.43.77.060. Definitions. . . . .	88
CHANGES TO THE ALASKA BUYBACK LAW . . . . .	89
Findings . . . . .	89
Sec.16.43.100. Powers of the commission . . . . .	89
Sec.16.43.170. Transfer of Entry Permits . . . . .	91
Sec.16.43.230. Designation of Distressed Fisheries. . . . .	92
Sec.16.43.240. Maximum Numbers . . . . .	92
Repeal of existing sections 16.43.290 through 16.43.330 . . . . .	93
Sec.16.43.290. Buy-back Special Reserve Fund . . . . .	93
Sec.16.43.300. Permit Termination Programs . . . . .	95
Sec.16.43.310. Administration of the Buy-back Program . . . . .	96
Sec.16.43.320. Fishermens' Buy-back Committee . . . . .	97
Sec.16.43.330. Termination of Buy-back . . . . .	98
Sec.16.43.340. Educational Entry Permits . . . . .	99
Sec.16.43.400. Special harvest area entry permits . . . . .	99
Sec.16.43.980. Recommendations to the legislature . . . . .	99
Sec.16.43.990. Definitions . . . . .	99

## I. INTRODUCTION

In many fisheries a major reduction in the number of fishermen would produce little or no decline in harvests. The possibility of producing almost the same revenues with far less cost suggests that the aggregate profits of all the fishermen currently in a fishery can often be increased if the fishery can be restructured so that fewer operations are involved.

Buy-back is one mechanism that has been suggested to bring about such a restructuring in limited entry fisheries with freely transferable permits. Under buy-back an agent enters the permit market, buys up permits, and retires them from the fishery. Funding for such a program might come from the fishermen involved or from some other source.

Under a fishermen funded program the question rises, "Can the fishermen remaining in the fishery compensate the fishermen who sell out and still be better off?" The answer can depend to a great extent on the rules of the buy-back program under consideration.

This report provides suggestions for the reform of the portions of the Alaska limited entry law that deal with buy-

back. Some of these reforms correct aspects of the existing law which are unconstitutional; others are designed to make the law more workable. The spirit motivating the entire analysis, however, is a desire to produce a buy-back program which will be as attractive an investment as possible for the fishermen who will have to pay for it.

Chapter II outlines the existing buy-back provisions in the Limited Entry Act (LEA). There are a number of problems that may reduce the investment appeal of buy-back to the fishermen. Some parts of the LEA must be changed because they are unconstitutional, while other parts are likely to turn out to be awkward or unworkable.

The remaining chapters discuss these problems with the current law and outline potential solutions:

1. Dedicated Fund Considerations

Two major constitutional problems with the law are dealt with in Chapters III and IV. First, under the LEA as it stands, the revenue from the tax on the fishermen is placed directly into a fund dedicated to the use of the buy-back program. The Alaska Attorney General has concluded that this approach is unconstitutional under

an article of the state constitution that requires that, except for the permanent fund, revenues from any state tax or license "shall not be dedicated to any special purpose" except "when required by the federal government for state participation in federal programs." (1) This "dedicated fund" problem represents a fundamental flaw in the current buy-back law that must be corrected before a program can proceed.

## 2. Taxation

Money must be raised before it can be spent; thus, the next chapter deals with taxation. A second potential constitutional problem arises due to the possibility of an improper delegation of taxation authority by the legislature to the CFEC under the LEA. This chapter will discuss this problem and also review the advantages and disadvantages of different types of taxes.

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1 Article IX, section 7. Knuth, pages 4 to 6. But see Condon, pages 10 to 11, where it is also argued that there may be certain implied exceptions to this blanket prohibition. Condon mentions "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." Condon, page 11.

### 3. Buying Permits

Chapter V reviews the problems of program administration. The current law contains parts that are unclear, and also, parts that may prove expensive to implement. This chapter contains an integrated set of proposals for change.

### 4. When to Implement Buy-back

Chapter VI, on the process of designing and deciding to implement a buy-back program, has been left until after the chapters on taxation and program administration since a discussion of what is possible and how a program might work is necessary in order to understand the problems associated with implementation.

### 5. Buy-back in Related Fisheries

Chapter VII discusses problems caused by the interdependence of related fisheries. Many fisheries exploit stocks of fish that are also exploited by fishermen in other areas or with other gear types. Concerns over administrative reallocations of stocks from one fishery to another may inhibit fishermen from pursuing buy-back.

This chapter discusses these concerns and how they might be addressed.

6. How to Bring a Buy-back Program to an end

The final chapter, appropriately, discusses how to bring a buy-back program to an end.



## II. PROVISIONS OF THE CURRENT LAW

The Alaska limited entry program classifies fisheries according to gear type, species, and region. If two different gear types are used to fish the same species in the same area, then these are often considered two separate fisheries for limitation purposes. For example, in Cook Inlet the salmon drift gill net and set gill net fisheries are considered separate fisheries.

When a fishery is limited, a maximum number of permits for that fishery, reflecting participation levels in recent years, is established. Permits are rationed among fishermen, with no more than one permit in any fishery to any one person, on the basis of a complex point system that seeks to balance economic dependence on the fishery and the extent of past participation in it. Once issued, most entry permits can be purchased and sold, but they may only be leased under certain very restrictive "emergency" conditions.

In addition to providing criteria for limiting fisheries and issuing permits, the limited entry law also provides for "Reduction to Optimum Numbers of Entry Permits." The Commercial Fisheries Entry Commission (CFEC), the state agency responsible for the administration of the limited entry pro-

gram, is charged with identifying an "optimum" number of entry permits for the limited fisheries under Article 4 of the Limited Entry Act (LEA). In the event the optimum is less than the number of issued permits, CFEC is charged with operating a "buy-back" program to reduce the actual number to the optimum. The LEA also makes some provisions for increasing the number of entry permits should that be necessary. A more detailed discussion of the provisions of Article 4 will be a useful basis for a discussion of the questions this paper seeks to address.

Under the LEA the first step towards buy-back is the determination of an optimum number of entry permits. This number is to be based upon a reasonable balance of three general, and somewhat nebulous, standards. The first is that the number of permits be sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear.(2) The second condition is that the number of permits be enough to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with

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2 AS 16.43.290(1)

sound fishery management techniques.(3) The final condition is that the optimum number of permits be sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them.(4) As can be seen, these standards are vague and provide the Commission with considerable discretion.

The law provides that the optimum number may be revised if there is either an established long-term change in the biological condition of the fishery which substantially alters the optimum number of permits,(5) or an established long-term change in market conditions has occurred, directly affecting the fishery, which substantially alters the optimum number of entry permits.(6)

If the optimum number of permits is less than the actual number of permanent permits, the statute requires the commission to establish and administer a buy-back fund for that fishery for the purpose of reducing the number of units of

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3 AS 16.43.290(2)

4 AS 16.43.290(3)

5 AS 16.43.300(a)(1)

6 AS 16.43.300(a)(2)

gear to the optimum number within no more than 10 years.(7) The money for the buy-back funds is to come from a tax on holders of entry permits which could rise to 7% of the gross value of the total annual catch attributable to the holder's entry permit, except that the holder of a permit who has made no commercial landings in a given year will be assessed a tax equal to the average tax on all other holders of the same type of permit in that year.(8) Money collected from the holders of permits in a fishery is to be used for buying back entry permits, vessels, and gear in that fishery at fair market value.(9) Assessments need not equal annual buy-back fund expenditures within a particular fishery but shall be continued until the buy-back fund for that fishery has been reimbursed.(10)

The law makes a very general provision for the issuance of new permits if the original optimum number is greater than the actual number. The Commission is to determine equitable methods of issuance that assure the receipt of fair

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7 AS 16.43.310(a)

8 AS 16.43.310(b)

9 AS 16.43.310(b)

10 AS 16.43.310(c)

market value for the permits issued.(11) All new permits are to go to applicants who are presently able to engage actively in the fishery.(12)

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11 AS 16.43.330(b)

12 AS 16.43.330(a)

### III. LEGISLATIVE APPROPRIATION OF MONEY

The unconstitutionality of dedicated buy-back funds poses at least four serious problems for a fishermen funded buy-back program: (1) All tax revenues raised from the fishermen must become the property of the state and go into the state's general fund with all other state revenues. Thus direct control over the revenue is lost without the dedicated fund. (2) Any money to be spent on the program must be appropriated by the legislature from the state's general fund. Fishermen may be uncertain that this will actually happen. (3) Any earnings that might result on unspent assets in a buy-back fund becomes the property of the state and must be transferred to the state's general fund with other state revenues. If the interest earned by the special reserve fund can't be appropriated to the fund, there will be greater pressure on buy-back managers to spend available funds immediately, as opposed to waiting for better permit prices. (4) Appropriations from the state's general fund will be necessary if sums equal to the lost interest earnings are to be transferred back into the buy-back fund. All these problems are complicated by the fact that one legislature cannot appropriate, during the upcoming fiscal year, general fund revenues which will be gathered in subsequent fiscal years.

This section discusses four possible approaches to dealing with the problems caused by the constitutional ban on dedicated funds. In the first approach the legislature makes an up-front appropriation to a "buy-back special reserve fund" in exchange for a commitment by the fishermen to tax themselves in order to repay the state an amount approximately equal to the present value of the appropriation on the date that it becomes effective. The legislature would make annual appropriations of interest earned by the special reserve fund to the special reserve fund thereafter. In the second approach the legislature makes annual appropriations to a special reserve buy-back fund equal to the taxes raised by the fishermen and the interest earned by the fund during that year. The third approach is a combination of the first two. The fourth approach, about which there is considerable legal uncertainty, would utilize what is referred to as a "custodial fund."

#### Up-front Money

The key to this approach is the idea of an exchange of assets of equal value between the fishermen and the state. The state makes an appropriation to a special fund which may only be spent if the fishermen agree to adopt a program of license fees and taxes which would return, over a period of

years, a sum whose expected risk adjusted present value was equal to the amount appropriated. A discussion of the tax program is postponed to a later section. The present section will only deal with the appropriation.

This approach would work in the following way. Once the CFEC has identified the amount of up-front money that would be needed, and has proposed a tax program that would return an equivalent amount in present value terms to the state, it would include the estimated program needs in its budget proposals to the Governor's office. If the Governor's office agreed to the requested appropriation it would be included in the Governor's budget requests to the legislature. If the legislature approved the appropriation request, the money could become available at any time after the start of the following fiscal year. The money could be spent once the fishermen, in a special election, had voted to adopt a tax program to pay it back.

The concept of "present value" is used to determine the equivalence of sums of money considered at different times. In the present case a large sum of money would be made available by the state early in the program, to be repaid with money from the fishermen over several years following the initial state payment. Since money can be lent out at



interest, a sum of money in an earlier year has a greater value than an equal sum in a later year, the difference being the interest that might have been earned. Thus the present value calculations would require fishermen to repay, not just the initial grant of money, but an amount sufficient to compensate the state for forgone earnings.

The CFEC would request that the tax revenues be placed in a "special reserve fund." "Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur." (13) The establishment of this special reserve fund should not be inconsistent with the prohibition of dedicated funds since the prohibition should

"not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legislature may prefer...to reserve money in a special reserve fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state REVENUES, has been satisfied." (14)

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13 Condon, page 12.

14 Condon, pages 12-13.

There are reasons to believe that it would be unconstitutional for the fund to retain and accumulate any interest it might earn. It is likely that interest earnings will have to be transferred to the state's general fund since retention of interest by the fund means that steadily increasing amounts of money could

be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid.(15)

To deal with the "lost earnings" problem it would be necessary for the state legislature to make annual appropriations of the monies earned by the fund to the fund. Each year the legislature would appropriate to the fund a sum defined, not in explicit dollar terms, but as an amount equal to interest earnings by the fund during the fiscal year.

