



MEMORANDUM

TO: Bruce Twomley
CFEC Commissioner

DATE: February 4, 2015

FROM: Sam Cotten *Sam Cotten*
ADF&G Commissioner

PHONE: 907-465-4100

SUBJECT: Commercial Fisheries Limited Entry Commission Program Review

Over the past year there has been a high level of interest related to the operations of the Commercial Fisheries Limited Entry Commission (CFEC).

- Representative Paul Seaton introduced HB386 “An act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings” and held a hearing on the bill in the House Special Committee on Fisheries on April 17, 2014.
- Representative Seaton later requested the Legislative Budget and Audit Committee at its meeting on August 6, 2014, to schedule a program audit of CFEC which was initiated in late January 2015.
- Former Governor Parnell’s Chief of Staff Mike Nizich authorized the Department of Fish and Game (ADF&G) to undertake a program review of CFEC on August 22, 2014.
- ADF&G hired Tom Lawson, former director of Administrative Services in September 2015 to perform a review and issue a report.
- Mr. Lawson has now submitted a report of his findings and recommendations to me for distribution to interested parties.

Attached for your own review is a copy of Mr. Lawson’s report. I find his work to be comprehensive and thorough, and it should help to inform future discussions with the Legislature and other interested parties, as was originally intended.

I agree with the observations of others that CFEC has made valuable contributions to commercial fisheries in Alaska during its 40 years of existence, but there have also been many changes in the

industry during this time period as well. In light of the current fiscal climate facing the state, this review is timely to help ensure that CFEC is operating as efficiently as possible.

I look forward to discussing this report with you.

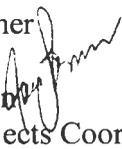
cc: Jim Whitaker, Chief of Staff
Kris Curtis, Legislative Auditor
Ben Brown, CFEC Commissioner
Vern Rupright, CFEC Commissioner

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF FISH AND GAME Office of the Commissioner

TO: Sam Cotten
Commissioner

DATE: 1/31/2015

FROM: Tom Lawson 
Special Projects Coordinator

PHONE: 465-4100

SUBJECT: Commercial Fisheries Entry Commission Review

Please find attached the Commercial Fisheries Entry Commission Review, Department of Fish and Game, January, 2015.

While there are numerous findings that identify issues and inefficiencies, I am confident that they are fixable through the recommendations presented. Overall, I was very impressed with the commission's accomplishments and contributions to the sustainability of Alaska's commercial fisheries as well as the quality of the staff and their commitment to CFEC's mission.

The study is a snapshot in time. While I tried to keep abreast of management actions and decisions through my tenure, there are likely some actions and decisions that occurred that are not reflected in the document and thus might affect its accuracy. Any errors or omissions are solely my own responsibility.

Both present and former CFEC commissioners and staff have been nothing but helpful as I conducted this review. Thanks to all of them for their time and assistance. The Division of Administrative Services and Commissioner's Office staff were especially helpful and accommodating. Most of all, thank you to the department for the opportunity.

Attachment

cc: Kevin Brooks, Deputy Commissioner, ADF&G

Commercial Fisheries Entry Commission Review

Prepared for:

Alaska Department of Fish & Game

Prepared by:

Tom Lawson, Special Projects Coordinator

Alaska Department of Fish & Game

January, 2015

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Introduction

The commercial fishing industry is a crucial component of Alaska's economy and serves as the economic backbone of Alaska's coastal communities. The seafood industry is the state's largest private-sector employer. The Alaska Commercial Fisheries Entry Commission (CFEC or Commission) plays an essential management role in developing and sustaining Alaska's billion-dollar fishing industry.

The Limited Entry Act directs the Commission to promote the conservation and sustained-yield management of Alaska's fishery resources, and the economic health and stability of the fishing industry, by regulating entry into Alaskan commercial fisheries. To fulfill these responsibilities, the Commission is organized into five sections: Administration, Adjudications, Research & Planning (sometimes shortened to Research), Licensing, and Information Technology (IT).

The Commission engages in the following activities as mandated by the Limited Entry Act (AS 16.43.010 et seq.):

- Establishing maximum numbers of entry permits for fisheries to be limited and administering applications and point systems to rank eligible applicants;
- Processing entry permit applications and adjudicating claims not resolved in the initial classification process;
- Issuing annual permits in limited and open-access fisheries, and issuing annual vessel licenses for all commercial vessels as required to legally participate in the state's commercial fisheries;
- Processing requests for emergency and permanent transfers of limited entry and interim-use permits and compiling data on all such transfers;
- Enforcing provisions of the Limited Entry Act including regulation of permit transfer activities;
- Participating in the research and development of comprehensive fisheries economic data;
- Working with other State and federal management agencies to develop, analyze, and coordinate fisheries policies;
- Assessing demerit points against, and when appropriate suspending the fishing privileges of, permit holders for convictions for violations of commercial fishing laws in the salmon fisheries.

Commercial Fisheries Entry Commission Review

The Commission has limited entry into 68 of Alaska's fisheries, continues to receive requests for the limitation of additional fisheries and works with fishermen and the Alaska Department of Fish & Game (ADF&G) to analyze these requests.¹

The Commission's authorized Fiscal Year (FY) 2015 budget is \$4,520.2 (thousands of dollars), all from CFEC receipts, categorized as designated general funds (DGF), with the exception of \$114.4 in federal receipts. Twenty-eight permanent full-time (PFT) and three permanent part-time (PPT) positions are authorized. The authorized budget does not reflect the actual revenue. Actual CFEC receipts collected in FY2014 were more than \$7.8 million while expenditures were approximately \$4.0 million. No federal revenue was received in FY2014.² In FY2014 the total expenditures for the Commission were 88% of the FY2014 authorized budget.

Recent Legislative Activity

On April 16, 2014, the House Rules Committee, at the request of the House Special Committee on Fisheries chaired by Representative Paul Seaton, introduced House Bill (HB) 386, "An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings." On April 17, 2014, The House Special Committee on Fisheries held a hearing on the bill but took no action on it. The bill died with the April 25, 2014, adjournment of the second session of the twenty-eighth Alaska Legislature.

On July 30, 2014, Representative Seaton sent a letter to the Legislative Budget and Audit Committee requesting:

...an audit of the Commercial Fisheries Entry Commission (CFEC) with a focus on opportunities for consolidation ... [to] include the following:

- Identify CFEC's efforts in limiting fisheries, processing appeals, conducting research activities, and monitoring transfers of permits from FY 05 through FY 14. Compare those duties to staffing levels, and analyze how each has fluctuated.
- Research state law and legislative intent in creating CFEC. Determine whether their purpose and ascribed functions could be performed by another state agency. Analyze whether cost savings could be achieved through merging similar functions performed by another state agency.
- Determine whether DFG has sufficient capabilities to support CFEC's information technology requirements.

¹ Commercial Fisheries Entry Commission, Annual Report, 2012, at 1.

² Cristine O'Sullivan, Finance Officer, Division of Administrative Services, ADF&G, personal communication.

Commercial Fisheries Entry Commission Review

- Identify and evaluate staff titles and job duties and determine which, if any, work efforts are not essential to CFEC's purpose, or required by law. Additionally, analyze the actual personal service costs, by job title, to budgeted positions to identify gaps between actual and budgeted personal services.
- Determine whether the adjudication functions performed by CFEC could be performed by the Office of Administrative Hearings within the Department of Administration, in an appropriate and timely manner. Additionally, determine whether the increased case load in OAH would require additional staffing.³

The audit request was approved at the committee's August 6, 2014, meeting with the addition of the following objective:

- Report on the fees collected and the use of fees from FY 10 through FY 14.

The audit is expected to be conducted in 2015.

Purpose

Acknowledging the changes in CFEC workload over the last 40 years and the recent legislative activities regarding CFEC, this program review was conducted to help inform the discussion that will likely occur during the 2015 legislative session regarding changes to CFEC. Specifically, the purpose of this program review is to conduct an examination of the operations of CFEC, present findings, and provide recommendations, as appropriate, for future actions, including, but not limited to, streamlining opportunities.

The information, findings, and recommendations presented are based on a series of interviews from September through November, 2014, and a review of materials listed in the Sources section. The review is a snapshot in time. While effort was made to track decisions and actions during the course of the review, it is possible that some decisions and actions occurred that are not reflected in the document and thus might affect its accuracy.

Unless otherwise noted, budgets and expenditures are reported in thousands of dollars.

³ Representative Paul Seaton, memo to Senator Anna Fairclough, Chair, Legislative Budget and Audit Committee, July 30, 2014, request for an audit of the Commercial Fisheries Entry Commission.

Commercial Fisheries Entry Commission Background

The Commission's 2012 annual report states:

Alaska's fisheries were exploited to the brink of extinction by Outside interests prior to statehood. Even after we achieved the monumental success of statehood, there were to be many more years of failed efforts to manage access to our fishery resources in a manner that would ensure long-term sustained yield.

Following these calamities, and ensuing failed attempts to limit access to Alaska's salmon fisheries, the people of Alaska amended the State Constitution in 1972 by a three-quarters majority to authorize the limitation of entry to commercial fisheries. In 1973, the Alaska State Legislature enacted the Limited Entry Act and created a system for limiting the number of fishermen in Alaska's commercial fisheries. In 1974, the Commercial Fisheries Entry Commission (CFEC or Commission) began to implement this program and our work continues to this day. By the end of 2012, CFEC had limited entry to a total of 68 fisheries, considered nearly 23,000 discrete applications, and issued approximately 1.5 million cumulative annual permits and licenses.⁴

History and Overview

In 2003, Commission Chair Bruce Twomley presented a paper entitled, "License Limitation in Alaska's Commercial Fisheries" at the *Joining the Northern Commons: Lessons for the World, Lessons from the World* conference of the International Society of Study of the Commons, Anchorage, Alaska, August 17-21, 2003. The paper provided a history and overview; including issues and controversies, of the limited entry program from inception to 2003 (see Appendix A).

Establishing a Limited Entry Fishery. In his 2003 presentation, Chair Twomley explained:

The primary purpose of Alaska's limitation program is to establish a form of moratorium that does more than simply block new entrants. For each limited fishery, a qualification date is established. The maximum number of permits to be issued is based upon the highest number of units of gear in the fishery in any one of the four years prior to the qualification date. During the eligibility period prior to the qualification date, large numbers of fishers have come and gone from the fishery. Therefore, the number of individual applicants for permanent entry permits who participated prior to the qualification date is invariably much greater than the maximum number. The commission must gradually reduce the number of entry permits to the maximum number through an elaborate grandfathering system.

