

The Importance of the "Exempt Truck" to the Fisheries Industry

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One of the many factors of importance to the fisheries industry is distribution. One of the principal aspects of distribution pertains to the charges assessed and the quality of transportation services. One of the principal factors affecting transportation costs relates to the exemption of fishery products, from the provisions of the Interstate Commerce Act, particularly with reference to Section 203 (b)(6) of what is now Part 2 of that Act. Agricultural products, as described in Section 207 of the Agricultural Marketing Act of 1946, include fishery products. Because of this statute the Department of Agriculture has participated in numerous cases before the transportation regulatory agencies and Senate Committees to assist the fisheries industry.

There are four general types of motor highway operations. Common carriers operate between specified points on more or less regular trips. Contract carriers, by individual agreement, operate on a job basis. Private carriers, which have become the most numerous, are those engaged in transporting goods of the owners. Then there is the "exempt carrier," with which you are most directly concerned.

The fish and shellfish "crop" is extremely perishable and must be marketed immediately. Actual marketing is largely accomplished by wholesale distributors located at points of landings. The volume of fish and shellfish produced varies greatly. It cannot be anticipated or predicted, either as to quantity or time of landing. It varies from day to day, from a few thousand pounds to several hundred thousand pounds. However, small or large, the catch must be moved to markets promptly, regardless of time of day or night, week days, Sundays, or holidays, and to whatever markets consumer demand dictates. Much of this movement to market depends upon motor truck transportation. As a matter of fact, many inland towns and hamlets can be reached *only* by motor trucks.

In less than 50 years the rural highways have increased from approximately 2 million miles to 3 million miles, and about 500,000 miles have been paved or surfaced. These highways, plus new developments in electrification and refrigeration, mean an expanded opportunity to serve an ever increasing number of small markets. The Interstate Commerce Act contains a reference to the pertinency of developing highway transportation. In our efforts to preserve highway transportation, but more especially exempt trucks, we occupy tenable ground—but nothing should be lost by complacency or default.

The Motor Carrier Act has placed interstate motor common carriers under the full range of regulations, that is, requiring certificates of convenience and necessity, circumscribed routes, territory, types of traffic, rigidity of rates, uniform accounting, safety, and other rules. Regulation of motor vehicles operating as public carriers in transporting the basic agricultural (exempt) commodities, including fish and shellfish, is subject only to the safety requirements. Section 203 with reference to exclusions reads as follows:

“Motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish) or agricultural commodities (not including manufactured products thereof) if such motor vehicles are not used in carrying any other property, or passengers, for compensation.”

The Motor Carrier Act has been controversial ever since it was placed on the statute books. The I.C.C. has made some rulings that have been modified later—following review by the courts (see I.C.C. vs. Love—77 Fed. Supp. 63, 172 F (2d) 224). The crux of the difficulty lies in the translation of Section 203(b) (6) by the Commission; the intent of the sponsors of this section and the interpretation of shippers. The final solution may depend upon: (1) Judicial and inflexible determination by the United States Supreme Court; (2) by the passage of clarifying legislation; or, (3) a change in policy by the I.C.C.

Motor common carriers have imposed limitations as to routes or territory. A vast number of motor common carrier certificates exclude permission to haul livestock, fish, and seafood.

Thus, a great many of the certificated common carriers have relieved themselves of any obligation to perform the transportation service peculiar to the needs of agriculture and the fisheries industry.

It is very difficult for a trucking company to acquire an operating authority. Last spring, Congress was told that the I.C.C.'s Bureau of Motor Carriers had a backlog of more than 1,800 appeals for operating authority. The number has now grown to 2,200 and is still increasing.

Loss of the highly specialized transportation service presently utilized would reduce the number and choice of markets now available to the fisheries industry.

Most fish and shellfish shipments move in less-than-carload quantities. The industry, therefore, is greatly interested in the perpetuation of the Railway Express Agency, which, with its predecessor companies, made a definite pioneering contribution in the development of seafood markets throughout the country. It is also interested in obtaining lower rates and better services from the Railway Express Agency. The upward spiraling of express rates and charges has continued all through the past five years. The National Fisheries Institute, the Department of Agriculture and the Fish and Wildlife Service, have joined in protesting these rate expansions before the Interstate Commerce Commission.

Because of reported rising costs the Agency was granted an increase rate of 6 cents per shipment on February 28, 1952. Other attempts to increase express charges are now pending.