Since one legislature cannot bind a future legislature to a specific program of appropriations, the reformed law cannot say that a legislature "will" or "must" make these annual interest appropriations. The law can only say that a legislature "may" make such an appropriation. An example

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15 The "drafters" are the authors of the Alaska constitution. Condon, page 16.

of similar language may be found in the law governing hatchery associations. There the law says that,

The salmon enhancement tax collected under this chapter shall be deposited in the general fund. The legislature may make appropriations based on this revenue ...for the purpose of providing financing for qualified regional associations.(16)

#### Annual appropriations

This second approach eliminates the state's up-front funding. Under this alternative, fishermen's assessments would be deposited in the state's general fund, and each year the legislature would make an appropriation from the general fund to a Buy-back Special Reserve Fund equal, not of any particular sum of money, such as \$500,000, but of a sum defined by the language of the appropriation to be equal to the money raised through the fleet reduction fees for the fishery during that year and the interest earned by that money prior to the appropriation. Earnings on unexpended balances in the fund would also still have to be appropriated back to the fund as described before.

Still, the law could not presume to require that future legislatures make specific appropriations, so it could only

state that a legislature "may" make an appropriation equal to the sums to be raised from the fleet reduction fees, and that a legislature "may" make appropriations equal to the interest earned on those funds.

#### Combination; Up-front and annual appropriations

It would be possible to combine the two approaches just discussed. In that case it would be important to design the fund accounting so that the taxes required to repay the initial advance and the taxes available for a new appropriation to the fund could be easily calculated on an annual basis.

#### Custodial funds

There are cases in which the state may collect and hold money that really belongs to other persons. Money collected under these circumstances, where the state is a "custodian" of the funds rather than their owner, may be exempt from the prohibition of dedicated funds.

A custodial fund has several characteristics. The money must clearly not belong to the state; the state's role is that of holding the money for its true owner. In this connection, state taxes cannot be used to raise the money, the

program should be voluntary, and contributors' vested interests in the money should continue to be recognized. Some attenuation of these characteristics may not preclude a fund from being considered custodial, but severe attenuation would.(17)

The state's Public Employees Retirement Program is a classic example of a custodial fund. Employee contributions are payments to their pension programs, not state taxes and separate accounts are maintained for each employee. The payment could be considered voluntary since, although all employees must contribute to the program, the payment is a condition of employment to which state employees agree as a component of their contract with the state.

The state's role in a buy-back program would be less clearly custodial. It is hard to describe the money collected for a buy-back program in terms other than "taxes" or "fees". Records of individual's vested interests in specific amounts of the fund would not be maintained. Money would be disbursed to whomever chose to sell a permit to the Commission, not in some direct way to contributors to the

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17 The law on custodial funds is not clear cut. This list of characteristics is based on conversations with lawyers in the Alaska Attorney General's office.

fund. The status of contributions as voluntary does, however, seem very similar to that for the pension program; both could be construed as conditions of employment.

#### Fund Accounting

The buy-back program can pose two separate fund accounting problems. First, if the state advances money to the program, it will be necessary to keep track of the program's "liability" to the state as that "loan" is paid off and as its unpaid balance accrues interest. Secondly, it will be necessary to keep track of the earnings of the buy-back special reserve fund to make it possible for the legislature to appropriate them to the program for its use.

The following scheme, summarized in Figure 3 on page 24, is one way to deal with these accounting problems. Advances from the state will be deposited directly into the buy-back special reserve fund. The constitution requires that tax and fee revenues collected by the state be deposited into the general fund. There they will be placed in a special account called the "unappropriated tax and fee revenue account." Records will be kept on the funds in this account and of the interest they earn, and all of this money will be subject to appropriation by the legislature.

The funds in this account are meant to go to one of two places: (1) they may be appropriated by the legislature to the buy-back special reserve fund, or (2) they may be used by the legislature to pay off part of the state's advance.

Money in the buy-back special reserve fund may be used by the administrators of the buy-back program to purchase permits, pay off the state advance, or pay for the administrative costs of the program. Interest earned by the money in the buy-back special reserve fund will be sent back to the general fund to a special account called the "unappropriated earnings of the special reserve fund account." Records of the money deposited in this account, and the interest it earns, will be kept so that the legislature can also use this money to pay off the advance or appropriate it back to the buy-back fund.

The balance in each account and fund will be kept up to date on a daily basis, with all deposits, withdrawals, and interest earnings recorded.(18) Accounting, in this fashion,

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18 Since this is an account in the general fund the monies may be integrated with other general fund monies. Thus the interest earnings which are assigned may be commensurate with an overall general fund rate of return. Actual assignment of earnings to the account may have to take place after the fact, whenever a general fund average rate of return is calculated.

will allow both the legislature and fishermen to remain continuously apprised as to the status of their investments.



LEGISLATURE:

- (1) Makes up-front appropriation to the "Buy-back Special Reserve Fund"
- (2) Makes annual appropriations of interest on unexpended balance in the fund to the fund
- (3) both the up-front funding and the interest appropriations are made out of the state's general fund

FISHERMEN:

Agree to a tax program that will pay, over time, into the state's general fund an amount equal to the estimated present value of the state's up-front appropriation

Figure 1. Up-front Funding

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FISHERMEN:

During each year they tax themselves and pay the money into the state's general fund.

LEGISLATURE:

- (1) Each year appropriates a sum of money to the "Buy-back Special Reserve Fund" which is equal to the total sum of the buy-back tax revenues paid by fishermen that year into the general fund.
- (2) Makes annual appropriations of interest on unexpended balance in the "Reserve Fund" from the general fund into the reserve fund.

Figure 2. Annual Appropriation

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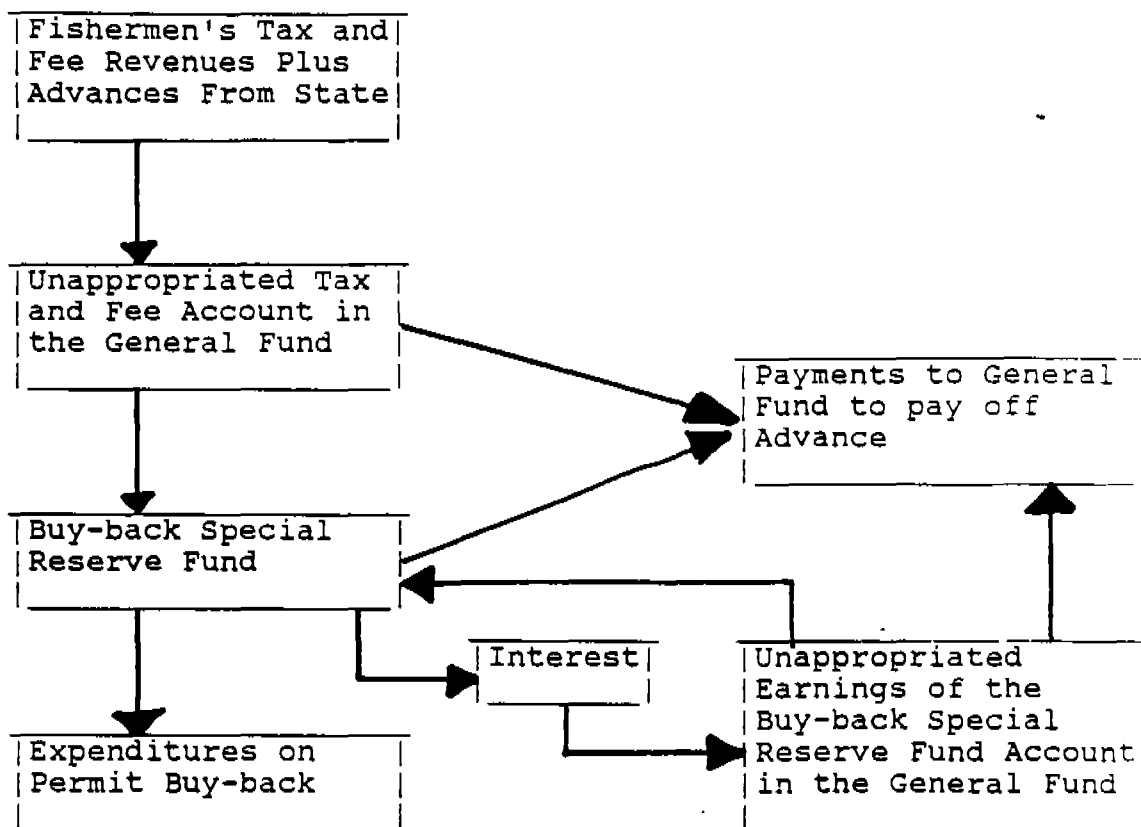


Figure 3. Fund Accounting for Buy-back

#### IV. TAXATION

There are two issues that must be addressed in designing a mechanism to raise the money for buy-back from the fishermen. First, the question of the possible improper delegation of taxation authority to the CFEC must be resolved and, second, the actual tax methods, whether fixed fees, gross revenue taxes, or poundage taxes, or a combination, must be selected.

##### Delegation of taxation authority

The current law may make an unconstitutional delegation of the legislature's taxing authority to the CFEC. Only the legislature may levy taxes, although a tax may be levied, conditionally, on certain clearly defined events.<sup>(19)</sup> In light of this, the legislature may be providing too little direction to the CFEC about the level, between nothing and 7% of gross revenues, at which to set the tax. This problem might be solved by providing additional guidelines in the law to restrict the Commission's determination of the rate of the tax. It is not clear, however, how precise such re-

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19 Vogt, page 2.

strictions would have to be for the law to pass constitutional muster.

The simplest alternative would be to incorporate an explicit tax into the reformed law. Thus, for example, the law might call for the program to be funded through a fixed yearly fee of \$1,000 per permit holder or a tax of 3% of the fishermen's gross revenues. This approach has the obvious and serious drawback that it provides no flexibility to deal differently with the unique conditions arising in different fisheries or with changing circumstances in a given fishery.

A variant of this approach could provide some additional flexibility: the legislature might levy two different taxes, each of which might come into effect under different conditions. A fishermen's election adopting one or the other of the taxes could fulfill the required condition, thus installing the relevant tax.<sup>(20)</sup> This variant is used in the Alaska law dealing with fishermen funded aquacultural and enhancement programs.<sup>(21)</sup> Thus, the law levies a three percent tax and a two percent tax, each subject to certain con-

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<sup>20</sup> Vogt, page 3.

<sup>21</sup> A similar approach is used in the Alaskan law dealing with the private funding for the Alaska Salmon Marketing Institute.

ditions. The section dealing with the three percent tax reads as follows:

(a) A person holding a limited entry permit...shall pay a salmon enhancement tax at the rate of three percent of the value of salmon...that the person removes from the state or transfers to a buyer in the state..."

(b) A three percent salmon enhancement tax may only be levied or collected under (a) of this section:

(1) in a region designated by the commissioner of Fish and Game for the purpose of salmon production...

(2) if there exists in that region an association determined by the commissioner of Fish and Game to be a qualified regional association...

(3) if the qualified regional association approves the three percent salmon enhancement tax...

The section levying the two percent tax contains the same wording except that the word "two" is substituted everywhere that the word "three" appears above. Thus a two percent tax is collected if the association approves, or alternatively, the three percent tax is collected if the association approves. Conceivably, the flexibility of the system also allows the association to approve each tax separately, so that a third tax option of 5% is possible.(22)

Another approach could provide considerably more scope for designing a taxation program adapted to the needs of a specific fishery. This would require the legislature to act on a separate piece of tax legislation for each fishery in which buy-back was to be started. Thus, a separate bill levying the taxes would be written for each fishery. The tax bill could require that the tax would only be collected if some condition, such as a vote by the fishermen adopting a buy-back program, occurred. This approach would be more involved than the general approaches described earlier, since it would require passage of additional legislation, but it would provide more scope for adaptation of the tax program to the needs of each fishery.