⁴ Commercial Fisheries Entry Commission 2012 Annual Report at ii.

The Entry Commission ranks each applicant against all other applicants according to the hardship the applicant would suffer if unable to receive an entry permit upon initial issuance (most permits are transferable once they are issued). To determine this ranking, the extent of an applicant's past participation and economic dependence upon the fishery are measured. The commission issues permanent entry permits to the applicants with the highest scores and continues to issue permits moving down through the ranked applicants until the maximum number of permits is issued. Nonetheless, the commission is authorized to exceed the maximum number in order to issue permanent entry permits to those individuals who would otherwise suffer "significant economic hardship." [AS 16.43.270(a)]

Processing and adjudicating applications for permanent entry permits is expensive and time consuming. Each application requires detailed fact finding. Following the initial denial of an application, a hearing officer must conduct an evidentiary hearing on behalf of a denied applicant who can demonstrate a genuine issue. Hearings are governed by administrative procedural rules, including rules of evidence. Following a final administrative review by the commissioners, an applicant can go to state court to challenge the commission's final decision. Applicants are often represented by attorneys and by law can continue to participate in a limited fishery for as long as they can keep a pending application alive before the commission or a court.⁵

Most all of the CFEC sections, along with the commissioners, play a critical part in the limitation of a fishery. The process begins when the Commission receives a petition or request to limit a fishery. The Research Section analyzes the fishery and compiles data on participation, fishery economics, and fishery management considerations and makes a recommendation in one of the following forms: a memo (where it is clear that the fishery doesn't qualify); or a briefing report (most of the time this is confidential) where it appears that the fishery meets the criteria to be limited. If the commissioners decide that limitation is a potentiality, they start the public process.

The first stage of the public process is to propose the limited fishery, and propose regulations declaring a maximum number of permits (as defined by statutes and the courts), along with a proposed qualification date (establishing January 1 of that year as the start of the limited entry). There are public hearings in the region and a public comment period. The Research Section staff lead the public hearings (sometimes with the commissioners, sometimes not) and are assisted by the Commission's legal assistant. All the way through this phase the Research Section is providing feedback and recommendations to the Commission.

Based on the public comments, the Commission then may decide to go forward. The Research Section then develops dozens of point system scenarios guided by statutes and case law. The courts determined that the Commission must consider all the statutory point system elements but

⁵Twomley, Bruce. "License Limitation in Alaska's Commercial Fisheries." Presented at the *Joining the Northern Commons: Lessons for the World, Lessons from the World* conference of the International Society of Study of the Commons, Anchorage, Alaska, August 17-21, 2003, at 5,6.

subsequent legislation confirmed that the Commission doesn't have to apply all of the elements to the fishery.⁶ The point system scenarios are provided to the Commission and they pick one, propose regulations, and then another round of public hearings/comments occurs. After factoring in comments from the public, the point system is then adopted by regulation. The research staff then usually writes a decisional document - internally called a 'rationale' - that chronicles the history of the limitation and provides background on decisions that went into developing the rules for that fishery. At that point the Research Section has completed the bulk of its work. The average time to establish a limited fishery is roughly two years.

Next, permit applications are submitted to paralegals in the CFEC Adjudications Section and the workload of CFEC increases significantly. There are two types of permits issued by CFEC. The interim-use permit allows the fisher to fish in a limited fishery on an interim basis until his limited entry permit is issued or denied, after all administrative appeals and court remedies are exhausted. An interim use permit is also issued to fishers in an open access fishery.⁷ The entry permit allows entry into a limited fishery. Both interim use and entry permits are renewed annually.

Using data provided by CFEC Information Technology Section computer programmers, combined with supporting documents provided by the applicants themselves, the paralegals must review each entry permit application to verify the points claimed by the applicant and to determine the applicant's ranking under the point system. In this review process the paralegals may consult with the Adjudications Section hearing officer. An entry permit is issued based on ranking by points.

Adjudications. If an entry permit application is denied, or if an applicant is dissatisfied with their assigned points⁸, the appeal process begins in the Adjudications Section. There are three levels of appeals within CFEC, administrative hearing, administrative review, and reconsideration, after which the applicant can then go to state court.⁹ A hearing officer conducts the administrative hearing and then issues a determination that is reviewed by the Commission. The Commission participates in the second and third level of appeal. There is a direct relationship between the value of the fishery and the number of appeals of denied or challenged entry permit applications. While an entry permit status is under appeal or pending court action, the applicant is issued an interim-use permit which allows the individual to fish in the limited fishery in question. It is a common occurrence that applicants who have had an entry permit application denied will appeal and request time extensions or seek judicial relief, so they can continue to fish on an interim permit until a final decision is made.

Throughout this process the Information Technology Section provides technological support.

⁶ In *Rutter v. CFEC*, 668 P.2d 1346 (Alaska 1983) the court said that CFEC was remiss by failing to include all the statutory elements of a point system. Subsequent legislation, Ch. 22 SLA 1985, gave CFEC more latitude to at least consider, but not necessarily implement, all elements. See AS 16.43.250(a).

⁷ AS 16.43.200.

⁸ Often, the application is accepted, but the number of points claimed is under dispute. The applicant knows that more points will help them in the long run, so they enter the appeals process to try to get as high a ranking as they can.

⁹ 20 AAC 05.1800 – 20 AAC 05.1870.

Commercial Fisheries Entry Commission Review

The Commission completed the 68th and last limitation in 2004. Since then, the Commission has periodically received petitions to limit fisheries, but after examination, the limitation criteria were not met. The vessel-based weathervane scallop limited entry fishery, established in 2004, was repealed December 30, 2013.¹⁰ The total number of limited entry fisheries is now 67.

Court Decisions. The Alaska Supreme Court has issued 86 decisions addressing applicants for limited entry permits (see Appendix B) that have affected or modified the program.¹¹ The minutes summarizing Chair Twomley’s testimony regarding HB 386 before the Alaska House Special Committee on Fisheries in 2014 notes:

For the sake of efficiency it is critical to win these cases in court. The Alaska Supreme Court held that when it reverses a commission rule, that the reversal can be applied retroactively to require reopening previously closed applications and require the commission to accept new applications for those who did not apply during eligibility...[T]his means that with every decision made, the CFEC walks a tightrope. Thus, reversed decisions could undermine fisheries on which Alaskans rely.¹²

Carlson Case. Perhaps the most costly and highest profile Alaska Supreme Court CFEC cases was *Carlson v. State*.

The case started in 1984 when the class sued the State, Commercial Fisheries Entry Commission (CFEC) on behalf of all nonresident Alaska commercial fishers. The class included “all persons who participated in one or more Alaska commercial fisheries at any time who paid non-resident assessments to the State for commercial or gear licenses or permits.” Arguing that the State was illegally charging nonresidents more than it charged residents for commercial fishing permits and licenses, the class demanded a refund of the difference between what they paid and what residents paid. Between 1984 and 2002, nonresident commercial fishers paid three times as much as resident fishers for licenses and permits.¹³

Carlson was before the Alaska Supreme Court a total of five times and each time was remanded back to superior court to address the Alaska Supreme Court’s decisions. Summaries of the salient points of the first four Supreme Court decisions (1990, 1996, 2003, and 2008) are included in Appendix B. In 2003, “...the United States Supreme Court declined to hear an appeal from the Carlson class members

¹⁰ Ch. 69 SLA 2008, HOUSE CS FOR SB 254(FIN)(efd am H) Second Session Twenty-Fifth Legislature 2008.

¹¹ CFEC website: <http://www.cfec.state.ak.us/decision/Supremecourt.pdf>. The document was last updated in 2010.

¹² House Special Committee on Fisheries, April 17, 2014, minutes. House Bill No. 386, “An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings” at 8.

¹³ *State, CFEC v. Carlson*, 270 P.3d 755 (Alaska 2012). Footnotes and citations omitted. In 1984, the challenged fee differential between residents and non-residents was 1:3 and the highest of the five resident fee classes was \$250 (a cap set by the legislature on permit fees). Non-residents could be charged a maximum of \$750 per permit.

Commercial Fisheries Entry Commission Review

arguing that under the Commerce Clause of the U.S. Constitution, they should be refunded the entire differential between resident and nonresident fees.”¹⁴

In 2001, responding to court decisions, the legislature revised the CFEC permit fee statute, AS 16.43.160, repealing the previous fee structure and imposing on nonresidents a fee based on a formula that calculated their share of the costs of managing the State’s commercial fisheries.¹⁵ The statute was again revised in 2005 as a result of subsequent *Carlson* court actions requiring nonresident fees to be calculated per capita instead of per permit.¹⁶ The current nonresident fee is found in 20 AAC 05.245(a):

(7) in addition to the annual base fees for all interim-use or entry permits renewed for the years, a person who is not a resident of this state, will be charged an annual nonresident surcharge for that year as calculated under this paragraph; once every three years, the commission will obtain from the Office of the Governor, Office of Management and Budget (OMB), the values necessary to calculate the maximum allowable annual fee differentials under the per capita formula established by *Carlson v. State*, 919 P.2d 1337, 1342-45 (Alaska 1996); to determine the annual nonresident surcharge, the commission will calculate an average of the maximum allowable fee differentials in the five most recent fiscal years for which OMB has provided values, and will round the calculated average to the nearest five dollars; the commission will recalculate the annual nonresident surcharge every three years[.]

Carlson court decisions: granted the demand by the class that they were eligible for a refund of overpayment of fees, established appropriate factors to be included in the calculation of nonresident commercial fishing license and permit fees, and determined and then revised how interest on refunds would be calculated. In its 2012 final *Carlson* decision, the Alaska Supreme Court stated:

After our last remand, the superior court entered a judgment awarding the class a principal refund of \$12.4 million with prejudgment interest exceeding \$62 million [total judgment against the State was \$82.3 million, including attorney fees and cost award]. The question presented is whether one of our previous decisions in this case, *Carlson III*, incorrectly decided that the rate of prejudgment interest for unconstitutional commercial fishing license and limited entry permit fee overpayments is the statutorily imposed punitive interest rate for underpaid and overpaid taxes under Title 43 of the Alaska Statutes. Because the statute establishing prejudgment interest for underpayment and overpayment of taxes does not apply to the refund of overpayment of the commercial fishing fees involved in this case, and because our earlier incorrect holding on this issue resulted in a manifest injustice, we

¹⁴ Commercial Fisheries Entry Commission 2003 Annual Report at 11.