The Defense Transport Administrator on January 30, 1952, when addressing the annual convention of the United Fresh Fruit and Vegetable Association, said:

“There has been a steadily decreasing volume of express business during the past five years, and a steady increase in express rates. In 1946, the Railway Express Agency handled some 231 million less-carload shipments. The shocking traffic forecast for its 1952 operation is a maximum of 75 million less-carload shipments . . . If the railroads do not intend to renew the Express contract, they should not let their offspring die a lingering death waiting for the contract expiration in February 1954.”

In its decision of June 19, 1951, the Interstate Commerce Commission made the following observation:

"The record indicates that express service in the recent past has been inferior to that of years ago in that it has become slower, delays in transit are encountered more often, pick-up and delivery service is often inadequate, and much inconvenience has been caused by the establishment of the 40-hour week for the respondent's employees."

Another item working against the improvement of the express services is the actual and potential abandonment of passenger trains because of deficits for 1951. The deficit was 681 million—dissipating 42 percent of the freight profits.

Should the Express Agency cease to function, or even curtail its services, then the retention of the exempt truck becomes all the more important to the industry as a means of keeping minimum charges.

Following the Love court case, previously referred to, which included the prohibition by the I.C.C. of headed shrimp being shipped as an exempt commodity, the Commission (52 MCC 576) adopted the following much broader and more suitable description in defining the meaning of the words "fish (including shellfish)" as used in Section 203 (b) (6):

"We find that the term 'fish (including shellfish)', as used in Section 203(b)(6) of the Interstate Commerce Act means frozen, quick frozen, and unfrozen fish and shellfish in the various forms in which it is shipped, such as live fish, fish in the round, beheaded and gutted fish, filleted fish, beheaded shrimp, and oysters, clams, crabs and lobsters, with or without shells, including crab meat and lobster meat, but excluding fish and shellfish in hermetically sealed containers and fish and shellfish which have been otherwise treated for preserving such as smoked, salted, pickles, spiced, corned, or kippered."

This ruling is now in effect.

On February 26, 1951, the I.C.C., in conformity with an appellate court decision (I.C.C. vs. Service Trucking Co., No. 10255, Third Circuit United States Court of Appeals), announced that fully regulated certificated motor carriers could utilize a motor vehicle loaded only with exempt commodities, without regard to the certificate and rate provisions of the Act.

Nevertheless, certain of these certificated carriers are endeavoring to amend the statute which would restrict the movement of fish over the highways. They perhaps contend, should exemptions be cancelled they would continue to haul the tonnage at higher tariff rates. They have given little thought to the prospect of losing the entire tonnage.

The Interstate Commerce Commission, on March 11, 1952, offered the Senate Committee a proposal relating to exempt fish shipments in the first movement from point of production to point of sale by the producer. The point of production in its proposal means wharves or other landing places at which fishermen debark their catch. The point of first sale shall not be deemed to include point of production.

In a Senate Committee hearing held last March, witnesses Hodges and Versaggi, representing the National Fisheries Institute, presented comprehensive and convincing testimony in opposition to S.2357 to restrict agricultural fish exemptions, and S.2362 arbitrarily designed to exclude trip-leasing.

Such legislation will likely be reintroduced at the next session of Congress.

The aforementioned bills were inter-related. The passage of S.2362, while referring to trip-leasing, would largely nullify the good attached to the exemption clause of the Motor Carrier Act if passed.

An amended, S.2357 was actually passed at the last session of Congress but instead of diminishing the exemption clause, as originally intended, "horticultural commodities" were included within the term of agricultural commodities as exempt.

"The 'Traffic World' in its July 12, 1952, issue, in part, said:

"The Eastern Railroad Presidents' Conference went on record July 10, advocating certain changes in the Interstate Commerce Act. Two of the items read as follows:

"That contract carriers by motor, water and air shall be required to file, adhere to, and make public the rates they actually charge . . .," and "that the agricultural products' exemption apply only to the motor carriage of agricultural products and fish from producing areas to primary markets."

It behooves the fisheries and other agricultural trades to be alert and protect their position in order that the committee can give proper consideration to the effect of the impact of hostile legislation. Your dollars are involved in this matter. Exempt trucks hauling shipments to distant markets are economically shackled when they must return to the origin point empty. With prospects of international emergencies facing us, such rustling seems fallacious and wholly inconsistent. In effect, the I.C.C. in its MC-43 decision, now held in abeyance because of court action, in prescribing the arbitrary 30-day lease period is, as indicated, intended to eliminate trip-leasing. As an example, a truck hauling commodities such as seafood, from Florida to New York, could make a much lower charge north-bound provided it had the legal right of hauling a pay load southbound. At present there are no operative prohibitions (because of pending court action) against the services of trucks and drivers being leased for the trip. The 30-day restriction would likely kill off completely, or at least reduce materially, the trip-leasing of trucks. The exempt trucker, knowing he must return with truck empty, would have to charge higher rates to take care of expenses for the two-way trip—one loaded and the other empty. The lamentable effect would be the complete exclusion of exempt commodities. With trip-leasing prohibited, it would mean practically no exemptions.

