

# Limited Entry declared constitutional

The Associated Press

ANCHORAGE — The Alaska Supreme Court on Tuesday upheld the legality of the limited entry system by which the state restricts participation in its commercial salmon fishing industry.

The court, in a 3-1 decision, ruled the system was authorized by a 1972 constitutional amendment, and that the regulations governing it are reasonable and valid.

The decision overturns a 1981 ruling by Anchorage superior court judge Victor Carlson, who said the law was un-

constitutional because it allowed limited entry permit holders to sell their licenses or pass them on to their heirs.

Hank Ostrosky, who with his daughters Lori and Julianne challenged the law, said he was not surprised by the decision and plans to appeal it to the U.S. Supreme Court.

"I'm actually elated by the decision since now we can go to the Supreme Court and hopefully win a decision that will outlaw limited entry in most any form," the 56-year-old Bristol Bay fisherman said.

# Limited Entry ruling to be appealed

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"If I had won here, all that would have happened is that the legislature would have made a minor change.

"Now I can go to the Supreme Court and drive a stake into the heart of the vampire."

The Alaska Constitution says "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state."

In 1972, the clause was amended to add: "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 on them for a livelihood and to promote the efficient development on them for a livelihood and to promote the efficient development of aquacul-

Despite another clause reserving fish and wildlife "to the people for common use," the court said "the conclusion is inescapable that the purpose of the amendment was to authorize . . . a limited entry

system. No other purpose seems reasonably possible."

The Ostroskys argued that the transfer provisions amount to "an unconstitutional classification based on wealth and lineage."

In the last quarter of 1981, limited entry permits sold for an average of \$50,000. Some went for more than \$100,000, depending on the type of gear and location.

"While the current system may thus discriminate on the basis of wealth, it does so only in the manner that any price does," the court said in an opinion written by Justice Warren Matthews.

"An entry permit is a government license having value issued to a limited number of people," he said. "As such it resembles a liquor license, or a permit to operate a trucking firm over a given route, or a utility franchise, or a broadcast license."

Carlson had specifically rejected that reasoning, noting that access to alcohol is not a constitutionally protected right

but access to fish and game is.

"The fact that the poor cannot buy them is wealth discrimination only in the general sense that all prices discriminate in a society where wealth is distributed unequally," Matthews said.

"Further, the fact that the poor seldom inherit such privileges is lineage discrimination only in the sense that laws permitting inheritance of anything of value are discriminatory."