¹⁵ Passage of CS FOR HOUSE BILL 194(FIN) (Ch. 27 SLA 2001) and CFEC adoption of implementing regulations brought the State’s fee structure into compliance with court rulings.

¹⁶ HOUSE CS FOR CS SENATE BILL 93(FIN) (Ch.16 SLA 2005).

now conclude that our earlier decision on this issue must be overruled. We accordingly remand this case for a new prejudgment interest calculation.¹⁷

In August 2012, the superior court issued a final judgment after the fifth remand awarding to the class: \$12.5 million in principal refund, \$18.0 million in prejudgment interest, and \$3.0 million in attorney fees for a total of \$33.5 million.¹⁸

Over the course of almost 30 years, *Carlson* consumed literally thousands of hours of commission and attorney generals' time.

Commission Decisions and Activities. Per AS 16.43.980, CFEC is required to prepare an annual report. These reports are available on the Commission's website: www.cfec.state.ak.us dating back to 1991. Each report contains a summary of the year's decisions and activities, as well as reports on each section: adjudications, information technology, licensing, and research & planning. In addition, information on revenue, decisions and activities in prior years, and a current list of employees is provided. The most current annual report available is the 2012 annual report released December 2013. Appendix C includes a list of Commission decisions and activities from 1993 to 2011, compiled from the Commission's annual reports.

Internal Revenue Service. One of the longest running Limited Entry Act challenges was the battle between CFEC and the Internal Revenue Service (IRS) regarding its efforts to seize and force the sale of limited entry permits when fishers were delinquent in paying their taxes.

A tenet on the Limited Entry Act is that limited entry permits are a "...privilege, subject to State control, and revocable at the will of the State without compensation."¹⁹ Beginning in the 1980's the IRS attempted to seize and force the sale of limited entry permits; "...CFEC resisted these efforts in order to protect the nature of Alaska Limited Entry Permits as a State privilege that for many permit holders, has served as their sole source of livelihood."²⁰

In the 1990's, many Alaska fishers faced serious financial problems as a result of low salmon prices coupled with salmon run failures in Bristol Bay and Western Alaska. The IRS continued seizure and forced sale attempts to cover delinquent taxes. In addition to CFEC, the Governor's Office, Alaska Division of Investments, the Alaska Business Development Center, Alaska Federation of Natives, Bristol Bay Native Association, Bristol Bay Economic Development Corporation, the Commercial Fishing and Agriculture Bank, Senator Ted Stevens, and the Alaska legislature all participated in multifaceted efforts to address Alaska fishers issues with the IRS and protect the Limited Entry Act.

In 1990, the legislature, amended AS 16.43.170(a), stating that permit transfers can only occur through the commission:

¹⁷ *Id.* at 757.

¹⁸ *Carlson v State, CFEC*. Case No. 3AN-84-5790 CI. Final Judgment after Fifth Remand, 2012.

¹⁹ Letter of Intent, May 3, 1990 Senate Journal 3856, CSHB 124 (Rules).

²⁰ Bruce Twomley, CFEC Chair, memo to author, September 23, 2014, Subject: CFEC Introductory Material.

(a) Except as provided in AS 16.10.333 - 16.10.338 and in AS 44.81.230 - 44.81.250, entry permits and interim-use permits are transferable only through the commission as provided in this section and AS 16.43.180 and under regulations adopted by the commission. An involuntary transfer of an entry permit in a manner inconsistent with the statutes of this state and the regulations of the commission is void.²¹

This was done to “to reiterate, emphasize, and clarify the original intent of the legislature in adopting the Limited Entry Act of 1973, AS 16.43.010--990.”²² Included with this legislation was a letter of intent that provides a comprehensive review of the concept of the entry permit as a privilege as intended in the Limit Entry Act (see Appendix D).

In 1992:

...the Alaska legislature unanimously adopted Governor Walter J. Hickel's SB 449 (Chapter 55, SLA 1992) to govern involuntary transfers by the only two authorized creditors: the IRS and child support claimants. The legislation for the first time authorized such transfers, required them to conform to applicable State law, and, protected the State's interest in limited entry permits.²³

In 1996, The Commission issued the *Carle* decision denying a request by the IRS to transfer a Southeast Alaska salmon purse seine entry permit to the highest bidder in a forced permit auction held in December.²⁴

In 1998, the Alaska Congressional Delegation assisted in passing the IRS Restructuring and Reform Act, improving procedural and due process protections for taxpayers. By 2001, conflicts with the IRS had subsided. Despite numerous attempts, the IRS was never successful in a forced sale and transfer of a limited entry permit.²⁵

Fees, Budget, and Revenue

Fees. CFEC revenue is generated by fees it collects from commercial fishing permits and vessel licenses.²⁶ AS 16.43.160(b) requires, “[t]he annual base fee must reasonably reflect the different rates of economic return for different fisheries.”

The formulas for calculating fees for limited entry permits and interim use permits are established in regulation. In brief, the fee for “... an entry permit or an interim use permit in a limited fishery is four-

²¹ Ch. 211 SLA 1990. SCS FOR CS FOR HOUSE BILL 124 (FIN) Second Session Sixteenth Legislature, 1990.

²² Letter of Intent, May 3, 1990 Senate Journal 3856, CSHB 124 (Rules).

²³ Commercial Fisheries Entry Commission 1993 Annual Report at Adjudications Section.

²⁴ *Carle*, CFEC 96-003-P (Final Comm. Dec. on Rqst. to Trnfr. 3/4/96).

²⁵ Detailed information regarding CFEC's efforts with the IRS and assisting fishers in financial crisis can be found in CFEC's annual reports; see especially 1991-2001.

²⁶ AS 16.05.490, AS 16.43.160.

tenths of one percent of the estimated value of the entry permit, rounded...” to the nearest of 40 fee classes, ranging from \$75 to \$3000, in \$75 increments.²⁷ The fee for “... an interim use permit in an unlimited fishery is four-tenths of one percent of the estimated average gross earnings per permit in the most recent three years for which data are available rounded...” to the nearest of the 40 fee classes.²⁸ Non-residents pay a surcharge calculated based on a formula established by *Carlson v State*, 919 P.2d 1337,1342-45 (Alaska 1996). Reduced fee exceptions are made for low income resident and non-resident permittees. Reduced permit fees are also granted to fishers of halibut and sablefish based on low quota shares specified in regulation. Permit fees are reset annually based on calculations by the Research Section.

2005 Fee Increase. After several years of declining revenue, CFEC sought and was granted a fee increase:

Senate Bill 93, which passed the legislature during the 2005 session and was signed by the Governor, makes two significant changes that will increase CFEC revenues beginning with the 2006 commercial fisheries licensing year (calendar year). The first is to raise the cap on annual fishing permit renewals to \$3,000. This mainly affects those higher value fisheries that have benefited in the past from the lower cap. The statute calls for fees to reflect the economic return from different fisheries. The second is a modification to the annual commercial fishing vessel license fee. The fee structure was expanded from 5 fee classes to 13 fee classes at 25-foot increments beginning at 0-25 feet.

Following the effective date of SB 93, the Commission proposed regulations, held a public comment period including several public hearings, and received oral and written testimony. In response to public comments, the Commission adopted an annual permit renewal schedule to accommodate a phased-in approach. The permit renewal fee for the 2006 licensing year will be capped at \$1,050, for 2007 at \$2,025, and for 2008 [and beyond] at \$3,000.

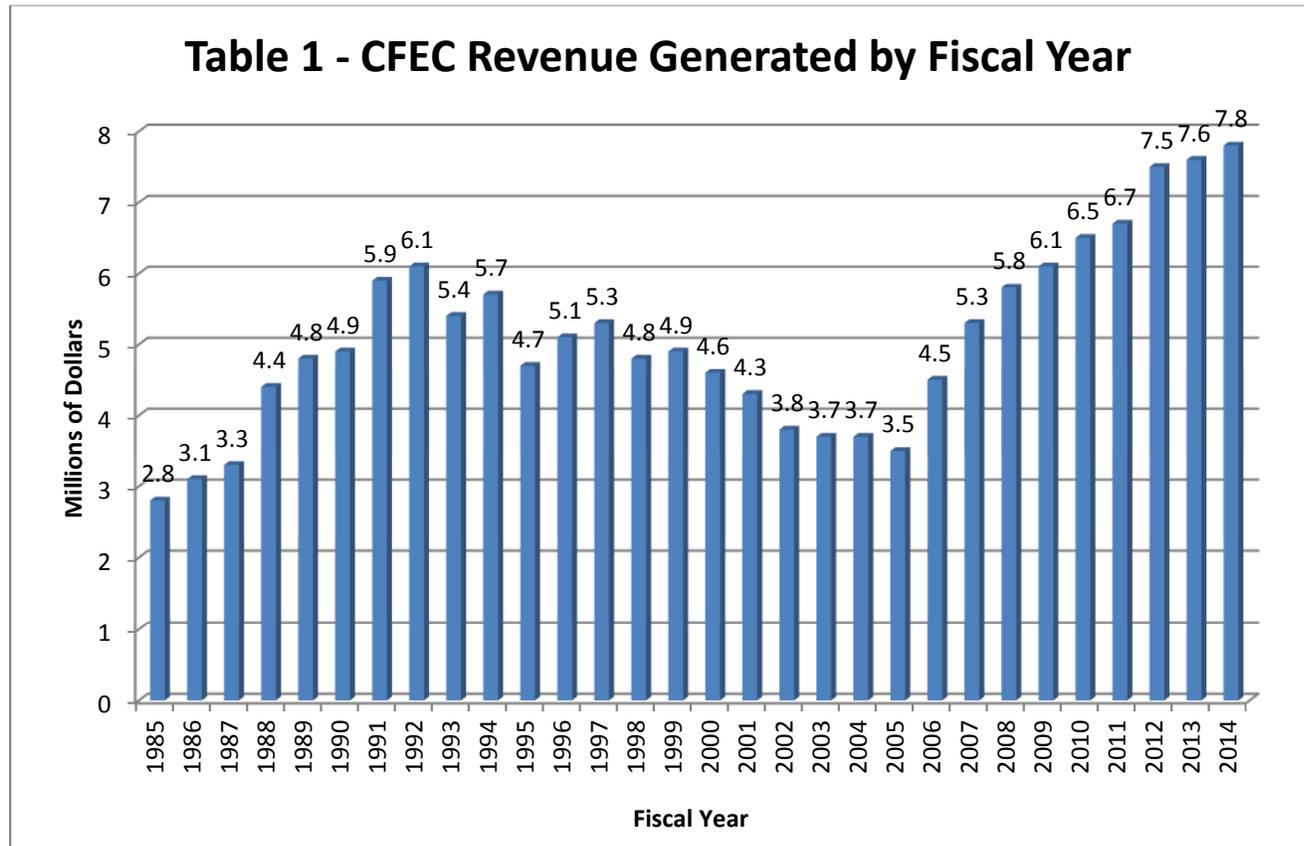
The phased-in approach will only affect high value fisheries. Those fisheries that are below the \$1,050 cap for 2006 will not see an increase by raising the cap in future years unless their economic value increases to a point where they are pushed higher under the formula. Permit renewal fee classes range from \$75 to \$1,050 for 2006, with the majority being \$375 or less. The 2006 fee increase impacted those fisheries that would have paid higher fees in the past if not for the previous fee cap. Based on this phased-in approach, we anticipate revenues generated above the CFEC obligations to be approximately \$1.5 million in each of the next three fiscal years.