These approaches could be combined. Thus, if the buy-back law included a set of taxes that took effect with a fishermen's election, the legislature would not be precluded from substituting a special tax program designed especially for a fishery. In the absence of a special program, the fishermen would vote on whether or not to adopt a tax and fee program from options available in the buy-back law. If the legislature designed a special tax program for the fishery, it might still be contingent upon the fishermen voting for the special tax.

### Tax Options

Three taxation options are considered here: a fixed fee, a tax on gross earnings, and a tax on the pounds of fish landed. Each of these approaches has advantages and disadvantages.

### Fixed Fees

Financing for the buy-back program could be generated by charging a fixed "fleet reduction" fee for permit renewal in addition to the current permit renewal fee.(23) Thus,

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- 23 The existence of Interim Use Permits (IUPs) poses a problem that might be dealt with in one of several ways. (1) Buy-back might be delayed until all cases have been decided and the associated IUPs had been eliminated. (2) Buy-back could be instituted and IUP holders would be required to pay all taxes as they occur-just like permanent permit holders. If an IUP holder opts to not pay the taxes and "sell" his future privilege to the state, the state would not pay for the permanent permit unless and until it is issued and the "payment" for that permit would be the lowest amount paid for any permanent permit in the calendar year in which the IUP holder opted to sell. If no permits were purchased in that calendar year, the lowest amount paid in the first subsequent calendar year in which purchases occurred under the program will be utilized. (3) IUP holders would not be charged taxes but would not be liable for buy-back until their cases were resolved. Should they receive a permit they would become liable for any taxes they would have paid had they owned permanent permits plus any interest that those taxes would have earned the state if they had been in the state possession.



where a permit can be renewed now for perhaps \$250, the renewal fee plus a fleet reduction fee might be \$1,250.

One of the advantages of a fixed fee is that collection would be relatively inexpensive. Fees would be received from the fishermen during the permit renewal process as a condition for retention and use of the permit. As an additional advantage, this type of fee would serve as a disincentive for persons to hold onto permits for speculative purposes. The cost of waiting until fleet reductions have increased permit values would be substantially increased.

A variant of the fixed fee approach is to peg the fee to the permit price; thus, the fee might be 2% of the estimated average permit price. One advantage of this approach is that the revenues raised from the fees would be proportioned to the permit prices in the different fisheries. In addition, as permits are withdrawn from the fishery, and permit prices rise, program revenues are also going to have to rise in order to enable the program to continue. A fee pegged to permit prices will accomplish this. Thirdly, the rising fees will also help to moderate the rise in permit prices. On the other hand, relating the fees to estimated permit prices in the fishery may lead to considerable controversy. A problem could arise if the Commission had to

pay high prices to pull permits off the market. The volume of transactions occurring outside the buy-back program may fall due to the reduction in the number of permits in the market and due to the opportunities persons have to sell them to the Commission. Permit value estimates from non-buyback transactions will thus be based on fewer sales observations and those values will be affected by the buy-back program and expectations concerning its future course.

One advantage of fixed fees as opposed to gross revenues or poundage taxes is that there are no minimum tax problems posed by persons who do not fish during a current year. If a permit is renewed the tax must be paid. This contrasts with the gross revenues taxes in the current program which create a "free rider" problem since some persons could speculate on permit appreciation while paying virtually no tax. The current law does require permit holders who do not fish to pay a tax equal to the average tax of the remaining active permit holders in the fishery. However, in many cases, it will be easy for a person to circumvent this requirement by finding a way to make one small landing on his permit. He would then only have to pay the tax on that landing. It is possible that some persons could arrange to have fraudulent fish tickets prepared for this purpose.

### Gross Revenues Tax

The buy-back tax could be computed as a percentage of gross revenues in the fishery concerned. For example, the fishermen could be taxed 3% of their gross revenues. Alaska's raw fish tax and salmon hatchery and enhancement assessments are taxes of this type. In most cases, the tax could be collected by having fish buyers collect the money and forward it, within a reasonable time period, to the state Department of Revenue.

There are several potential problems with gross revenues taxes. Program planning may be difficult since program revenues will vary depending on prices and landings. These sorts of taxes also lend themselves to evasion. Thus if the tax is on gross revenues, processors and fishermen may falsify documents, or buyers may substitute in-kind services to the fishermen for cash payments. In addition, the question of how to accurately account for post-season price adjustments, bonuses, and gear allowances is raised. Finally, lags in reporting and collecting taxes on post season adjustments might considerably complicate administration of the program.

This type of tax is harder to collect than the fixed fees. For instance, as noted, fishermen may be paid price adjustments by processors during the Spring of the year following the season. Any taxes associated with these price adjustments could not be collected until the adjustments are received. Such a provision may be expensive to enforce, but not enforcing it would probably result in lower initial payments when landings are made and larger post season adjustments. Post-season price adjustments may also pose problems for permit sales. It will probably have to become a condition for the sale of the permit that all buy-back taxes be paid.

Some fishermen may be selling and shipping their fish to buyers out of state and this will also complicate attempts to collect gross revenues taxes. In these cases the fishermen would have to be assessed after the season on the basis of an estimated "fair market value" for their fish. This fair market value would be based on fish ticket landings records and prices estimated by the CFEC from fish tickets, processor's annual reports, and sundry sources.

#### Poundage Taxes

Taxes could also be levied on the basis of the pounds

of fish landed; for example, the tax might be one cent per pound of red salmon. Different tax rates could be utilized for each of the different species of salmon. A tax schedule specifying the number of cents per pound for each species of fish could be set out in the law, but, given the fluctuations in market prices, and the differences in market prices from area to area and gear type to gear type, the relationship of taxes to gross revenues would vary considerably across gear types, years, and species.

Setting the tax as some proportion of the CFEC's estimate of the average market price of the different species would be a more complex procedure, but could come closer to making the tax a constant percentage of gross. Thus, after each season the CFEC would estimate average market prices for each species and compute tax liabilities for each fisherman on the basis of these estimates and the fisherman's fish tickets. The tax would then be collected from the fishermen themselves.

As an alternative, it may be possible to make the tax in any year a certain percentage of the price of the fish in the previous year. Thus, if a fish sold for 40 cents per pound during the current year a cents per pound tax, set at five percent of the previous year's fish price, would

produce a 2 cents per pound tax next year. This approach has the administrative advantages that the tax would be known ahead of the season and could be levied during the season like the gross revenues tax. In fact, it may be easier to collect than the gross revenues tax since it could be collected in its entirety at dockside. There would be no worries about post-season payments to account for bonuses or price adjustments.

This approach has the obvious disadvantage of leaving the tax only loosely related to the price of fish in the year in which it is imposed, particularly if the previous year's average was used. Thus, in the example above, if the price of fish dropped to 20 cents per pound in the second year the tax would be ten percent of the value of the fish. This objection may be partially dealt with by giving the commission the power to adjust the tax prior to the season in response to evidence that large price movements are occurring.

It may be possible to cut loose from basing the current year's tax on the previous year's price altogether, and to base the current year's tax per pound on price estimates made in advance of the season by the CFEC's research staff. This approach would require a considerable improvement in

current price forecasting abilities, however, to consistently produce poundage taxes approximately equivalent to a given percentage of ex-vessel price.

The choice of poundage taxes, gross revenue taxes, or fixed fleet reduction fees has distributional consequences for the program. Fishermen with larger gross revenues would likely prefer program funding through fixed fleet reduction fees since all fishermen would share equally in raising the money. Fishermen who operate on a lower scale or who usually have relatively small landings and revenues are more likely to prefer a funding scheme based on the taxation of pounds of fish landed or gross revenues. Similarly, seine fishermen using refrigerated seawater vessels might prefer a poundage based tax, while seine fishermen with "dry hold" vessels might prefer a tax based on gross revenues. This would occur since the price per pound for any poundage based tax would be an estimated average price for the fleet; it would probably be lower than the refrigerated seawater price but higher than the "dry hold" price.(24) It is possible

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24 An interesting sidelight to this is the fact that a poundage tax would be more conducive to investments in on-board processing and quality production than a gross revenues tax. On-board processing would reduce the landed weight thus reducing the taxes. Quality production would increase the product's ex-vessel price increasing a gross revenues tax but not a poundage based tax. It is true that the poundage tax would be related

that to achieve acceptance for a program it may be necessary to reach a compromise between the interests of the different fishermen by utilizing some combination of uniform fixed fleet reduction fees and taxes which vary with poundage or revenues.

#### Nonpayment of taxes

Any taxation program raises the problems of how to handle non-payment of taxes. Confiscation of the permit, either for a period of several years or permanently, might be a logical penalty.

For political palatability, it may be desirable to provide fishermen unable to pay buy-back taxes or fees with a nonpayment option. For instance, in exchange for an exemption from the buy-back fees and assessments, the fisherman could be required to convert his transferable permit to a non-transferable permit in the same fishery. A fisherman would be willing to do this if the present value of the after-tax income from the sale of the permit at the date he

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with a lag to average gross revenues but anyone leading the others in quality improvements, or producing a better quality product at any point in time, would face a poundage tax that took a smaller proportion of his gross revenues.



anticipates leaving the fishery was less than the present value of his anticipated buy-back tax savings.(25) A disadvantage of this approach from the point of view of the buy-back program would be that any benefits from it that would accrue to the fishery would probably accrue at a later date and would thus be heavily discounted. The persons most likely to agree to a trade of this sort are the fishermen who expect to hold their permits the longest, since their expected selling prices would be the most heavily discounted.

Many variations to this basic approach are possible. Thus, it may be desirable to provide different levels of tax relief in exchange for more or less stringent conditions on the non-transferable permit. For example, a fisherman might exchange his transferable permit for a non-transferable permit that would expire at a given future date, possibly ten years away. In exchange for this the fisherman would be exempt from all taxes. Alternatively, the fisherman might be offered a partial reduction or exemption from taxes if he would exchange his transferable permit for a non-transferable permit that will allow him to fish for as long as he chooses to remain in the fishery.

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25 There may be other complications which affect the risk adjusted present value of these alternatives.

## V. PROGRAM ADMINISTRATION

### No vessel or gear purchases

In the revised program it would be wise to eliminate vessel and gear purchases. Vessel and gear purchase requirements in the current law pose three problems. First, the purchase of vessels and gear will increase the administrative costs of the program since the purchases will be accompanied by the costs of vessel appraisal, vessel storage, and vessel resale. Second, it is likely, judging from the experience in other programs, (26) that the resale value of the vessels will be considerably less than their original purchase prices. These reductions in value would be due to deterioration in storage, dumping too many buy-back vessels on used markets at one time, and restrictions placed on reuse of the vessels. This loss in value would leave less money available for the purchase of permits. Third, it is impossible to know in advance which operation represents the least cost per unit of potential fishing capacity removed, when vessel and gear are involved. (27) Thus, for a given

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26 Schelle and Muse, page 64.

27 Schelle and Muse, pages 65 to 66.

level of expenditure, less potential fishing capacity would be removed if vessel and gear are purchased.

Permit Purchases: Two Alternative Objectives

In deciding which permits, among those available, to purchase it will be necessary to choose between maximizing the level of current capacity associated with the permits purchased, or trying to buy as many permits as possible. To some extent, the choice is between removing current capacity or removing potential capacity.

Each objective has advantages and disadvantages. Maximizing the amount of current capacity removed may provide the most short term relief to the remaining fishermen although the number of permits removed would be less than if the focus was on maximizing the number of permits purchased.

To maximize the amount of current capacity removed, the program would have to purchase both individual permits and agreements from the permit holders that they will not reenter the fishery. Without such an agreement a highliner might sell his permit to the program at an above market price and then reenter the fishery by buying a permit on the market at a lower price. The program would have paid more

for a highliner's permit without eliminating the individual from the fishery. The fact that the person is selling both his permit and the right to reenter the fishery will further add to the cost of the program. Additionally, to the extent that the attributes of a particular vessel are a principal determinant of an operation's fishing capacity and current production, merely removing the skipper might have less of a current impact than anticipated. Attempting to purchase the right to use the vessel in the fishery would consume more precious funds and result in a further reduction in the total number of units which will ultimately be removed.

