

RCT

Common Use, No Exclusive Fisheries, and Limited Entry Clauses of Alaska Constitution

The common use clause of Alaska's Constitution states:

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

Alaska Const., art. VIII, section 3. "The expression for "common use" implies that these resources are not to be subject to exclusive grants or special privileges as was so frequently the case in ancient royal tradition." Owsichek v. State, Guide Licensing and Control, 763 P.2d 488, * (Alaska 1988)(citing Alaska Constitutional Convention Papers, Folder 210, Papers Drafted by the Committee on Resources, entitled "Terms".)

The no exclusive fisheries clause and the limited entry clause are contained in article VIII, section 15, of the Alaska Constitution, which states:

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

Id

In Johns v. Commercial Fisheries Limited Entry Commission, 758 P.2d 1256 (Alaska 1988), the Alaska Supreme Court provided:

In State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), we noted that there is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of economic distress to fishermen and resource conservation. Ostrosky, 667 P.2d at 1191. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry. Because of this risk of unconstitutionality exists, the CFEC should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so.

Id. at page 1266 (emphasis added); Owsichek, 763 P.2d 488, Alaska 1988) (citing Johns and Ostrosky).

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