²⁷ 20 AAC 05.245(a)(1).

²⁸ 20 AAC 05.245(a)(2).

The legislature has used this additional revenue to fund programs that contribute to the support of Alaska’s commercial fisheries.²⁹

Table 1 displays CFEC revenue from FY1985 through FY2014. The decline in revenue from FY1997 to FY2005 is evident, prompting the push for a fee increase. Since FY2005, the revenue has been increasing steadily to an all-time peak in FY2014 of \$7.8 million.



Sources: Commercial Fisheries Entry Commission 1997 and 2012 annual reports; Cristine O’Sullivan, Finance Officer, Division of Administrative Services, ADF&G, personal communication.

Fishermen’s Fund. The fund was established in 1951 to provide “... for the treatment and care of Alaska licensed commercial fishermen who have been injured while fishing on shore or off shore in Alaska.”³⁰ Since the fund pre-dates statehood it is grandfathered in as one of the “[s]pecial revenue funds [that] account for the proceeds of specific revenue sources that are legally restricted to expenditure for specified purposes.”³¹

²⁹ Commercial Fisheries Entry Commission 2012 Annual Report at 24.

³⁰ Department of Labor and Workforce Development, Division of Worker’s Compensation, Fishermen’s Fund website: <http://labor.alaska.gov/wc/ffund.htm>

³¹ State of Alaska, Comprehensive Annual Financial Report for the Fiscal Year July 1, 2012-June 30, 2013, Department of Administration, Division of Finance at 159.

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The fund is administered by the Department of Labor and Workforce Development and the fund is composed of “39 percent of the money derived by the state from all commercial fishermen's licenses, not to exceed a maximum of \$50 for each license holder for each year.”³² CFEC determined in a 2003 policy memo (see Appendix E):

... that a portion of the fees paid by a permit holder for the annual renewal of his or her permit(s), which is equal to what that person would pay for a crewmember license, constitutes the commercial fishing license for purpose of calculating contributions to the Fishermen’s Fund.³³

Each year, CFEC calculates the Fishermen’s Fund amount and then the revenue is transferred into the Fishermen’s Fund. Table 2 displays the Fisherman Fund transfers from FY2001 to FY2014.

**Table 2 - Fisherman Fund Transfers |
Fiscal Year, 2001 - 2014**

Fiscal Year	Fishermen’s Fund Transfers
2001	280,918.35
2002	390,844.55
2003	405,772.80
2004	407,176.80
2005	388,566.80
2006	395,226.00
2007	383,278.00
2008	380,606.00
2009	368,404.80
2010	372,713.20
2011	375,745.00
2012	365,574.60
2013	365,238.20
2014	362,299.40
Totals	5,242,364.50

Source: Cristine O’Sullivan, Finance Officer, Division of Administrative Services, ADF&G, personal communication.

³² AS 23.35.060(a).

³³ Commercial Fisheries Entry Commission, memo to file, April 30, 2003, Subject; CFEC Contributions to Fishermen’s Fund at 2.

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Budget. Table 3 displays CFEC expenditures by budget category and positions for FY2001 through FY2014. From FY2001 to FY2014, the number of authorized positions has been reduced from 30 to 28 permanent full-time (PFT) positions and from 5 to 4 permanent part-time (PPT) positions; there were no budgeted non-permanent (NP) positions. Note that, on average during this period, 82% of the annual expenditures were in personnel costs.

Table 3 – CFEC Expenditures by Line Item and Position Counts

FY2001 - FY2014

Fiscal Year	Personal Services	Travel Services	Services	Supplies	Capital	Total	PFT	PPT	NP	Total PCNs
2001	2,133.6	21.1	319.4	15.4	140.1	2,629.6	31	5	0	36
2002	2,318.3	31.0	342.4	141.0	101.5	2,934.2	31	5	0	36
2003	2,291.1	20.5	292.6	123.0	6.8	2,734.0	31	5	0	36
2004	2,154.9	18.8	211.3	111.8	21.0	2,517.8	29	4	0	33
2005	2,327.0	18.7	285.2	131.0	11.6	2,773.5	29	4	0	33
2006	2,670.0	23.7	321.3	52.3	5.4	3,072.7	29	4	0	33
2007	2,768.1	29.9	463.5	63.9	17.3	3,342.7	29	4	0	33
2008	2,832.5	26.2	471.1	100.4	96.9	3,527.1	29	4	0	33
2009	2,937.9	34.7	567.5	53.6	68.4	3,662.1	29	4	0	33
2010	2,838.8	27.0	502.6	125.2	20.0	3,513.6	29	4	0	33
2011	2,851.3	28.6	518.2	58.7	16.5	3,473.3	29	4	0	33
2012	2,914.2	41.1	530.5	106.3	5.3	3,597.4	29	4	0	33
2013	3,026.2	30.7	562.0	67.4	21.8	3,708.1	28	4	0	32
2014	3,300.5	21.4	579.2	51.6	31.5	3,984.2	28	4	0	32
Percent of Total	82%	1%	13%	3%	1%	100%				

Source: Cristine O’Sullivan, Finance Officer, Division of Administrative Services, ADF&G, personal communication.

Commercial Fisheries Entry Commission Review

Table 4 displays the final authorized budget total by funding source and the actual expenditures by funding source from FY2008 to FY2014. Note that no federal receipts were received during the period.

**Table 4 - Final Authorized Budget and Actual Expenditures by Funding Source
FY2008 - FY2014**

Fiscal Year	Funding Source		Final Authorized	Funding Source		Actuals	Actuals to Authorized Difference	% Actuals to Authorized
	CFEC Receipts	Federal Receipts		CFEC Receipts	Federal Receipts			
2008	3648.7	114.4	3763.1	3527.1	0	3527.1	236.0	94%
2009	3832.8	114.4	3947.2	3662.1	0	3662.1	285.1	93%
2010	3840.3	114.4	3954.7	3513.6	0	3513.6	441.1	89%
2011	3962.9	114.4	4077.3	3473.3	0	3473.3	604.0	85%
2012	4092.1	114.4	4206.5	3597.4	0	3597.4	609.1	86%
2013	4176.9	114.4	4291.3	3708.1	0	3708.1	583.2	86%
2014	4389.2	114.4	4503.6	3984.2	0	3984.2	519.4	88%

Source: Alaska Budget System

Excess Revenue. Since the full implementation of the fee increase in 2008, CFEC revenue has routinely exceeded the Commission’s actual operating expenditures and Fishermen’s Fund transfers.

Beginning in the FY2005 operating budget³⁴ and continuing to the present FY2015 operating budget, there is language that authorizes that the amount appropriated for the Commission includes “...the unexpended and unobligated balance on June 30, [of the prior fiscal year], of the Department of Fish and Game, Commercial Fisheries Entry Commission program receipts from licenses, permits and other fees.”³⁵

Depending on the fiscal year, the excess revenue collected in the current fiscal year or carried forward from the prior fiscal year has been appropriated in the budget bills to cover a portion of the operating expenditures of the Division of Commercial Fisheries and/or miscellaneous capital projects within ADF&G’s capital budget or as grants to named recipients through the Department of Commerce, Community and Economic Development. For example, between FY2007 and FY2010, the Division of Commercial Fisheries was appropriated and spent annually between \$1.4 million and \$1.8 million.

Table 5 summarizes CFEC receipts activity, including all transfers, carryforwards, and revenue collected from FY2008 to FY2014. Note the upward general trend in the annual carryforward amounts.

³⁴ Ch.158 SLA 2004, CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL 375 Second Session Twenty-third Legislature 2005 at 16.

³⁵ Ch.16 SLA 2014, CONFERENCE COMMITTEE SUBSTITUTE FOR HOUSE BILL 266 Second Session Twenty-Eighth Legislature 2014 at 16.

Commercial Fisheries Entry Commission Review

Table 5 - CFEC Receipts Detail, including all Transfers, Carryforwards, and Revenue Collected FY2008 to FY2014