The objective of maximizing the number of permits removed will take out more long run capacity on the assumption that permits in the hands of less productive fishermen would have eventually found their way into the hands of more productive fishermen. If this would have happened, removing the greatest number of permits will produce the greatest overall long term release of production to the remaining fishermen.

Should the program pay more for permits owned by persons with relatively high current production, or should the program purchase the least expensive permits available since the permits convey exactly the same privilege, ultimately

have the same potential capacity, and may eventually all be in the hands of persons exerting maximum effort? The relative attractiveness of these alternative objectives depends upon the extent to which current capacity can be adequately measured and actually purchased, the cost of purchasing and enforcing reentry restrictions, the rate at which permits move to high effort fishermen, and the time rate of discount.

Programs designed to remove the largest number of permits should be ranked on the basis of their likelihood of producing the minimum average cost per permit. Programs designed to take out the maximum amount of current production should be ranked on the basis of the cost per unit of current capacity removed.

#### Removing the Maximum Number of Permits

(1) The "Offer to Sell," variable purchase price approach:

One way to buy permits would be to solicit "offers to sell" from fishermen during specified periods in the course of the year. Each offer would have to include a price quote and be binding if accepted. The program would then rank the offers by price and accept all of those in which the price

fell below a given cut off point.(28) The cut off point should be set by the program with regard to the following considerations:

1. Typical market sales prices
2. The need to pay a premium to attract permits from the market
3. The need to include a premium to obtain permits from fishermen without buying vessels and gear
4. The amount of money available to the program
5. Prices paid during earlier purchases and the possibility that fishermen would be reacting to those prices

Point five deserves more comment. Fishermen may regard the cut-off point choices in earlier periods as indicators of cut-off points to be chosen in the future. It is possible that bids submitted will tend to reflect previous cut-off points and not actual reservation prices.(29) That is, if fishermen expect that the cut-off price will be higher than the market price and their actual reservation price, they may gamble with a higher offer price in the hopes of receiving the greater value if they win. If they lose, and

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28 This approach is based on the buy-back program used by Oregon in the Columbia River salmon drift gill net fishery. See Schelle and Muse, pages 50 to 54.

29 A permit holder's reservation price is the price below which he would not sell his permit, but above which he would.

the cut-off is below their offer price, then they can still sell their permit at market price.

To the extent that the program accepts offers above the market and reservation prices, the program will have failed to remove the permits at least cost. For that reason, the program should retain some discretion which would allow it to change the cut-off point for the purpose of discouraging this strategic behavior on the part of the fishermen.

Points one and two also deserve some clarification as the offer prices fishermen will submit may also be affected by reduced transactions costs. The average price paid for permits obtained under this approach would exceed the market price if everyone possessed perfect information and if market transactions costs, including the costs of searching for a permit, negotiating a sale contract, and enforcing that contract, were zero. To the extent that transactions costs in the permit market are greater than the costs of selling directly to the state, and the existence of a market for permit brokerage suggests that market transactions costs can be large, the average price asked for permits may drop toward, and perhaps beneath, market sales prices. Although the price paid may dip below the average market sales price it is also quite possible that the price paid could remain

above such prices. The answer depends on the magnitude of the savings in transactions costs and the supply price elasticity of entry permits in the relevant fishery.

(2) The "Offer to Sell" cut-off purchase price approach:

A variant of the first approach would be to rank offers to sell by purchase price, select a cut-off price, and then pay that price to all persons with offers at or below the cut-off. Compared to the first approach, this procedure would discourage speculative offers and encourage persons to make offers consistent with their own reservation price.

This procedure dramatically reduces the incentive to present an offer above both the market and one's reservation price in the hopes of "making more." If a permit holder's offer is less than the cut-off price he would still get the cut-off price. The possible gain from gambling on a higher offer price is removed.

If actual reservation prices were "offered" under the first approach, then the second approach would be clearly inferior and would remove fewer permits for a given level of expenditure. If, however, offers are substantially above reservation prices, the possibility exists that paying ev-



everyone the cut-off price (second approach) would actually lower the average costs per permit. It is not clear, on theoretical grounds, which approach is superior.

Nevertheless, there are substantial disincentives toward gambling with offers above one's reservation price.<sup>(30)</sup> If the cut-off price is below your offer price but above your reservation price, and your reservation price is above market prices, the "downside risk" would be that you would lose a sale at your reservation price. This, coupled with the fact that the probability of being "above" the cut-off price increases with offer price, should serve to dampen such behavior. Thus, these authors cautiously favor the first approach over the second.

(3) The fixed purchase price approach:

Another way to purchase permits would be to advertise a willingness to purchase entry permits for a set price and then to buy up the permits that people offer to sell. In situations where more offers are received than there is

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30 This statement applies if one's reservation price is above market prices. Under the first approach offers higher than reservation prices would be expected when reservation prices are less than market.

money available for purchases secondary allocation criteria will be necessary.

In the absence of the permit market transactions costs discussed earlier, the lowest possible price this program could offer would be the going market price. In this case the program would probably have to offer a premium over the market price to attract many permits. If permit market transactions costs are large the program may be able to buy some permits at prices below the typical market sales price, since the transactions costs to fishermen of dealing with the program would probably be relatively moderate. The savings in transactions costs might compensate for a somewhat lower permit price. A premium over market would probably still be needed if many permits are to be removed.

Even if buy-back purchases were small relative to total market transactions, so that the market price was a helpful guide, market price fluctuations could still pose problems for the program due to lags in the collection of price information and in the adoption of new program prices. If market prices are dropping, the program price would tend to be above the minimum price necessary to purchase the desired permits; if prices are rising the program price would tend to be below the minimum price necessary to remove the de-

sired number of permits and the program would find the available pool of sellers continually drying up.

This approach, and the two approaches ranking offers to sell by the size of the offer, attempt to withdraw the greatest number of permits given the available funding; however, it is not certain which of these programs would produce the lowest average cost per permit purchased. In each case, in the absence of transactions costs, the programs would have to offer average prices larger than the current market price. Transactions costs affect each program in a similar way, theoretically allowing them to purchase permits at somewhat lower prices reflecting reduced transactions costs.

The programs in which offers to sell are accepted from fishermen appear to have lower administrative costs. First, less research on permit markets is required since it is not necessary to call out a price in advance of buying permits. Second, the "offer to sell" approaches make it unnecessary to have a secondary allocation procedure to decide which permits to buy in case the aggregate value of offers received is greater than the buy-back funds. In these programs the choice of the cutoff point will solve that problem. This is not the case with the program in which a

price is called out and fishermen are given the chance to sell at that price. In that program there may be insufficient funds to purchase all the permits offered and a choice will have to be made about which permits to purchase. For these reasons, these authors cautiously favor the first "offer to sell" ranking approach over the fixed purchase price approach.

#### Removing the Maximum Current Capacity

The approaches just discussed try to purchase the most permits possible given the program budget. They do not try to buy out the most current production possible. The following paragraphs discuss two approaches to this latter objective.

Before considering the approaches it is useful to review several caveats about this objective. Current capacity is difficult to measure. Even if a reasonable surrogate can be found, paying more for a permit to someone with relatively high current capacity makes no sense if the individual can simply purchase another permit at market value and reenter the fishery.<sup>(31)</sup> Purchasing the permit and the individual's

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31 It may not even be necessary for the highliner who sold his permit to purchase a new one since he may be satis-

(and vessel's) privilege of reentering the fishery will cost the fund more money and may raise substantial administrative and enforcement costs.

The potentially significant enforcement costs associated with preventing a person who sold his permit from participating in a fishery in any capacity in the future pose an important problem for this approach. These costs, including the costs of apprehension and prosecution, may be objectionable if they involve a state subsidy to the buy-back program.

To some extent enforcement costs might be reduced if a fishery is small enough so that most participants are known by many other persons. Thus the fishermen remaining in the fishery might quickly be able to identify a person who had sold his permit and reentry rights and surreptitiously returned to the fishery. Highliners, in particular, are likely to be widely known, making it more likely that one reneging on his agreement would be noticed. Fishermen remaining in the fishery and paying taxes to buy up their competitors would have a considerable incentive to identify

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fied to simply find a partner with a permit. He could then put his special skills back to work in the fishery.

persons taking buy-back money and then violating the terms of the agreement.

(1) The "Offer to sell" variable price approach:

The first of these two approaches to the objective of maximizing current capacity removed is very similar to the approach discussed earlier in which the program would solicit "offers to sell" containing price quotations. The difference is that in this case the offers would be ranked in descending order by the ratio of a measure of the permit holder's productivity, such as recent gross revenues, to his price quote. All the permit holders whose ratios are above a cut off point selected by the program would be purchased.<sup>(32)</sup> This is basically a ranking by the price, to the program, per unit of current capacity. The persons offering the most current capacity per dollar would be bought first regardless of whether they were high producers or

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32 Figure 4 on page 57 illustrates the workings of two "offer to sell" approaches, and their results, in a concrete situation involving five hypothetical operations. In the top table a measure of gross revenues is shown for each operation, (for the moment assume that this is the best measure of current capacity available) as well as hypothetical offer prices for each operation. In the bottom table the operations are ranked on the basis of each of the criteria described above.

low.(33) This rule attempts to purchase the cheapest capacity available, so that the program can buy the most current capacity possible given its budget.

(2) The formula price approach:

In an alternative approach the program could offer to purchase permits at prices that would depend on the value of each fisherman's landings during recent years. For example, the price might be set equal to two times the average of the fisherman's landings during the most recent three years. This approach is designed to lure more productive fishermen from the fishery by relating purchase prices to fishery revenues.

Again, in order for these approaches to work it will be necessary to obtain, from persons selling their permits, an agreement not to participate in the fishery in ANY capacity for some time, perhaps ten years, after they sell their permit. In the absence of such an agreement it would be possible for highliners to sell their permits to the program for prices above the actual market price, to repurchase new per-

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33 Alternatively, the offers could be ranked in ascending order by the ratio of the price quote to the measure of productivity. All ratios above a cut off point could be chosen.

mits on the market from fishermen who are not as competitive, and then reenter the fishery.

It is likely that the second approach to buying up "current capacity" will produce smaller capacity reductions for any given budget than the process of ranking offers to sell by the ratio of a measure of capacity to offer price. For the purpose of this comparison we will assume that capacity in each program is measured by some multiple of one year's gross revenues (the argument should hold for other capacity measures). A ranking by the ratio of the capacity measure to the offer price ensures that each permit bought represents the cheapest current capacity (at least the surrogate measure of capacity) possible given the voluntary offers to sell. This cheap capacity may come from highliners or others.

#### Conclusions and Recommendations

All of these considerations on the different approaches to buying permits suggest the following conclusions. If the objective is to take out the maximum potential capacity by taking out the maximum number of permits it is necessary to identify the approach which is likely to produce the lowest average cost per permit purchased. Of the three approaches



discussed above, none would be unambiguously superior under all circumstances. Nevertheless, the authors favor the offer to sell, variable purchase price approach, in which persons with offers below the cut-off price would be paid their offer price. This approach appears to be administratively less costly than the fixed purchase price approach, and should remove more permits for a given level of expenditure if offers are reasonably close to reservation prices.

If the objective is to maximize the reduction in current capacity, the program that charges the least per unit of current capacity should be chosen. In this case the "offer to sell" program that ranks offers by descending gross revenues per dollar of buy-back expenditures appears to be better than the program which pays the permit holder some multiple of his recent gross revenues.

Of the two objectives, the authors favor attempting to remove the maximum number of permits possible given the available fleet reduction resources. Permits within a fishery all convey exactly the same privilege. A permit owned by a low producer today may be owned by a highliner tomorrow so removing permits removes potential capacity.