The Association of American Railroads in its release entitled, "Transportation in America" with reference to motor trucks said:

"Motor vehicles carrying for compensation, property consisting of ordinary livestock, fish or agricultural commodities, which are now exempted from regulation by the Interstate Commerce Act and various State regulatory acts, should be regulated in the same manner and to the same extent as other operations for compensation."

It also made a statement in 1947 reading as follows:

"The primary reason for railway entrance into the field of highway freight transport was to provide better service for patrons through utilization of certain advantages offered by highway operations. The principal aims were to speed up the movement of less-than-carload freight and to effect economics by the substitution of truck service for local freight-train service . . ."

To speed up the movement of less-than-carload freight and to effect econom-

ics is exactly what the fisherman wishes to accomplish. Indeed, this he must do to stay in business. "What is good for the goose is good for the fish."

The railroads often refer enviously to the selectivity of tonnage handled by motor carriers. Unwittingly, the railroads themselves are becoming selective. In this age of progressive increases in per capita consumption, because of our higher standard of living plus the daily growth of our population, railroads are reaping the adverse reward of higher and higher freight rates and this is evidenced by the loss of approximately 2½ million carloads of freight, as compared with this time last year. Increased tonnage is being hauled, but not by the railroads.

What has been said points to the desirability of shippers of exempt commodities keeping this ultra important channel of distribution open at all costs in order to protect their distribution necessities. This is true because, generally speaking, neither the motor common carriers, the Express Agency, nor the railroads are enthusiastic about hauling fishery products. This is further evidenced by the high freight and protective service rates assessed. What are left, for the most part, are the private or exempt truckers who are willing to distribute fish tonnage. Increased rail transportation charges have caused shippers generally to look with more favor upon truck transportation because of 12 horizontal rail freight increases since June 30, 1946. When one mode of transport increases its rates the others generally follow. The availability of exempt trucks acts as a balance wheel to keep transportation charges on a stable and rational basis.

To increase volume and reach out to new markets, equitable transportation charges, coupled with the assurance of the ultimate in speed and safety are of prime and continuing importance to your industry. To transport commodities efficiently and cheaply assures economic progress. High freight rates have never promoted domestic or international trade. The flexible distribution of goods is worth considerable to the economy of this country.

It is sometimes necessary for several fish distributors to pool-load or consolidate their shipments to make up a full truckload. Exemptions, therefore, are of value to both the large and small shippers of fish.

Deliveries of shellfish at Chicago, via motor truck were 20 percent of the total in 1946, and 51 percent in 1951. Fish product shipments during the same period from New England to Chicago, via motor carrier, increased from 35 percent to 94 percent. Fresh and frozen shrimp from the Gulf during 1946 amounted to 232 carloads via railroads, compared with only 11 carloads in 1951. Shrimp production increased 23 percent during the 1939-1950 period, not including imports from Mexico. These data indicate the huge diversion from rail freight and express to motor carriers—additional facts for preserving what you have by way of exemptions.

The combination of pending collateral matters—litigation and legislation principally—affecting the fisheries industry, if culminating unfavorably, could well create as a final result either the increase in transportation charges or a diminution of service and the narrowing of marketing areas for the fisheries industry.

Being compelled to use the services of motor common carriers, even when they are permitted to move your kind of freight, will result in much higher transportation assessments. Common carrier truckers for the most part do not

desire to haul fish or shellfish. With incessant express rate advances, the necessity for guarding your present exemption rights under existing statute is definitely imperative.

Marketers of fish and shellfish, therefore, should adopt a persistent, concerted and dynamic program of action to preserve whatever constructive transportation arrangement is available to them and seek every possible improvement that will expand tonnage operations. Volume cannot expand with prohibitive transportation charges or with the narrowing of distributive limits which would obviously follow any curtailment of present exemptions.

From a practical standpoint and in the final analysis, the fisheries industry is concerned only with getting its products to market safely and in merchantable condition for sale at a price the consumer can afford to pay and one that will leave a balance sufficient for the fisherman to stay in business. Fish must be transported; they cannot swim to market.