Fiscal Year	
2014	(9,383,742.23) CFEC receipts carryforward from FY13 to FY14
	5,255,845.63 CFEC receipts transferred to capital project appropriations to cover FY14 expenses
	362,299.40 CFEC receipts transferred in FY14 to the Fishermens Fund
	7,584,770.55 CFEC receipts carryforward from FY14 to FY15
	3,984,196.84 CFEC operating budget actual expenditures FY14
	<u>7,803,370.19</u> CFEC Revenues collected in FY14
2013	(8,116,752.29) CFEC receipts carryforward from FY12 to FY13
	2,305,624.35 CFEC receipts transferred to capital project appropriations to cover FY13 expenses
	365,238.20 CFEC receipts transferred in FY13 to the Fishermens Fund
	9,383,742.23 CFEC receipts carryforward from FY13 to FY14
	3,708,085.75 CFEC operating budget actual expenditures FY13
	<u>7,645,938.24</u> CFEC Revenues collected in FY13
2012	(4,823,899.45) CFEC receipts carryforward from FY11 to FY12
	(10,213.87) CFEC receipts carryforward from FY10 to FY12
	291,509.06 CFEC receipts transferred to capital project appropriations to cover FY12 expenses
	365,574.60 CFEC receipts transferred in FY12 to the Fishermens Fund
	8,116,752.29 CFEC receipts carryforward from FY12 to FY13
	3,597,414.31 CFEC operating budget actual expenditures FY12
<u>7,537,136.94</u> CFEC Revenues collected in FY12	
2011	(2,826,534.22) CFEC receipts carryforward from FY10 to FY11
	856,415.22 CFEC receipts transferred to capital project appropriations to cover FY11 expenses
	375,745.00 CFEC receipts transferred in FY11 to the Fishermens Fund
	4,823,899.45 CFEC receipts carryforward from FY11 to FY12
	3,472,637.79 CFEC operating budget actual expenditures FY11
	<u>6,702,163.24</u> CFEC Revenues collected in FY11
2010	(1,549.11) CFEC receipts carryforward from FY08 to FY10
	(2,323,390.90) CFEC receipts carryforward from FY09 to FY10
	1,583,035.61 CFEC receipts transferred to Commercial Fisheries operating budget appropriation in FY10
	564,904.24 CFEC receipts transferred to capital project appropriations to cover FY10 expenses
	372,713.20 CFEC receipts transferred in FY10 to the Fishermens Fund
	2,826,534.22 CFEC receipts carryforward from FY10 to FY11
	10,213.87 CFEC receipts carryforward from FY10 to FY12
	3,503,360.12 CFEC operating budget actual expenditures FY10
<u>6,535,821.25</u> CFEC Revenues collected in FY10	
2009	(2,095,320.40) CFEC receipts carryforward from FY08 to FY09
	1,550,390.20 CFEC receipts transferred to Commercial Fisheries operating budget appropriation in FY09
	280,500.87 CFEC receipts transferred to capital project appropriations to cover FY09 expenses
	368,404.80 CFEC receipts transferred in FY09 to the Fishermens Fund
	2,323,390.90 CFEC receipts carryforward from FY09 to FY10
	3,656,547.22 CFEC operating budget actual expenditures FY09
<u>6,083,913.59</u> CFEC Revenues collected in FY09	
2008	(1,677,295.10) CFEC receipts carryforward from FY07 to FY08
	1,407,099.62 CFEC receipts transferred to Commercial Fisheries operating budget appropriation in FY08
	380,606.00 CFEC receipts transferred in FY08 to the Fishermens Fund
	1,549.11 CFEC receipts carryforward from FY08 to FY10
	2,095,320.40 CFEC receipts carryforward from FY08 to FY09
	3,525,587.16 CFEC operating budget actual expenditures FY08
<u>5,732,867.19</u> CFEC Revenues collected in FY08	

Source: Cristine O'Sullivan, Finance Officer, Division of Administrative Services, Department of Fish and Game

Commercial Fisheries Entry Commission Review

Table 6 provides a status of capital project appropriations and a multi-year operating appropriation funded with CFEC receipts, expended through FY2014. Note that in the state's accounting system, capital projects have a five year termination date and can be extended without legislative approval.

Commercial Fisheries Entry Commission Review

Table 6 - Status of Capital Project Appropriations funded with CFEC Receipts Through FY2014

Capital Appropriations to DFG and DCCED; Multi-year Operating Appropriation Funded with CFEC Receipts - AC 51132	Project Account Code-Year of Expiration	CFEC (AC 51132) Restricted Revenue Authorization	ITD Actual Revenues Collected thru FY14	Beginning of FY15 Uncollected Balance	
<u>Capital Appropriations to DFG:</u>					
Chapter 82 SLA 2003 -					
Electronic Commercial Catch	43389-15	(500,000)	(493,921)	(6,079)	
Chapter 15 SLA 2009 -					
Permit Card Equip Elandings	43620-13	(138,000)	(137,992)		lapsed
Chapter 43 SLA 2010 -					
Assess. Pilot Station Sonar	43636-15	(250,000)	(205,572)	(44,428)	
Genetic Marker West AK Salmon	43643-13	(750,000)	(741,242)		lapsed
Chapter 17 SLA 2012 -					
Crystal Lake Hatchery Def. Mnt	43676-17	(650,000)	(484,294)	(165,706)	
Susitna River Sockeye Salmon	43688-17	(625,000)	(222,178)	(402,822)	
UCI East Side Set Net Chinook	43689-14	(789,000)	(788,971)		lapsed
Wild/Hatchery Salmon Mgmt	43691-17	(2,500,000)	(1,210,969)	(1,289,031)	
Chapter 16 SLA 2013 -					
Chinook Salmon Enhance NCI	43105-18	(2,000,000)	(93,169)	(1,906,831)	
Chapter 18 SLA 2014 -					
Chinook Initiative	43130-19	(2,500,000)		(2,500,000)	
		<u>(10,702,000)</u>		<u>(6,314,897)</u>	
<u>Capital Appropriations to DCCED:</u>					
Chapter 17 SLA 2012 -					
Named Recipient Grants -					
Alutiiq Pride Shellfish Hatchery	31625-14	(460,000)	(460,000)		
Metlakatla Indian Comm.-Hatch.	32070-17	(500,000)	(13,612)	(486,388)	
Prince of Wales Hatchery Assn	32105-17	(475,000)	(470,990)	(4,010)	
So. Southeast Reg. Aquaculture	32133-17	(455,000)	(356,498)	(98,502)	
Chapter 16 SLA 2013 -					
ASMI Canned Salmon...Project	52301-18	(300,000)	(94,072)	(205,928)	
Named Recipient Grants -					
KRAA Kitoi Bay Hatchery DM	32388-18	(3,300,000)	(2,571,228)	(728,772)	
So. SE Reg. Aquaculture Assn	32428-18	(500,000)	(438,908)	(61,092)	
Yakutat Reg. Aquaculture Assn	32443-18	(100,000)	(39,579)	(60,421)	
Chapter 18 SLA 2014 -					
Named Recipient Grants -					
Chugach RRC-Crab Rehabilitation	30046-19	(450,000)		(450,000)	
Kodiak Reg Aquaculture Assn	30109-19	(1,328,000)		(1,328,000)	
		<u>(7,868,000)</u>		<u>(3,423,113)</u>	
Chapter 17 SLA 2012 -					
Reappropriation - 2 Yr Operating:					
Analyzing System Req'ments	41570-13	(100,000)	(84,144)	(15,856)	balance is encumbered
Total uncollected CFEC Receipts authority - DFG & DCCED					
Capital ARs & DFG Operating AR 41570-13 - as of beginning of FY15					<u>(9,753,866)</u>

Key -- AC: 5 digit account code; AR: Appropriation; ITD: Inception to date

Source: Cristine O'Sullivan, Finance Officer, Division of Administrative Services, Department of Fish and Game

Findings and Recommendations

“The key to the CFEC review is how to maintain the limited fisheries and the ongoing research and licensing functions, scale down the other functions, but be ready for a new limited fishery.” – an interviewee

The following findings and recommendations are based on an analysis of a series of interviews from September through November of 2014 with current and former CFEC commissioners and senior staff, and other state officials, as well as the resources listed in the Sources section. Recommendations are categorized into two types: legislative or administrative, depending upon what type of action is necessary for implementation.

Overarching Findings

Alaska voters amended the state’s constitution to allow limited entry into the state’s commercial fisheries in 1972. The following year, the legislature enacted the Limited Entry Act (AS 16.43). The Limited Entry Act established the state’s limited entry program, creating the Commercial Fisheries Entry Commission to administer the program.

The stated purpose and findings of the Limited Entry Act are:

- (a) It is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants and vessels into the commercial fisheries in the public interest and without unjust discrimination.
- (b) The legislature finds that commercial fishing for fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource.³⁶

Finding #1: The limited entry program has been a great success for Alaska.

From the legislature's statement of purpose in AS 16.43.010, we discern the following broad purposes: 1) enhancing the economic benefit to fishermen since too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration; 2) conserving the fishery;

³⁶ AS 26.43.010.

and 3) avoiding unjust discrimination in the allocation of a limited number of entry permits.³⁷

The limited entry program is a success by measure of its purpose and addressing the findings as stated in AS 16.43.010. The limited entry program:

- Brought stability to fisheries management and economics. From 1975 through 2013, CFEC limited a total of 68 fisheries, including two vessel-based limited fisheries.

Limited entry was implemented in 19 of the state's salmon fisheries in 1974. By the end of 2013, entry permits [to individuals] had been issued in a total of 65 commercial fisheries: 26 salmon fisheries, 19 herring fisheries, 9 crab fisheries, 5 sablefish fisheries, 3 shrimp fisheries, and 3 dive fisheries. In some limited fisheries, more than one type of permit was issued to help contain increases in fishing power. Some permits constrain the amount of gear that can be used, while others constrain the length of the vessel. To date, a total of 79 permit types have been issued in the 65 limited fisheries [no permanent entry permits have been issued in the Prince William Sound sablefish pot gear fishery and two fisheries under a vessel limited entry program are not included in this total].³⁸

The limited entry program implemented for commercial salmon fisheries in Alaska stabilized the number of fishermen and therefore the amount of gear used in each of the state's salmon fisheries. It improved management effectiveness and ability of the fishery managers to regulate the fishery so that harvestable surpluses could be taken while still meeting escapement objectives in an orderly and predictable fishery.³⁹

- Limits permit holders to individuals who fish, empowering the fishers and eliminating third party control.

The repeated references to participation and dependence throughout the Limited Entry Act demonstrate that a central premise of the statutory scheme is that the permit holder is an individual who will fish. Accordingly, the act prohibits permit holders from leasing their permits. It also requires crew members to fish only in the presence of a permit holder who is "actively

³⁷ *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255 (Alaska 1980) at 1265.

³⁸ Jennifer Shriver, J, M. Gho, K. Iverson, C Farrington. *Executive Summary -- Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975 to 2013*. CFEC Report 14-2N-Exec. Commercial Fisheries Entry Commission at 1.

³⁹ John H. Clark, A. McGregor, R. D. Mecum, P. Krasnowski, A. M. Carroll. *The Commercial Salmon Fishery in Alaska*. Alaska Fisheries Research Bulletin, Vol. 12, No. 1, Summer 2006, at 5.

engaged in the operation of the gear." Moreover, the Act limits operation of gear to persons with valid entry permits, while defining "person" as a natural person, excluding corporations, companies, partnerships, firms, associations, organizations, joint ventures, trusts, societies, or any other legal entity other than a natural person.⁴⁰

Prior to statehood, commercial fishing in Alaska was dominated by the canneries that controlled the fleets and fish traps, so fishers were employees and at the mercy of the canneries.

- Clearly establishes that a limited entry permit is a privilege, not a property right, held by an individual (see Appendix D) with transfers strictly controlled by the Commission.