Using buy-back funds to remove the maximum amount of current capacity necessarily means that fewer permits will be removed. Current capacity is difficult to measure. Paying more for a highliner's permit and his right to reenter the fishery will drain buy-back funds and result in fewer permits removed. Such approaches would be more expensive to administer and enforce. Moreover, it is not entirely clear that such procedures would have as great an impact as intended.

For these reasons, the draft legislation in the appendix provides for a program whereby removing the maximum number of permits is the primary objective, and the "offer to sell" variable purchase price approach is the method chosen to achieve the objective.

#### The Fishermens' Buy-back Committee

Once a buy-back program is established it will be important to be in close contact with representative permit holders. One method of achieving this would be to establish a fishermens' buy-back committee to advise the Commission on the conduct of the program. The fishermen could be appointed by the governor with the advice of fishermens' groups and representatives.

As an alternative to the fishermen's advisory committee, it might be possible to put the responsibility for program administration directly in the hands of the fishermen's committee rather than in the hands of the commission. This approach would give fishermen's representatives direct control over the day to day administration of the buy-back program. However, it would add a new layer of bureaucracy to program administration and might increase the overall administrative costs. The burden of these increased costs would fall to the fishermen, because they would come out of buy-back funding, and could make this alternative a less attractive investment for them. The former approach tries to provide for fishermen's input into program decisions while holding costs down.

ASSUME THAT FIVE PERSONS WITH  
THE FOLLOWING CHARACTERISTICS  
OFFER TO SELL THEIR PERMITS

Person	Gross Revenue Measure	Offer Price	Ratio of the Gross Revenue Measure to the Offer Price
A	\$ 80,000	\$32,000	2.5
B	90,000	30,000	3.0
C	100,000	35,000	2.9
D	110,000	40,000	2.8
E	85,000	38,000	2.2

THE TWO "OFFER TO SELL"  
APPROACHES WOULD PRODUCE THE  
FOLLOWING RANKINGS

Rank	By Ratio of the Gross Revenue Measure to the Offer Price	By Offer Price
1	B	B
2	C	A
3	D	C
4	A	E
5	E	D

Figure 4. Rankings Produced by Alternative "Offer to Sell" Approaches

## VI. WHEN SHOULD BUY-BACK BE IMPLEMENTED

### Problems with the "Optimum Numbers" Concept

The current LEA requires the estimation of an "optimum number" of units of gear in a fishery prior to the commencement of a buy-back program. As noted earlier, the optimum number is to be set based on a reasonable balance of three criteria: the optimum should produce a reasonable average rate of return in the fishery, should leave enough permits to harvest the allowable commercial take of the resource, and should be enough to avoid serious economic hardship to those engaged in the fishery considering other alternative activities available to them. Identification of an optimum number below the existing number of permits automatically triggers the buy-back program.

There are a number of problems with this approach. The optimum numbers criteria are vague, they pose considerable estimation problems, and the process is a very mechanical approach to deciding whether or not to go forward with a complex and controversial social program fraught with economic, social, and political implications.

The optimum numbers criteria are not clear and the "reasonable returns" criterion is particularly hard to interpret. For example, although labor and management and capital inputs are to be taken into account, the law does not indicate whether or not reasonable returns are those that recover the opportunity costs of these inputs, or whether they are returns that include some of the rental returns the fishery may be able to generate. Vessels used in a fishery are often used in other fisheries as well; the law, however, provides no guidance about the portion of the vessel value that is to be used for the purposes of calculating the opportunity costs of capital. The reasonable rate of return criteria provides no guidance about the fluctuations about the rate of return that can be tolerated. For example, it is not clear if the criterion implies a fleet that breaks even every year, or if not, how often the fleet should break even or have positive returns in any multi-year period. These ambiguities, and others, pose problems for analysis and will leave any particular interpretation adopted open to challenge.

Aside from these questions of definition, there are also serious problems associated with the estimation of optimum numbers. Opportunity costs for labor inputs will be very difficult to estimate, as will the projection of probable

returns in future years given the large fluctuations in landings and prices which affect the fishing fleets. These estimation problems would occur in any decision making process, but they pose a somewhat more serious problem for an optimum numbers approach. Identification of a target that is an "optimum" is more demanding than simply identifying a target that is merely "better". The demands on research in the second case would be easier to meet.

Perhaps a more fundamental objection to the "optimum numbers" concept is that it seems to be a rigid approach to a complex social decision. An important dimension of this objection is that, although fishermen are to pay for, and be the beneficiaries of, the buy-back program, the LEA provides little formal opportunity for fishermen to be involved in decision making concerning the adoption of a program. This is not to say that fishermen would not be consulted, since the CFEC would hold public hearings on any regulations it proposed concerning buy-back. In addition, it is hard to imagine the CFEC moving ahead on such a complex and potentially controversial program without having sought considerable informal input from fishermen and their representatives. Granted this, it may still be desirable to increase the formal opportunities for fishermen to be involved in program decision making.

### Decision to Investigate Buy-back

In response to a wide range of information the Commission might come to be persuaded of several things: (1) that there were problems in the fishery that buy-back might alleviate, (2) that there was considerable support for a buy-back program among the permit holders in the fishery, and (3) that the Commission had the available resources or could obtain an appropriation of resources sufficient to carry out a program of research into the usefulness of buy-back in dealing with the problems in the fishery. Once persuaded that these conditions existed, the Commission could decide to begin to design a buy-back program for the fishery and examine the likely impacts of such a program.

In order to give the fishermen a more formal role in program decision-making, it might seem desirable to refrain from designing programs until fishermen in a fishery formally ask for it. Presumably the mechanism would be a petition signed by a certain proportion of the fishermen in the fishery. There are several problems with this approach, however: (1) the Commission will have to retain the option not to investigate a program, even if the fishermen request it, if the resources to investigate it are not available, (2) to be meaningful, this approach would have to prohibit



Commission research into buy-back in the fishery in the absence of such a petition, this seems impractical, and (3) the legislature may appropriate money for a program or not, as it sees fit, irrespective of whether a group of fishermen has or has not filed a petition with the Entry Commission.

Under the approach suggested above, fishermen's input into program initiation and design would be present from the start. Successful design would depend on working closely with the fishermen in a fishery.

#### Program Design by the Entry Commission

Once it decides to study the desirability of a fleet reduction program the CFEC will be faced with a variety of questions, the exact nature of which will depend on the options that have been incorporated into the buy-back law, and the nature of the fishery or fisheries involved.

The first and most basic set of questions will deal with the projected size of the buy-back program: how many permits should the program buy back? The CFEC research section will be called on to do financial feasibility analyses of different sized programs. The staff will estimate the monetary outlays required for programs of different sizes and analyze

alternative finance schemes. They will pay particular attention to the effects of alternative finance schemes on the timing of fleet reductions and, hence, the timing and amounts of monetary outlays and returns to the remainder of the fleet. These analyses would be oriented towards determining whether the fishermen who remain in the fishery will or will not be better off after particular programs. The results of these analyses will help the fishermen judge the scale of the program that they would prefer. The information from the staff research and the comments from the fishermen, made in light of that research, would help the CFEC in program design and would be important information for fishermen when the time came to vote on whether or not to proceed with a program.

A second set of questions, actually intimately related to the first, deals with how to structure the program. These questions are closely related to the first set since the program design will be likely to affect the costs and benefits of any given level of permit retirement. The questions arising here depend on the available program options. With up-front money it would be necessary to identify the different tax schedules that would be equivalent, in present value terms, to different amounts of up-front funding. In the absence of up-front funding, it will be

necessary to study different taxation programs to see how changes in the type and timing of taxes impact different parties. If up-front and annual appropriation approaches were combined, the types of analysis discussed here would also have to be combined.

Building on the advice of the fishermen in the concerned fishery and the analyses performed by the CFEC research staff, the Commission would produce a set of program recommendations. The appropriation processes would then be set in train and preparation would be begun for fishermen's elections.

#### The Fishermen Decide

Expenditure of a legislative appropriation, whether of up-front money or an annual appropriation, should only be permitted following an election in which a simple majority of the permit holders, in the fishery concerned, vote to adopt the tax schedule on which the appropriation was premised. If the fishermen vote not to adopt the tax, the appropriation should also lapse. This requirement for approval of a buy-back tax by fishermen gives them an absolute veto over the implementation of buy-back.

An election should be carried out as soon as is practical following the start of the fiscal year in which the appropriation would become available. The principal reason for the delay of an election after the start of the fiscal year would be to accomodate the schedules of the fishermen. The Alaska fiscal year begins on July 1 and many salmon fisheries are in full swing at that time. It seems likely that, particularly for salmon fisheries, many elections would be postponed until the Fall.

The CFEC could choose to run the election itself or it could contract out the administration of the elections to another agency or a private contractor such as a legal or accounting firm. The Division of Elections is one state agency that might be able to conduct the elections.

The procedures used by the state to issue and collect absentee ballots by mail may be adapted to the problems of carrying out a fishermen's election by mail.(34)

The election might be carried out by mailing ballots to each permanent entry permit holder in the fishery, who had

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34 Fishermen's elections are conducted, using postal ballots, to decide whether or not to adopt mandatory assessments for the purpose of funding salmon hatchery projects.

held his permit at a point 90 days before the ballot postmark deadline. One ballot would be mailed 45 days before the ballot return postmark deadline, and another would be mailed 21 days before that deadline. Each voter would receive, along with each ballot, a notice clearly describing the way the buy-back program would work. The ballot question would simply ask for a yes or no response to the question, "Should the State of Alaska implement the buy-back program designed for this fishery by the CFEC?" The ballots would contain instructions asking the recipient to:

1. fill out the ballot and place it in a special, unmarked, ballot envelope
2. place the ballot envelope in a stamped, self-addressed return envelope supplied by the state
3. write the following on the mailing envelope:
  - a. name and address
  - b. one of the following:
    - 1) entry permit number
    - 2) social security number
    - 3) birthdate
4. have the mailing envelope signed by two witnesses
5. place the mailing envelope in the mail on or before a given postmark deadline

The CFEC, or other agent contracted to carry out the election would accumulate the incoming ballots, check the information on the mailing envelopes for accuracy, and then

store them until it was time to count the votes. At that time, if any one had returned two ballots, the first one received would be eliminated. Then the ballot envelopes would be separated from the mailing envelopes and counted.

Prior to the postmark deadline the CFEC would conduct a program designed to familiarize the fishermen in the fishery with the ballot proposition and with the voting mechanism. This program would consist of mailings to qualifying voters, public hearings, notices posted in public places, notices printed in newspapers, and notices broadcast over radio and television.

This election is likely to be more important to each of the participating fishermen than a general state election is to each individual voter. Because of this, each fisherman may be more concerned with the prevention of fraud than voters usually are in general elections. The increased importance in part may be due to the relatively small number of eligible voters, resulting in each vote carrying relatively more weight than it would in an election with many more eligible voters. Additionally, the outcome of the election will affect the individual voters in a very direct and substantial way. For these reasons, the election procedures should be at least, and possibly more, careful about poten-

tial vote fraud than the state's procedures in regular elections.

## VII. BUY-BACK IN RELATED FISHERIES

Because some fisheries exploit the same stocks buy-back may face some additional problems. Fishermen in a fishery under buy-back may be concerned that they will lose influence with the Board of Fisheries as their relative numbers decline. On the one hand, they may be concerned that, at a future date, persons in a related fishery would argue that, with their reduced numbers, they should have relatively fewer fishing opportunities. Additionally, they may fear that with their reduced numbers they would be able to bring less political pressure to bear to resist these arguments. Pushed to extremes, persons with this concern may only be willing to see buy-back in their fishery if there are also proportionate reductions in the number of operators in the related fisheries.

This problem may be reduced if fishermen in one fishery could be assured that if they chose to pursue buy-back, fishermen in related fisheries would make a similar choice. In particular, they would want to be sure that they would not assess themselves for buy-back unless fishermen in related fisheries had also agreed to do so. Since a legislative appropriation to a buy-back committee based on buy-back assessments could only be used for buy-back purposes, the



fishermen in each fishery could be assured that buy-back would proceed in the other.

To deal with this problem it may not be necessary to achieve an exact proportional reduction of the fishermen in each fishery. There are several reasons for this. First, and most simply, the decisions of the Board of Fisheries are not made solely on the basis of the number of fishermen in each fishery. Many other factors beyond simple numbers of fishermen in each group may enter into Board decisions. Secondly, there may be cases where one of the fisheries is large enough relative to the other that its members may feel that some reduction in their numbers will not compromise their ability to hold their own before the Board. Thirdly, reallocation fights may arise in part, and acquire much of their heat, when at least one of the gear groups is experiencing economic pressure. The buy-back mechanism is designed to relieve that pressure. Thus buy-back programs launched in two or more related fisheries may produce different proportional reductions in numbers, but actually relieve pressures for reallocation. Finally, buy-back in any fishery will release fish to all remaining fishermen including, to some extent, fishermen of competing gear types. This effect may also serve to relieve some of the intensity

in an allocation controversy, even when buy-back is proceeding in only one fishery.

To deal with related fisheries the CFEC could design separate buy-back programs and request separate appropriations for each fishery. Adoption of a program in any one of the fisheries, however, could depend on its adoption by the fishermen in the others. Elections could be conducted simultaneously in all fisheries. Once the election process was completed the programs in the fisheries would be administratively separate, each with a separate fishermen's buy-back committee.

This approach provides no guarantee that permits will be bought back proportionately in each fishery. The proposal only provides a mechanism to ensure that buy-back will only take place in one fishery if it takes place in the related fisheries. In addition, the legislation might allow the commission, with the unanimous consent of the fishermen's committee, to transfer funds from one buy-back special reserve fund to another. Thus it may be that one fishery will see a certain degree of buy-back as profitable but may be held back by a related fishery. If the buy-back would still be profitable after making a grant to the other fishery to move it along, then it would be sensible to make

that grant. While this contingency may seem unlikely, there does not appear to be any reason to constrain the fishermen should they decide to do it.

If the Board of Fisheries were to adopt a regional allocation plan involving all the related fisheries and specifying the relative status of each of them, the buy-back process could be eased considerably. Such a plan could not bind future Boards of Fisheries but would clearly state the assumptions under which the fishermen chose to participate in the buy-back program. If the Board adopted a plan with buy-back in mind, that plan would lend weight to the arguments of fishermen who may need to defend themselves against reallocation pressures due to the changed situation that would exist after buy-back.

#### VIII. HOW TO STOP THE PROGRAM

The buy-back program is intended to end when the Commission has spent the appropriated funds, plus any accumulated interest, and the state has been fully repaid according to the terms of any up-front appropriation.

The fishermen may want to bring a buy-back program to an end before the appropriated monies have been entirely spent. This could be done by the submission of a petition with the names of a simple majority of the permanent permit holders remaining in the fishery. Upon receipt of the petition and verification of the signatures the purchase of new permits would be ended. If the initial advance from the state had been repaid the unexpended funds from the buy-back special reserve fund would be returned to the state's general fund. If the initial advance had not been repaid and the unexpended funds were not sufficient to repay it taxation would be continued until it had been repaid.

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## APPENDIX: DRAFT STATUTORY CHANGES

### INTRODUCTION

This appendix contains draft language for statutory changes necessary to implement many of the reforms discussed in this paper.

These statutory changes produce a voluntary program in which fishermen submit offers to sell (including an offer price) to the CFEC, and the CFEC ranks these in ascending order by offer price, identifies a cut-off price, and buys all permits offered at prices below the cut-off price. The changes would only authorize the CFEC to buy permits, they would not allow the purchase of vessels and gear. During this process the CFEC would consult with fishermen representing the fishery in which the program is taking place.

The changes envision a fishermen funded buy-back program. Tax revenues, collected from the fishermen would be transferred to the state's general fund and the legislature would make appropriations from the general fund to a separate buy-back fund. No buy-back taxation of fishermen could take place until the fishermen voted in favor of the taxes, and no expenditure from the buy-back fund could take place without prior adoption of a taxation scheme to repay the general fund. The changes are flexible enough to permit the state to provide up-front money.

In this appendix the text of the statutory changes is broken up by material in boxes like this one:

The material in these boxes provides perspectives the formal legal language often fails to convey.

## CHANGES TO THE TITLE 43: REVENUE AND TAXATION

To a considerable extent the proposals dealing with the collection of buy-back revenues have been based on procedures used to gather money from fishermen for aquacultural enhancement.

The provisions for gathering the salmon enhancement taxes are contained in Chapter 76 of Title 43, the title in the Alaska statutes dealing with revenue and taxation.

These suggestions for statutory reform locate the provisions for raising buy-back money in a proposed Chapter 77 of Title 43.

Sections 43.77.011 through 43.77.018, below, all deal with possible tax options. As discussed in the chapter on taxation, it is possible for the legislature to impose a tax which becomes effective following some external action which "fulfills the condition" of the tax. This approach was used in the law dealing with nonprofit hatchery associations where two taxes were imposed, one at 2% of the gross and one at 3% of the gross. Each tax only became effective when the fishermen adopted it in an election. This approach is used here and elaborated somewhat to add, in addition to the gross revenues taxes, four possible fixed "permit buy-back fees," and two possible "poundage" or "specific" taxes. Each of these eight sections sets up one of the taxes.

As discussed in the paper, it would be possible for the legislature to adopt a tax program different from the ones set out here if in some particular case these were felt to be inappropriate. These taxes are set out here so that, in cases where they might be appropriate, it would be possible to implement a buy-back program without requesting a separate piece of tax legislation from the legislature. When this is possible the administrative costs of setting up a buy-back program might be reduced.

Sec.43.77.010. Permit Buy-back Taxes and Fees

One or more of the permit buy-back taxes or fees described in AS 43.77.011 through 43.77.018 may be levied and collected only:

1. in a particular fishery, as defined in accordance with AS 16.43.990(3); and
2. if a majority of the interim-use permit and entry permit holders in the particular fishery vote in favor of the tax or fee, or combination of taxes and fees, in an election held under AS 43.77.020.

Sec.43.77.011. Three Percent Permit Buy-back Tax

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back tax at the rate of three percent of the value of salmon, as defined in AS 43.75.140(8), that the person removes from the state or transfers to a buyer in the state. A commercial buyer shall collect the permit buy-back tax at the time the salmon is acquired by the commercial buyer.

(b) The three percent tax described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

Sec.43.77.012. Two Percent Permit Buy-back Tax

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back tax at the rate of two percent of the value of salmon, as defined in AS 43.75.140(8), that the person removes from the state or transfers to a buyer in the state. A commercial buyer shall collect the permit buy-back tax at the time the salmon is acquired by the commercial buyer.



(b) The two percent tax described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

Sec.43.77.013. 3% Specific Buy-back Tax

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back tax on each pound of salmon that the person removes from the state or transfers to a buyer in the state. A commercial buyer shall collect the permit buy-back tax at the time the salmon is acquired by the commercial buyer.

(b) The tax for each species shall be set by the commission and revised by the commission on May 1 of each calendar year. The tax for each species of salmon shall be equal to three per cent of the commission's estimate of the average ex-vessel price for the species in the fishery during the previous calendar year. The commission may adjust a tax downward between May 1 and the start of the fishing season if it appears that the tax will be greater than five per cent of the year's ex-vessel price for that species. If the commission adjusts the tax it will set it so as to equal three per cent of the commission's forecasted ex-vessel price for that species during the upcoming season.

(c) The three percent specific tax described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

Sec.43.77.014. 2% Specific Buy-back Tax

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back tax on each pound of salmon that the person removes from the state or transfers to a buyer in the state. A commercial buyer shall

collect the permit buy-back tax at the time the salmon is acquired by the commercial buyer.

(b) The tax for each species shall be set by the commission and revised by the commission on May 1 of each calendar year. The tax for each species of salmon shall be equal to two per cent of the commission's estimate of the average ex-vessel price for the species in the fishery during the previous calendar year. The commission may adjust a tax downward between May 1 and the start of the fishing season if it appears that the tax will be greater than four per cent of the year's ex-vessel price for that species. If the commission adjusts the tax it will set it so as to equal two per cent of the commission's forecasted ex-vessel price for that species during the upcoming season.

(c) The two percent specific tax described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

Sec.43.77.015. \$1,000 Permit Buy-back Fee

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back fee of \$1,000 per year. This permit buy-back fee shall be in addition to normal permit renewal fees required under AS 16.43.160.

(b) The \$1,000 permit fee described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

(c) Failure to pay a fee levied under this section will result in the permit holder being ineligible to fish, unless an exemption is granted under AS 43.77.030 subsequent to the levy.

(d) Unless exempted under AS 43.77.030, failure to pay a permit buy-back fee, within two calendar years from January

1st of the calender year in which the fee was levied will result in permit forfeiture.

Sec.43.77.016. \$500 Permit Buy-back Fee

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back fee of \$500 per year. This permit buy-back fee shall be in addition to normal permit renewal fees required under AS 16.43.160.

(b) The \$500 permit fee described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

(c) Failure to pay a fee levied under this section will result in the permit holder being ineligible to fish, unless an exemption is granted under AS 43.77.030 subsequent to the levy.

(d) Unless exempted under AS 43.77.030, failure to pay a permit buy-back fee, within two calender years from January 1st of the calender year in which the fee was levied will result in permit forfeiture.

Sec.43.77.017. Permit Buy-back Fee of 2 Percent of Permit Price

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back fee equal to two percent of the estimated average permit price during the preceeding calender year as estimated by the commission.

(b) The permit fee described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

(c) Failure to pay a fee levied under this section will result in the permit holder being ineligible to fish, unless an exemption is granted under AS 43.77.030 subsequent to the levy.

(d) Unless exempted under AS 43.77.030, failure to pay a permit buy-back fee, within two calendar years from January 1st of the calendar year in which the fee was levied will result in permit forfeiture.

Sec.43.77.018. Permit Buy-back Fee of 4 Percent of Permit Price

(a) A person holding an interim use permit or an entry permit under AS 16.43 shall pay a permit buy-back fee equal to four percent of the estimated average permit price during the preceeding calendar year as estimated by the commission.

(b) The permit fee described in (a) of this section may be levied or collected only if:

1. the terms of AS 43.77.010 are satisfied; and
2. the individual permit holder does not qualify for an exemption under AS 43.77.030

(c) Failure to pay a fee levied under this section will result in the permit holder being ineligible to fish, unless an exemption is granted under AS 43.77.030 subsequent to the levy.

(d) Unless exempted under AS 43.77.030, failure to pay a permit buy-back fee, within two calendar years from January 1st of the calendar year in which the fee was levied will result in permit forfeiture.

These taxes and fees are levied by the legislature contingent on their approval, by the fishermen in the fishery concerned, in an election. The following section outlines the procedures to be employed in conducting that election.

Sec.43.77.020.Election to Approve Permit Buy-back Tax or Fee

(a) An election must be held under this section before a tax or fee shall be levied under any section from AS 43.77.011 through 43.77.018. A permit buy-back tax or fee is to be levied under one or more of these sections only if

1. it is approved by a majority of the eligible interim-use permit and entry permit holders voting in an election held under this section in the fishery; and
2. the election results are certified by the Chairman of the Commercial Fisheries Entry Commission.