A legal prerequisite of the Limited Entry Act was that permits could not be locked in the hands of those who were originally issued them (i.e., the 'initial issuees'). After much study and debate, the legislature chose free transferability as the means to allow permit holders to enter and exit the fisheries.

Free transferability allows the transfer of permits from parents to their children and allows family members to inherit a permit upon the death of a permit holder. It facilitates the sale of permits on the open market, and allows fishermen to enter and exit fisheries at times opportune to them.⁴¹

- Maintains a high level of Alaska ownership. In 2013, the percentage of limited entry permits held by Alaskans was about 77% (49% rural and 28% urban Alaskans) of all limited entry permits. While this amount has decreased slightly over 40 years it is primarily due to migration where fishers have retained ownership but chosen to move out-of state, as opposed to permit transfers to non-residents.⁴²
- Enhances conservation by giving permit holders an ownership stake in the fisheries. One of the tenets of rights-based fisheries management is that limited entry can help mitigate or avoid the common-property dilemma, where, in an open-access situation, the majority of the users adopt a narrow, short-term view of resource harvest. The collective force of fishers who negotiate topics like harvest levels and enforcement with the Board of Fisheries or with ADF&G is going to be different in a limited entry situation versus an open-access fishery. As a group, the limited fishery permit holders are likely to be more willing to accept conservation closures when they understand how it will benefit them in the long run:

⁴⁰ *Grunert v. State*, 109 P.3d 924 (Alaska 2005) at 934.

⁴¹ Jennifer Shriver, J. M. Gho, K. Iverson, C. Farrington. *Executive Summary -- Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975 to 2013*. CFEC Report 14-2N-Exec. Commercial Fisheries Entry Commission at 1.

⁴² *Id.*

... the Alaska Legislature intended an entry permit to give its holder a permanent stake in the fishery in the hope of providing an incentive to conserve the resource, to obey conservation laws, and promote investment in aquaculture to re-build salmon stocks. With respect to aquaculture, fishers in some limited salmon fisheries have elected to tax themselves in order to develop non-profit hatcheries.⁴³

Finding #2: CFEC has an outstanding record of judicial successes in its defense of the Limited Entry Program.

From its inception, the Limited Entry Act has provided statutory direction to CFEC to administer the limited entry program. Periodic fine-tuning of the statutes by the legislature in response to court decisions and programmatic experience has occurred as well. In limiting each fishery, the challenge of maintaining the delicate constitutional balance between common use, sustained yield, no exclusive right to fisheries, and uniform application is always present.⁴⁴ There are 86 Alaska Supreme Court cases that concern the limited entry program, more than the original 68 limited fisheries.

CFEC decisions must be carefully crafted because if a CFEC decision is appealed and the court determines CFEC is in error, the decision must be retroactively applied.

CFEC v. Byayuk, 684 P.2d 114 (Alaska 1984), required the commission to apply a Supreme Court reversal retroactively to reopen previously closed applications. Subsequently, *Cashen v. State, CFEC*, 686 P.2d 12219 (Alaska 1984), applied the same principle to require the commission to accept new applications for the first time long after original deadlines. The *Byayuk* retroactive principle required more adjudication and left the commission without a margin for error in its decisions. A reversible error by the commission could undo the limitation of a fishery upon which Alaskan

⁴³ Twomley, Bruce. "License Limitation in Alaska's Commercial Fisheries." Presented at the *Joining the Northern Commons: Lessons for the World, Lessons from the World* conference of the International Society of Study of the Commons, Anchorage, Alaska, August 17-21, 2003 at 7. See Appendix A.

⁴⁴ Alaska Constitution, Article 8 – Natural Resources:

Section 3. Common Use. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 4. Sustained Yield: Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Section 15. No Exclusive Right of Fishery: No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972].

Section 17. Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

fishermen rely for their livelihood. Therefore, in adjudicating individual cases, the commission could never afford to pursue quantity at the expense of quality.

The court's premise for applying its reversal of a CFEC policy retroactively to reopen closed cases and to allow for new applications is that all applicants for the same fishery should be treated alike.⁴⁵

The minutes summarizing Chair Twomley's 2014 testimony regarding HB 386 note:

In the overall 3,000 decisions he has participated in, no retroactive decisions have occurred. He reported that of the 32 [Supreme Court] appeals since 1996, only two partial reversals have occurred. In both instances the CFEC avoided a retroactive application since the commission was careful to limit adjudications to the facts affecting the specific individuals.⁴⁶

The assistant attorney generals who work with the Commission on a regular basis report that "they are wonderful, ideal clients," "CFEC is the single best client they have ever had in over 25 years of government law work" and "CFEC gives far more insight than most clients."

A 2003 Performance Review perhaps sums it up best:

The commission's success in regulating entry into Alaska commercial fisheries, in adjudicating claims arising from its regulatory decisions, and in defending its decisions in court, provide the Alaska commercial fishing industry with a source of regulatory stability in a time that otherwise is characterized by serious economic distress.⁴⁷

Simply put, the Commission does an outstanding job in carefully crafting its adjudication decisions and has thus avoided serious judicial issues.

⁴⁵ Bruce Twomley, CFEC Chair, memo to author, October 13, 2014, Subject: The Kuzmin Cases and the critical state of CFEC Adjudications on Applications for Entry Permits in the originally limited 68 fisheries.

⁴⁶ House Special Committee on Fisheries, April 17, 2014, minutes. House Bill No. 386, "An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings" at 8.

⁴⁷ Performance Review Pursuant to Administrative Order 202, Alaska Department of Fish and Game, January 14, 2003. The review was performed at a time when Alaska's commercial fishing industry was suffering from failed runs and low market prices beginning in the 1990's; see CFEC annual reports.

Finding #3: The limited entry program is very complex and has been modified by the courts but CFEC staff work hard to keep it simple.

Alaska's [limited entry] program has always been controversial. The allocation system is complicated, expensive, and requires years to complete. While the program has survived all major legal challenges, courts have modified the program.⁴⁸

Chair Twomley has often referred to an Alaska Supreme Court justice who called the limited entry law "arcane."⁴⁹

One example of court modification is:

[t]he[Limited Entry] Act does not provide guidelines for setting the maximum number for non-distressed fisheries, other than stating that the number should further the legislative purpose. [Guidelines for determining maximum numbers in distressed fisheries are provided in AS 16.43.230.]

We now expressly hold that for a non-distressed fishery CFEC must set the maximum number at a level that is no lower than the highest number of units of gear fished in any one year of the four years prior to the limitation of the particular fishery.⁵⁰

The Limited Entry Act has not been changed to reflect this program modification by the court.

While it's a very complicated system, the goal has always been to keep it simple. The Licensing Section staff are the front line who deal with permit and vessel license renewals and processing emergency and permanent transfers. The staff make every effort to "keep the fishermen fishing." If they can't fish, they lose money.

Finding #4: Overall, staff is good, dedicated, with low turnover and longevity.

There was high praise for most of the CFEC staff from interviewees. Almost half of the staff have been employed at CFEC for 10 years or longer. Another 25% of the staff have at least a 5-year tenure. Staff were described as "extremely dedicated," "seasoned, great wealth of knowledge," "conscientious and trustworthy," "lots of experience," "cheerful and energetic," and "having a real esprit de corps."

⁴⁸ Twomley, Bruce. "License Limitation in Alaska's Commercial Fisheries." Presented at the *Joining the Northern Commons: Lessons for the World, Lessons from the World* conference of the International Society of Study of the Commons, Anchorage, Alaska, August 17-21, 2003 at 2, 3. See Appendix A.

⁴⁹ See for example, Commercial Fisheries Entry Commission, 2013. *The Alaska Commercial Fisheries Entry Commission's Explanation of the Time Required to Complete Adjudications*, at 3, footnote #12.

⁵⁰ *Simpson v. State*, CFEC, 101 P.3d 605 (Alaska 2004) at 61, without footnotes.

Finding #5: Representatives of Alaska’s fishing industry have high praise for the current commissioners.

Due to the limited time and scope of the project, seeking comments from a wide range of representatives of Alaska’s commercial fishing industry was not feasible. However, former Commissioner Cora Campbell did brief the United Fishermen of Alaska (UFA) board on this review and informal comments regarding CFEC were provided through UFA’s executive director, Julianne Curry.

Praise from multiple UFA board members for Commissioners Twomley and Brown was high and “the fishing industry appreciates the work of both commissioners.” Both Executive Director Curry and UFA President Jerry McCune enjoy working with both commissioners. UFA members feel comfortable knowing they have two commissioners that “have our back.”⁵¹

Adjudications Backlog

One of the most important statutory duties of CFEC is to determine who will receive limited entry permits. The commissioners review decisions on permit applications that are issued by the agency’s hearing officers, and they also address cases that come to the commissioners on appeal from individuals who are dissatisfied with a hearing officer’s decision. The commissioners also review permanent and emergency transfer cases.

Finding #6: The length of time it takes for the Commission to adjudicate cases has been a serious issue for a long time.

As of this writing, CFEC’s current backlog of permit applications is 28 cases (22 before the commissioners including one on remand from the Superior Court and 6 before a CFEC hearing officer). Nearly all the current cases have been in adjudication at CFEC for 15 or more years. See Table 7.

Table 8 displays the number of commissioner adjudication decisions and CFEC Adjudications Section (hearing officer and paralegal) decisions issued annually from 1996 through 2013; permit transfers include both emergency and permanent transfers.

In each of the last two years, the commissioners adjudicated only three permit applications, which is an unprecedented low number and five in 2011. From 2006 through 2013, the commissioners averaged 23 permanent and emergency transfer cases per year. Among all adjudications, on average these are the most simple and typically consist of an administrative review of a hearing officer’s decision.