(b) In conducting an election under this section, the commission, or a contractor hired by the commission, shall adopt the following procedures:

1. The commission shall hold at least one public meeting not less than 30 days before the date on which ballots must be postmarked to be counted in the election to explain the reason for the proposed buy-back program, explain how the buy-back program will work, and to explain the registration and voting procedures to be used in the election. The commission, or its contractor, shall provide notice of the meeting by:
  - a. mailing the notices to each eligible interim-use permit and entry permit holder;
  - b. posting the notice in at least three public places in the region where the fishery is conducted;
  - c. publishing the notice in at least one newspaper of general circulation in the region where the fishery is conducted at least once a week for two consecutive weeks before the general meeting.
2. The commission shall mail two ballots to each eligible interim-use permit and entry permit holder. The first ballot shall be mailed no more than 45 days before the date ballots must be postmarked to be counted in the election. The second ballot shall be mailed no less than 21 days before the date ballots must be postmarked to be counted in the election. The commission shall adopt procedures to insure that only the last ballot from each eligible interim-use permit and entry permit holder is counted in the election.

3. The ballot shall:

- a. indicate whether the election relates to a permit buy-back tax or fee under AS 43.77.011, 43.77.012, 43.77.013, 43.77.014, 43.77.015, or 43.77.016, 43.77.017, 43.77.018 or any combination of these sections.
- b. indicate whether the commission, pursuant to AS 16.43.100, has made adoption of the tax contingent on the adoption of a buy-back tax in another fishery or fisheries. If the adoption is so contingent, the ballot will list the other fishery or fisheries in which a tax must be adopted.
- c. ask the question whether the permit buy-back tax or fee shall be levied;
- d. provide an effective date for the levy of the permit buy-back tax or fee;
- e. indicate the date on which returned ballots must be postmarked in order to be counted.

4. The ballots shall be returned by mail and shall be counted by the commission or by a person approved by the commission.

(c) The Chairman shall certify the results of an election under this section if he determines that the requirements of (b) of this section have been satisfied.

(d) In this section, "eligible interim-use permit and entry permit holder" means an individual who, 90 days before the date ballots must be postmarked to be counted in an election under this section, is listed in the records of the commission as the legal owner of an interim-use permit or an entry permit which authorizes him to fish commercially in a fishery within which the election is to be held.

The buy-back taxes shall be collected if they are approved by the fishermen in this mail vote. The following section provides for the collection of the gross revenues taxes and poundage taxes by fish buyers, and for the collection of buy-back fees by the CFEC during the permit renewal process.

The section requires the deposit of money collected with the buy-back taxes in the General Fund.

It says the legislature may make appropriations based on the buy-back taxes to the Buy-back Special Reserve Fund.

Although a legislative advance of up-front money would be an extremely attractive approach to buy-back, this reformed version of the law does not discuss the appropriation of up-front money by the legislature since no change needs to be made in the existing laws of the state to allow this.

The law distinguishes between persons buying fish for commercial purposes and those buying fish for other purposes, presumably small-scale buyers. Commercial buyers are responsible for collecting gross revenues or poundage taxes and for forwarding them to the Department of Revenue. A permit holder selling to a non-commercial buyer is himself responsible for forwarding the tax revenues to the Department of Revenue.

There is no discussion of penalties for non-compliance with the tax program in this section since Title 43, of which this section is a component, makes provision for penalties for attempts to evade taxes imposed by the title. These are laid out in AS 43.05.

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Sec.43.77.025.Collection of Tax and Disposition of Proceeds

(a) A commercial buyer who acquires fish which are subject to the permit buy-back tax imposed under this chapter shall collect the permit buy-back tax at the time of purchase, and shall remit the total permit buy-back tax collected during each month to the Department of Revenue by the last day of the next month.

(b) A person holding an interim use permit or an entry permit who sells fish subject to the permit buy-back tax imposed under this chapter to a buyer other than a commercial buyer shall remit the total permit buy-back tax to the Department of Revenue by the last day of the next month.

(c) A commercial buyer who collects the permit buy-back tax shall:

1. maintain records reflecting the fishery as defined in accordance with AS 16.43.990(3) in which the fishery resource was caught; and
2. report to the Department of Revenue by March 1 of each year the total value, as defined in AS 43.75.140(8), of the salmon caught in each fishery defined in accordance with AS 16.43.990(3) which the buyer has acquired during the preceding calendar year.

(d) A person holding an interim use permit or an entry permit who sells fish subject to the permit buy-back tax imposed under this chapter to a buyer other than a commercial buyer shall:

1. maintain records reflecting the fishery as defined in accordance with AS 16.43.990(3) in which the fishery resource was caught; and
2. report to the Department of Revenue by March 1 of each year the total value, as defined in AS 43.75.140(8), of the salmon caught in each fishery defined in accordance with AS 16.43.990(3) which the person sold to a buyer other than a commercial buyer during the preceding calendar year.

(e) The permit buy-back fees levied under AS 43.77.015, AS 43.77.016, AS 43.77.017, or AS 43.77.018 shall be collected by the Commercial Fisheries Entry Commission. No interim-use or entry permit in a fishery subject to permit buy-back fees shall be renewed unless the appropriate permit renewal fee was paid or unless its owner has entered into a permit termination contract as provided for in AS 43.77.030.

(f) Permit buy-back taxes or permit buy-back fees collected under this chapter for a particular fishery as defined in accordance with AS 16.43.990(3) shall be deposited into the general fund. The Department of Revenue shall maintain an account for these funds and their earnings called the "unappropriated tax and fee revenue account" for that fishery.

(g) Income earned by the general fund from the monies in an "unappropriated tax and fee revenue account" shall be credited to the "unappropriated tax and fee revenue account."

(h) Upon request from the legislature or the commission the Commissioner of the Department of Revenue shall report to the legislature and the commission on the amount of funds in any Unappropriated tax and fee revenues accounts.



(i) The legislature may appropriate to a buy-back fund established for a particular fishery a sum equal to the money in the Unappropriated Tax and Fee Revenue Account established for that fishery.

Sec.43.77.026. Liability for tax on salmon shipped from state

(a) The owner of salmon removed from the state is liable for payment of the permit buy-back tax imposed by AS 43.77.011; 43.77.012, 43.77.013, or 43.77.014, if, at the time the salmon are removed from the state, the tax payable on the salmon has not been collected by a buyer.

(b) If the owner of salmon is liable for payment of the permit buy-back tax under (a) of this section, the owner shall comply with the requirements of AS 43.77.025(b) to report the owner's liability for payment of the tax.

The following section provides an exemption from taxes for persons who sign "permit termination agreements" with the commission. Permit termination agreements are agreements between the commission and a permit holder to exempt the permit holder from some or all of the buy-back taxes in exchange for conversion of his permit from a transferable to a nontransferable permit.

Sec.43.77.030. Exemption from buy-back taxes and fees

A person holding an interim-use permit as an entry permit under AS 16.43 may enter into a permit termination contract approved by the commission, as provided for in AS 16.43.300, resulting in an exemption, or partial exemption, from the buy-back taxes and fees levied in that fishery.

The following section provides for the termination of the buy-back taxes. Termination hinges on a petition requesting termination delivered to the CFEC from

a simple majority of the fishermen remaining in the fishery at any time.

Once the CFEC has verified the signatures on the petition it suspends the purchase of permits pursuant to AS 16.43.330(a) and notifies the Commissioner of the Department of Revenue of the receipt of the petition and the verification of the signatures.

If the buy-back taxes have already paid off any initial appropriation from the legislature, the tax program is suspended forthwith, and any unexpended balance in the special reserve fund is transferred to the general fund. If the advance has not yet been paid off, the buy-back tax is continued until it is.

Subsection AS 43.77.040(a)(1) implements the requirement that the original advance be paid off. This section requires that the original advance from the state plus a sum of money equal to what the original advance would have earned had it been invested in the general fund be paid off before the buy-back taxes or fees could be ended.

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#### Sec.43.77.040.Termination of Buy-back Taxes

(a) A buy-back tax or fee enacted pursuant to AS 43.77.011, 43.77.012, 43.77.013, 43.77.014, 43.77.015, 43.77.016, 43.77.017, or 43.77.018, may be terminated if:

1. the general fund has been repaid in full for any money appropriated by the legislature other than money appropriated pursuant to AS 43.77.025(g) or AS 16.43.290(e), and for any income that such money might have earned if it had been kept in the general fund, and
2. if a petition has been received by the commission requesting the termination of the buy-back tax and signed by a simple majority of the remaining permit holders in the fishery within which the tax is being levied as of the date the petition is submitted.

(b) Upon verification of the signatures on a petition received pursuant to AS 43.77.040(a)(2) the commission shall notify the Commissioner of the Alaska Department of Revenue.

(c) On receipt of the notification of the verification of the signatures, the Commissioner of the Department of Revenue shall ascertain whether or not the condition in AS 43.77.040(a)(1) has been met.

(d) If the Commissioner of the Department of Revenue finds that the condition in AS 43.77.040(a)(1) has been met the unexpended balance of the Buy-back Special Reserve Fund shall be deposited in the state's general fund and the buy-back tax shall be terminated.

(e) If the Commissioner of the Department of Revenue finds that the condition in AS 43.77.040(a)(1) has not been met he shall apply the unexpended balance of the Buy-back Special Reserve Fund to meeting it.

(f) If the Commissioner of the Department of Revenue finds that the condition in AS 43.77.040(a)(1) has not been met after money available in the Buy-back Special Reserve Fund has been used to meet it, the buy-back tax shall be continued until it has been met and then terminated.

#### Sec.43.77.060 Definitions.

In this chapter,

1. "commercial buyer" means the holder of a license issued pursuant to AS 16.10.290(d) or a cooperative corporation formed pursuant to AS 10.15 which acquires possession of fish from the person who caught the fish regardless of whether there is an actual sale of the fish.
2. chairman means the Chairman of the Commercial Fisheries Entry Commission
3. commission means the Commercial Fisheries Entry Commission

## CHANGES TO THE ALASKA BUYBACK LAW

### Findings

The legislature finds that:

- (a) In many limited fisheries it would be possible to lessen conservation threats, improve economic efficiency, diminish management and enforcement problems, and increase the average income of participating fishermen by reducing the number of limited entry permits in the fishery. Such a change would contribute to the economic health and stability of the state of Alaska and its fisheries.
- (b) The reduction in the numbers of permits should be carried out through the voluntary purchase of permits from fishermen in a fishery and the subsequent termination of the purchased permits.
- (c) Permit purchase programs such as those discussed in (b) should be paid for by the fishermen who most directly benefit from them. State advances for programs of this type should be repaid by the fishermen who directly benefit from them.

### Sec.16.43.100.Powers of the commission

In the current law this section describes the general powers of the CFEC. Most of this section would remain unchanged in the reforms. Certain amendments would be made, however, to make the CFEC responsible for monitoring the economic health of the limited fisheries, for proposing plans for buy-back programs in fisheries where such programs would benefit the fishermen, and to remove references to optimum numbers.

The current law, through its requirement that the CFEC identify optimum numbers and compare the estimated optimum with the current number, makes the CFEC responsible for monitoring the economic health of the fishery. Under the proposed reforms the CFEC would no

longer be responsible for identifying optimum numbers. The reform proposed in this section, however, would require CFEC to continue to monitor the economic health of both limited and unlimited fisheries, and to periodically examine the need and feasibility of further fleet reductions.

This section also makes the CFEC responsible for designing programs for fisheries in which buy-back would be a useful management tool, and for reporting to the fishermen, Governor, and Legislature on its findings. The actual decision on whether or not to implement a buy-back program would be a political decision made by the Legislature through its powers to appropriate money, and by the fishermen, through the fishermen's election, in the light of research carried out by the CFEC.

Finally, this section makes the CFEC responsible for determining whether the implementation of a buy-back tax or fee should be contingent on the adoption, by the fishermen in another, related, fishery, of a buy-back tax or fee.

Part (a)(9) of this section currently makes the CFEC responsible for establishing optimum numbers. Since the optimum numbers concept has been eliminated in the reforms, this section is repealed.

Part (a)(10) of this section currently makes the CFEC responsible for administering buy-back programs "provided for" in later sections of the law. A minor proposal in these amendments would substitute the wording "implemented under" for the words "provided for." The reason for this is that the current wording implies a more complete control for the CFEC over the design and implementation of buy-back programs than is provided for in the reform proposals. A reference to "optimum numbers" is also removed from this part of the section since the reform proposals eliminate this concept.