⁵¹ Julianne Curry, Executive Director, United Fishermen of Alaska, email to author, October 17, 2014, Subject: CFEC Review, UFA informal comments

Table 7 - Number of Permit Applications in Hearing, Administrative Review, and Judicial Appeal Status as of 1/30/2015

CFEC Fishery Code	Fishery	Application Deadline Year	In Hearing	Under Admin Review	Under Judicial Appeal
C 61A	SABLEFISH, LONGLINE, NORTHERN SOUTHEAST	1987	0	3	0
C 61C	SABLEFISH, LONGLINE, SOUTHERN SOUTHEAST	1987	0	1	1
G 01A	HERRING ROE, PURSE SEINE, SOUTHEAST	1977	0	1	0
G 01K	HERRING ROE, PURSE SEINE, KODIAK	1983	1	0	0
K 19A	RED/BLUE KING CRAB, POT GEAR, SOUTHEAST	1987	0	4	0
K 39A	BROWN KING CRAB, POT GEAR, SOUTHEAST	1987	0	1	0
P 17A	SHRIMP, BEAM TRAWL, SOUTHEAST	1999	0	6	0
S 04Z	SALMON, GILLNET, NORTON SOUND	1976	0	1	0
S 05B	SALMON, HAND TROLL, STATEWIDE	1981	5	0	0
T 19A	TANNER CRAB, POT GEAR, SOUTHEAST	1987	0	3	0
TB91K	TANNER BAIRDI CRAB, POT GEAR, KODIAK	2003	0	1	0
Total			6	21	1

Source: CFEC Adjudications Section

In 2006, the Supreme Court forcefully reprimanded CFEC when the Court issued its decision in *Brandal v. CFEC*. Mr. Brandal’s claim for a limited entry permit began at CFEC in 1978, 22 years prior. The Court stated that “CFEC’s handling of this case was inexcusable” and that the delay was “unconscionable.” The Court admonished CFEC for proceeding at a “glacial pace,” and stated that CFEC’s reasons for the delay were “wholly unpersuasive.”⁵² More recently, just this last year, the Commission was chastised again for similar reasons by the Superior Court in *Fitzjarrald v. CFEC*:

The case threatens to become a fisheries version of *Jarndyce v. Jarndyce*, Dickens’ version of endless litigation. (Charles Dickens, *Bleak House* 13 (1853)) Judges and Commission members have retired, the original hearing officer has died, and still this court is trying to glean information from a sparse record of a twenty year old hearing.⁵³

⁵² *Brandal v. State, CFEC*, 128 P.3d 736, 739, 740 (Alaska 2006).

⁵³ *Mark A. Fitzjarrald v. State of Alaska, Commercial Fisheries Entry Commission*. Case No. 1JU-10-459 Cl. Decision on Appeal, 2013at 1,2. The court remanded the case back to CFEC for a new hearing and decision. The hearing was held October 23, 2014. The hearing officer’s January 16, 2015 decision was that Mr. Fitzjarrald qualified for a permit. The hearing officer’s decision was adopted by the Commission later in January.

Table 8 – Commissioner Adjudication Decisions and CFEC Adjudications Section Decisions, 1996 - 2013

Commissioner Adjudication Decisions					
Year	Permit Applications	Permit Transfers	Enforcement	Misc	Commissioners
1996	51	43		16	BT (c), DA, MJ
1997	64	44		11	BT (c), MJ, MM
1998	105	42	1	10	BT (c), MJ, MM
1999	80	41		6	BT (c), MJ, MM
2000	70	25	3	5	BT (c), MJ, MM
2001	71	27	1	9	BT (c), MJ, MM
2002	75	16	10	3	BT (c), MJ, MM
2003	43	18	16	4	BT (c), MM, FH
2004	58	9	include w/ misc	23	BT (c), MM, FH
2005	72	11	include w/ misc	3	FH (c), BT, PF
2006	88	20	include w/ misc	10	FH (c), BT, PF
2007	51	27		2	FH (c), BT, PF
2008	39	12		1	FH (c), BT, PF
2009	33	27	6	2	FH (c), BT, PF
2010	14	31		1	BT (c), PF, FH (Sept)
2011	5	24		1	BT (c), PF, BB
2012	3	9		9	BT (c), PF, BB
2013	3	13		1	BT (c), BB

*Figures include adjudication decisions for both Administrative reviews and Administrative appeals.
Commissioners; (c) indicates Chairman:
BB = Ben Brown; BT = Bruce Twomley; DA = Dale Anderson; FH = Frank Homan; PF: Peter Froelich
MJ = Marlene Johnson; MM = Mary McDowell*

CFEC Adjudications Section (Hearing Officer and Paralegal) Decisions					
Year	Permit Applications	Permit Transfers	Enforcement	Misc	Staff
1996	58	43		22	5 HO, 2 PL
1997	74	60	2	11	5 HO, 2 PL
1998	108	38	1	6	5 HO, 2 PL
1999	69	33		6	5 HO, 2 PL
2000	47	27	3	7	5 HO, 2 PL
2001	64	25		8	4 HO, 2 PL
2002	53	16	12	1	4 HO, 2 PL
2003	48	19	14	4	4 HO, 2 PL
2004	41	11	include w/ misc	24	4 HO, 2 PL
2005	48	15	include w/ misc	3	3 HO, 2 PL
2006	23	18		6	3 HO, 2 PL
2007	27	16		2	2 HO, 2 PL
2008	10	13		2	2 HO, 2 PL
2009	12	30	6	2	1 HO, 1 PL
2010	7	30		1	1 HO, 1 PL
2011	4	26		1	1 HO (pt), 1 PL
2012	2	21		5	1 HO (pt), 1 PL
2013	1	34		6	1 HO (pt), 1 PL

Staff: HO = Hearing Officer; PL = Paralegal; (pt) = part-time

Sources: CFEC annual reports and Jill Wood, Paralegal, CFEC, personal communication.

CFEC responded in 2006 to the court's criticism in *Brandal* with "The Alaska Commercial Fisheries Entry Commission's Explanation of the Time Required to Complete Adjudications," (Explanation Statement); see Appendix F. The Commission has updated the Explanation Statement several times from the 2003 original. The Commission attaches it to its decisions, and sends versions of it to judges and members of the Alaska Legislature.⁵⁴

Much of the documentation in the Explanation Statement was valid when it was updated in 2006. CFEC's case load in the 1980s through the early 2000s did in fact amount to hundreds of cases; in 1990 the backlog of cases peaked at nearly 900. And for much of that period, the commissioners diligently dispensed with permit cases at a rate of 75 to 100 per year.

The commissioners made significant progress in reducing the case backlog while consumed with other important tasks, such as limiting new fisheries, developing optimum numbers, and analyzing and debating deep and far-reaching statutory and regulatory issues on topics such as salmon fishery restructuring, limited entry permit buyback, fishery moratoriums, vessel-based limited entry, and potential individual fishing quota (IFQ) programs. At the time, CFEC was also engaged in complex legal issues in *Carlson v. CFEC* and *Simpson v. CFEC*.⁵⁵ Topping off this workload, were the challenges from the Internal Revenue Service attempting to seize limited entry permits to pay for an individual's tax liens.

However, now - nine years later - the reasons for delay are no longer valid. The Commissioners now issue only a handful of permit application decisions each year - see Table 8. The Commission normally strives to complete administrative reviews of emergency and permanent transfers in the same calendar year when the transfers take place. However, recently the Commission allowed a backlog of reviews to accumulate, and did not complete their final review of cases from 2012 and 2013 until late in calendar year 2014.⁵⁶ This seriously reduced level of production came at a time when the Commission and their immediate support staff consisted of up to five attorneys,⁵⁷ an operations manager, an administrative clerk, and two executive secretaries (one temporary).

Equally important is that the Commission's diminished performance occurs when the agency is only minimally involved in other tasks. The Commission has neither limited a commercial fishery in 10 years nor developed any optimum numbers of permits for limited fisheries (another important statutory duty). Unlike the past, there have not been any time-consuming or meaningful regulatory or statutory issues in many years, other than the unsuccessful

⁵⁴ Bruce Twomley, CFEC Chair, memo to author, October 13, 2014, Subject: CFEC History.

⁵⁵ For *Carlson*, see previous section "Carlson Case" and for *Simpson*, see Optimum Number Section below.

⁵⁶ Jill Wood, Paralegal, CFEC,, personal communication.

⁵⁷ In 2011-2012, all three commissioners, a temporary hearing officer, and law specialist were attorneys. At present, two commissioners, a temporary hearing officer, and temporary law specialist are attorneys.

attempt in 2013 at extending the sunset date for the vessel-based limited entry systems for the weathervane scallop and Bering Sea hair crab fisheries.⁵⁸

The Explanation Statement discusses additional obstacles including the loss of the agency's executive director, but that layoff occurred over three decades ago in 1983; a mid-year budget cut and a reduction in employee hours at CFEC, but that event happened in 1986.

The number of staff at CFEC has indeed been reduced over time, but this does not necessarily represent a budget-cutting sacrifice. In fact, the reductions appear to be a common-sense response to a dramatic drop in the agency's workload. In 1989, CFEC was staffed with three commissioners, five hearing officers, four paralegals, and six research staff. This level of staffing would be unnecessary today given the agency's present workload.

Regarding the remaining cases under appeal at the commissioner level, interviewees disagreed as to whether the cases remaining are the difficult ones or are cases that will not necessarily invalidate prior decisions but are tough/complicated judgment calls in gray areas.

The current state of affairs at CFEC raises questions about how the commissioners are carrying out their assigned duties, and how long it will take them to finish their job.

Recommendation #1: Complete the backlog of cases in appeal at the administrative hearing level by June 30, 2015. Type: Administrative

Five of the six permit applications at the administrative hearing level are for the salmon hand troll statewide limited fishery (Table 7). The last known address of all permit applicants indicates all are based in Southeast Alaska. Only one of the five permit applicants has fished each year, including 2014, under an interim entry permit, since the fishery was limited in the early 1980's. The other four individuals haven't been issued an interim entry permit for this fishery since the year they last fished ranging between 1985 and 2006.⁵⁹ Hearings were held on three of the permit applications in the 1980s but no hearing officer's decisions have been issued. The other two permit applicants' hearing requests were granted in the 1980's but hearings haven't been conducted.

The sixth permit application at the administrative hearing level is for the herring roe, purse seine, Kodiak limited fishery. The permit applicant last fished this fishery under an interim entry permit in 2000. A hearing was held on the application in 1984 but the hearing officer's decision hasn't been issued.

⁵⁸ See House Bill 156, Senate Bill 54, 28th Legislature. Free Conference Committee Substitute for House Bill 71 passed in 2014 extending the sunset only of the vessel-based limited entry Bering Sea hair crab fishery to December 30, 2018. The vessel-based limited entry system for the weathervane scallop fishery sunsetted December 30, 2013.

⁵⁹ The Southeast Alaska salmon hand troll fishery targets Chinook and coho salmon, and has declined in participation over the decades primarily due to gear limitations and inefficiencies, and the significant increase in fuel costs.

There appears to be no obvious obstacle in issuing decisions by June 30, 2015, regarding the seven remaining permit applications at the administrative hearing level.