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AS 16.43.100(a)(9) is repealed.

AS 16.43.100(a)(10) is amended to read "administer buy-back programs implemented under AS 16.43.290 to 16.43.320."

AS 16.43.100(a) is amended to add the following two parts:

1. 16.43.100(a)(19) monitor the economic health of Alaska's fisheries
2. 16.43.100(a)(20) prepare permit buy-back program plans for fisheries where permit reduction may contribute to the economic health of the fishery.
3. 16.43.100(a)(21) determine if a buy-back tax or fee in one fishery is to be adopted contingent on the adoption of a buy-back tax or fee in another fishery. Except that no tax or fee contingent on the adoption of a second tax or fee shall become effective unless the second tax or fee is adopted within one calendar year of the first.

Sec.16.43.170.Transfer of Entry Permits

Section 16.43.170(c) currently allows persons who received permits under "minor economic hardship" priority classification levels to sell permits to the CFEC following the promulgation of an optimum number in their fishery. Two considerations are important here. First, the optimum number concept has been eliminated from the reformed law. Second, under 16.43.170(e) these permits are non-transferable. It would be desirable to avoid buying non-transferable permits, which will expire automatically, in the course of the buy-back program. Thus, the reforms propose the repeal of this section. This category of permit holder is still expected to pay buy-back taxes since he may expect to benefit from the reduced numbers of fishermen following the buy-back program.

Section 16.43.170(e) prohibits persons receiving permits under "minor economic hardship" priority classifications from selling their permits, unless the CFEC estimates that an optimum number, when it is promulgated, will exceed the existing number of permits in their fishery. The references to optimum numbers in this section are removed, leaving the prohibition intact.

AS 16.43.170(c) is repealed.

AS 16.43.170(e) is amended to delete the words, "Before the determination, under AS 16.43.290 and 16.43.300 of the optimum number of entry permits for a fishery," and "unless the commission estimates that the optimum number for that fishery will be equal to or greater than the number of outstanding entry permits and interim-use permits."

Sec.16.43.230.Designation of Distressed Fisheries.

This section requires the CFEC to designate fisheries as distressed if the estimated optimum number is less than the highest number of units of gear fished in this fishery during any of the four years immediately preceding January 1, 1973. This section depends on the optimum number concept, which is not in the reformed law, and, further, is of historical interest. This section is repealed in the reforms.

AS 16.43.230. is repealed.

Sec.16.43.240.Maximum Numbers

Subsection 16.43.240(a) depends on the concept of "distressed" fisheries which was eliminated in the repeal of section 16.43.230 while subsection 16.43.240(b) also uses the concept of "distressed" fisheries. Both subsections are repealed and replaced by the following new section 240.

AS 16.43.240 is repealed and replaced with the following new section AS 16.43.240:

When the commission finds that a fishery has reached levels of participation which require the limitation of entry in order to achieve the purposes of this chapter, the commission shall establish the maximum number of entry permits for that fishery. The maximum number shall reflect the number of units of gear participating in the last year or season completed prior to the qualification date.

Repeal of existing sections 16.43.290 through 16.43.330

Article 4, Sec. 16.43.290 through Sec. 16.43.330 is repealed and replaced by the following:

The following section describes a "Buy-back Special Reserve Fund", outlining the source of funds, and identifying the purposes for which money in the fund may be spent.

The section requires the Commissioner of Revenue to report to the legislature and to the CFEC on request on the amount of money that the buy-back fund earned. The section then says that the legislature "may" appropriate this amount to the Special Reserve Fund each year. Recall that the word "may" rather than the word "will" has been used, since one legislature can not bind the actions of a future legislature.

Sec.16.43.290.Buy-back Special Reserve Fund

(a) Following an election in which the entry permit holders in a fishery adopt permit buy-back taxes or fees there shall be created a special account in the general fund known as a Buy-back Special Reserve Fund for that fishery. The fund shall be composed of money appropriated by the legislature for the purpose of entry permit buy-back in that fishery.

(b) All income earned by money in a Buy-back Special Reserve Fund established for a particular fishery shall be deposited into the general fund. The Department of Revenue shall maintain an account for these monies and their subsequent



general fund earnings known as the "Unappropriated Earnings of the Special Reserve Fund Account" for that fishery.

(c) Income earned by the general fund from money in an "Unappropriated Earnings of the Special Reserve Fund Account" shall be credited to that account. This interest income shall be compounded daily.

(d) Upon request from the legislature or commission the Commissioner of the Department of Revenue shall report to the legislature and the commission on the amount of funds in any Unappropriated Earnings of the Special Reserve Fund Accounts.

(e) The legislature may appropriate to a buy-back fund established for a particular fishery a sum equal to the money in the Unappropriated Earnings of the Special Reserve Fund established for that fishery.

(f) The commission may make payments out of the Buy-back Special Reserve Fund for a fishery for one of the following purposes:

1. to purchase entry permits in the fishery for which the Fund was established pursuant to AS 16.43.310.
2. to reimburse the commission for reasonable administrative expenses caused by the buy-back program in the fishery for which the Fund was established,
3. to reimburse the members of the fishermen's committee for the buy-back program in the fishery for which the Fund was established for travel expenses or per diem pursuant to AS 16.43.320.,
4. to purchase entry permits in a fishery other than the fishery for which the Fund was established, pursuant to AS 16.43.290(a). No expenditure may be made for this purpose without the unanimous agreement of the fishermen's committee for the fishery for which the Fund has been established. The amount of any expenditure from the Fund for this purpose shall be decided by the fishermen's committee.
5. to reimburse the general fund for money appropriated by the legislature to the buy-back program for that fishery, other than money appropriated pursuant to AS 43.77.025(g) or AS 16.43.290(e), and for income such appropriations would have earned had they been invested with the remainder of the general fund.

Under certain circumstance some fishermen may have difficulty in paying the buy-back taxes or fees. This may impose a hardship on the fishermen and increase the costs of tax collection and/or decrease the proceeds from collection.

The following section provides an additional option in these cases. Essentially the CFEC and individual fishermen are allowed to negotiate an exchange of an exemption, or partial exemption, from certain taxes, for a commitment to the revocation of the permit at some known point in the future.

#### Sec.16.43.300.Permit Termination Programs

The commission may enter into a permit termination contract with individual permit holders. A permit termination contract will specify an exemption, or partial exemption, from certain buy-back taxes and fees, and a date on which, or set of circumstances under which, the use privilege associated with a particular permit will be revoked. The commission should negotiate contracts in which the estimated present value of the tax and fee revenues forgone by the state is not greater than the estimated present value of the market value of the permit at the time the use privilege is to be revoked.

The following section outlines the method the CFEC should use to repurchase permits, requires the CFEC to consult with the Fishermens' Buy-back Committee, and provides for the elimination of those entry permits bought back by the CFEC.

In these proposals, offers to sell permits would be solicited from fishermen, and ranked in ascending order of offer prices. The CFEC would set a cut-off threshold price, referred to as a "reference price" in the law, and purchase all permits offered at lower prices.

Sec.16.43.310.Administration of the Buy-back Program

(a) Following the approval of a permit buy-back tax or fee in an election carried out under AS 16.43.020, the commission shall adopt regulations providing for the purchase of entry permits in a manner consistent with the provisions of this section.

(b) Entry permits are to be purchased from permit holders who submit offers to sell which are accepted by the commission. Offers to sell are to be submitted on forms provided by the commission during periods of time specified by the commission. Offers may not be withdrawn once the commission has set a reference price pursuant to AS 16.43.310(c).

(c) An offer to sell shall be accepted by the commission if the price quoted therein falls below a reference price set by the commission. An entry permit owner submitting an offer which is accepted by the commission shall be paid the price quoted in the offer for his permit and shall transfer title to the entry permit to the commission.

(d) Following the closing of a period within which the commission has elected to accept offers to sell, the commission shall establish a reference price for the fishery based upon a reasonable balance of the following general considerations:

1. the estimated current market price
2. the amount of money in the Special Reserve Fund for the fishery in which the permits are being purchased
3. the need to include a premium to obtain permits from fishermen without buying their vessels and gear
4. the reference prices set during earlier purchases and the distribution of prices in the offers to sell currently under consideration.

The commission may supercede a previous reference price with a new reference price at any time.

(e) The commission shall consult with the members of the Fishermens' Buy-back Committee established under AS 16.43.320. for the fishery in which buy-back is being conducted before deciding to purchase permits and before setting a reference price.

(h) The use privilege associated with permits purchased by the commission under the provisions of this section shall be revoked.

The following section describes the composition, responsibilities, and compensation of the Fishermens' Buy-back Committee.

Sec.16.43.320.Fishermens' Buy-back Committee

(a) Within four weeks of the approval of buy-back taxes or fees by the fishermen in a fishery in an election carried out under AS 43.77.020 the Governor shall appoint a committee of persons owning entry permits in the fishery in which the buy-back taxes or fees are to be imposed. This committee will be known as the Fishermens' Buy-back Committee for that fishery.

(b) The members of this committee will serve terms of three years. The Governor shall fill vacancies by appointment within four weeks of the date they open.

(c) The responsibilities of the members of this committee will be to:

1. advise the commission about appropriate times to accept offers to sell,
2. advise the commission about the selection of reference prices,
3. decide whether or not money may be spent from the Fund established for their fishery for the purpose of purchasing entry permits in a related fishery,
4. decide the amounts of any monies to be expended from the Fund for the purpose described in AS 16.43.310(d)(3).

(d) The members of the Fishermen's Committee are entitled to per diem at normal state rates and to reimbursement of their transportation expenses for work connected with their Committee responsibilities. All per diem and transportation reimbursement for committee members will be paid from the

Buy-back Special Reserve Fund for the buy-back program with which they are associated.

The following section describes a part of the procedure for ending a buy-back program. A majority of fishermen petition the commission for an end of the program, and upon verification of the signatures the commission stops buying permits and notifies the Department of Revenue that the program is over.

The actions of the Department of Revenue are covered by another part of the law (AS 43.77.040), but essentially Revenue will check to see if any advance from the state has been repaid or could be repaid out of unexpended money in the buy-back fund. If, even after the unexpended buy-back funds had been used, there was still part of the advance unrepaid, the buy-back taxes would be continued until it was repaid and then terminated.

Sec.16.43.330.Termination of Buy-back

(a) The commission shall cease to initiate activities pursuant to AS 16.43.300 and 16.43.310 in a fishery upon verification of the signatures on petitions signed by a majority of permit holders in a fishery requesting termination of the buy-back program in that fishery. To be considered, each petition must be received within one calendar year of each of the others.

(b) The text of the petitions described in AS 16.43.330(a) shall read, "We, the undersigned fishermen in the (NAME OF FISHERY) fishery request the termination of the limited entry permit buy-back program in this fishery.

(c) Upon verification of the signatures on the petitions described in AS 16.43.330(a) the commission will notify the Commissioner of the Alaska Department of Revenue.

The following sections delete various references to optimum numbers.

Sec.16.43.340.Educational Entry Permits

AS 16.43.340(c) is amended by striking the words "or optimum numbers" and "and 16.43.290."

Sec.16.43.400.Special harvest area entry permits

AS 16.43.400(b) is amended by striking the words "or optimum numbers" and "and 16.43.290."

Sec.16.43.980.Recommendations to the legislature

AS 16.43.980(a)(1) is repealed.

Sec.16.43.990.Definitions

The changes to this section add several definitions to the list of definitions in the law.

(a) Chairman means the Chairman of the Commercial Fisheries Entry Commission

(b) commission means the Commercial Fisheries Entry Commission

(d) Committee means a Fishermens' Buy-back Committee as defined in AS 16.43.320.

(e) Fund means a Buy-back Special Reserve Fund established under AS 16.43.290.