Recommendation #2: Complete the backlog of cases in appeal at the administrative review level by June 30, 2016. Type: Administrative

There are 22 permit applications before the commissioners at the administrative review level, including one on remand from the Superior Court (Table 7). Chair Twomley has stated publicly and in writing that all adjudications should be completed "by the end of 2016."⁶⁰ Given the staff resources available and current workload, the June 30, 2016, completion date is achievable.

Once the adjudications are complete, it is possible that some may be appealed in court. If so, there is always the possibility that a court may remand a case back to CFEC for further action.

Fees, Revenue and Budget

The 2005 fee increase was a watershed event for the Commission in terms of revenue. Beginning in the 1990's, revenue was in a general decline from a high of \$6.1 million in FY1992 to a low of \$3.5 million in FY2005. CFEC struggled in the mid-2000's to have sufficient revenues to cover operational expenses and Fishermen's Fund transfer obligations and predicted to be in a deficit situation in FY2006, without passage of SB93. The decline in revenue was precipitated by factors including the previous fee structure change in 2001 as a result of the *Carlson* case, the decline in value in certain fisheries resulting in lower values of entry and interim use permits, and the consolidation of various fisheries.⁶¹

After passage of the fee increase legislation and establishment of the fee regulations, initially there were concerns expressed about the hike in fees but they subsided over time. However, every year there are complaints after the permit fees are reset per the fee formula calculations based on the most current data. Since the passage of SB 93 in 2005, there have been no changes to the permit fee statute or regulation (where the fee formula is established), or the vessel license fee structure (AS 16.05.530).

⁶⁰ House Special Committee on Fisheries, March 27, 2014, minutes. Confirmation hearing on Bruce Twomley for reappointment to Commercial Fisheries Development Commission at 2. Bruce Twomley, CFEC Chair, memo to author, October 13, 2014, Subject: The Kuzmin Cases and the critical state of CFEC Adjudications on Applications for Entry Permits in the originally limited 68 fisheries.

⁶¹ Senate Finance Committee, March 14, 2005 minutes. Senate Bill No. 93, "An Act relating to commercial fishing permit and vessel license fees; and providing for an effective date," at 4.

Finding #7: Since the 2005 fee increase and at times previously, CFEC has collected excess revenue above and beyond its annual operational expenses and Fishermen's Fund obligations.

In the 2001 fee restructuring via HB 194, AS 16.43.160 was amended by adding new subsection (e): "For an entry permit or an interim-use permit issued for calendar year 2002 and following years, the annual base fee may not be less than \$10 or more than \$300. *The annual base fee must reasonably reflect the different rates of economic return for different fisheries...*" (Emphasis added.) This section was subsequently repealed and reenacted in 2005 through SB 93 to the effect of restating the range of the annual base fee from between \$30 and \$3000, but retained the language: "The annual base fee must reasonably reflect the different rates of economic return for different fisheries." In part, this language was used as the rationale the previous limited base range fee from 2001 wasn't meeting the intent of the statute.⁶²

During a public hearing on SB93 in 2005, Frank Homan, then CFEC chair stated: "the Commission would have a surplus of approximately \$2 million for the first couple years after this bill was implemented; however, the downward trend would resume."⁶³ The fiscal note associated with the final bill also projected an eventual decline in revenue in outlying years. As recent history has shown, these projections were incorrect. Collectively, Tables 1-5 presented previously provide a comprehensive picture of the excess revenue collected and appropriated each year, beginning in FY2006.

Interestingly, at the March 14, 2005, Senate Finance Committee hearing on the SB 93 testimony, Chair Homan provided glimpses of previous excess revenue years. Excerpts from the hearing minutes follow:

Frank Homan, Limited Entry Commission testified that as recently as 1998, the difference between the obligations and revenue was approximately \$2 million, with the balance deposited to the State general fund.

Mr. Homan stated that in the year 2000 the legislature authorized the Department of Fish and Game to use excess revenues of the Commission for fishery related projects. The authorization amounts have been higher than the actual excess revenues and therefore the Department has never received the entire authorized amount. He spoke to the gap between the total CFEC obligation including the appropriation to the Division of Commercial Fisheries and the base obligations of the CFEC of its operating budget and fees to the Fishermen's Fund.

⁶² *Id.* at 4.

⁶³ *Id.* at 6.

SENATOR GARY STEVENS ... noted the significant excess revenue that would be generated in the first few years after the enactment of this legislation, thus over funding the Commission. He suggested fees could be increased gradually in phases as needed, which would be more equitable.

Mr. Homan responded that the Commission has historically generated \$2 to \$3 million more than the budgetary needs. The Commission's budget needs are "fairly level." The Legislature has appropriated the additional revenue to fund other commercial fishery projects. This option would remain. The Commission is only authorized to expend the amount appropriated by the Legislature.⁶⁴

Finding #8: The use of the excess CFEC revenue since 2008 has varied between the operating budget of Division of Commercial Fisheries and fisheries-related capital projects.

Table 5 documents the use of CFEC receipts outside of its annual operating budget and Fishermen's Fund obligations. Table 6 details the use of CFEC receipts for capital projects. From FY2007 through FY2011, the governor's operating budget request for the Division of Commercial Fisheries included CFEC receipts. The legislature approved the use of CFEC receipts for the annual Division of Commercial Fisheries operating budget requests with some modification through FY2010 but not in FY2011.⁶⁵

In the FY2010 Governor's capital budget request, one project, Permit Card Equipment for eLandings Program, for 138.0 was requested and approved, funded by CFEC receipts. A number of fisheries related capital projects proposed to be funded with general funds were included in the Governor's FY2011 capital budget request. The legislature switched funding source to CFEC receipts in the enacted FY2011 capital budget. Excess CFEC receipts were not utilized in the FY2012 operating or capital budgets.⁶⁶ Excess CFEC receipts were not requested or appropriated in the FY2013-2015 operating budgets.

In the FY2013 capital budget, the governor proposed and received CFEC receipts for three fisheries related capital projects. The legislature added four named recipient grants and one additional project to the ADF&G capital budget, all fisheries related (see Table 6: Ch. 17 SLA 2012 projects). The Governor's FY2014 and FY2015 capital budget request didn't include any projects funded with CFEC receipts; however the legislature added fisheries related grants to named recipients projects to the approved budgets (see Table 6: Ch. 16 SLA 2013 projects and Ch. 18 SLA 2014 projects). The Governor's FY2015 capital budget request included \$10.0

⁶⁴ *Id.* at 5-6, 8.

⁶⁵ Alaska Budget System.

⁶⁶ *Id.*

million in GF for the Chinook Salmon Research Initiative project, but the amount was reduced to \$7.5 million, with \$2.5 million switched to CFEC receipts in the enacted budget.⁶⁷

From FY2007 to FY2015, more than \$19 million in CFEC receipts has been appropriated through capital budgets to fisheries related grants to named recipients and capital projects.⁶⁸

Recommendation #3: Replace general funds in the Division of Commercial Fisheries with excess CFEC receipts. Type: Administrative/Legislative.

Given the serious budget situation the State is in, a simple solution for ADF&G is to replace GF with excess CFEC receipts in the Division of Commercial Fisheries. This funding source switch could help offset budget reductions to commercial fisheries management.

The mission of the Division of Commercial Fisheries is to manage subsistence, commercial and personal use fisheries in the interest of the economy and general well-being of the citizens of the state, consistent with the sustained yield principle, and subject to allocations through public regulatory processes.

The mission of CFEC is to control entry into Alaska's commercial fisheries to promote conservation of Alaska's fishery resources and economic health of commercial fishing.⁶⁹

There is a clear, direct relationship between the operations of the Division of Commercial Fisheries and CFEC. Such a funding source change would result in a cost savings to the State of Alaska. There is precedent for this recommendation as CFEC receipts were appropriated to the Division of Commercial Fisheries operating budget from FY2007 to FY2010.

Additionally, there was concern expressed by some interviewees and UFA regarding how decisions are made regarding the funding of capital projects. The opinion was expressed that excess CFEC receipts are being used to fund particular projects that are not necessarily supported by the fishing industry from which the permit fees are collected. Appropriating excess CFEC receipts to the operating budget of the Division of Commercial Fisheries would eliminate any debate on the worthiness of a capital project funded with CFEC receipts.

Recommendation #4: Evaluate the current permit fee structure and formula; ensure that low value permit fees are reasonable and consider raising the current cap of \$3,000.

Interviewees expressed some concern that permittees of the lowest value fisheries were being overcharged and that permit holders for the highest value fisheries were paying "fire sale prices." The last time the permit fee structure and formula were revised was 2005. Per AS 16.43.160(c)

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

“...[t]he annual base fee must reasonably reflect the different rates of economic return for different fisheries.” An evaluation of the current permit fee structure and formula is in order.

Recommendation #5: Delete the federal receipts authorization of \$114.4 in CFEC’s operating budget. Type: Administrative/Legislative.

CFEC has not received any federal receipts since FY2001, yet the authorization to receive \$114.4 in federal receipts remains in the operating budget. This authorization should be deleted.⁷⁰

Optimum Number

The Executive Summary of the Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report, 2004 (Appendix G) provides a detailed explanation of the optimum number study process and includes the following introduction:

An optimum number determination is the second stage of limited entry under Alaska law. Alaska’s limited entry statute (AS 16.43) was passed in 1973. The law provides for a multi-stage limited entry process.

In the first stage, a fishery is limited by adopting a “maximum number” of permits and issuing those permits to the highest ranking applicants under a hardship ranking (“point”) system. By law and court decision, the maximum number for a fishery should be no less than the highest participation level in any one of the four years immediately prior to the qualification date.

In the second stage of limited entry, the law directs the Commercial Fisheries Entry Commission (commission or CFEC) to determine an “optimum number” for the fishery. The optimum number should represent a reasonable balance of three general standards specified in the law (see AS 16.43.290). The three standards include economic, resource conservation, and management concerns...

An optimum number for a fishery could be greater or less than the maximum number. If the optimum number is greater than the number of permits outstanding in the fishery, the commission is required to put more permits into the fishery. If the optimum number is less than the number of permits outstanding in the fishery, then the commission may develop a fisherman-funded buyback program for the purpose of reducing the number of permits in the fishery to the optimum number.

⁷⁰ *Id.*

Any optimum number must be consistent with *Johns v. State*, 758 P.2d 1256, 1266 (Alaska 1988) [citation and footnote omitted], in which our Alaska Supreme Court declared:

[T]here 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 distress to fishermen and resource conservation. 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 the permit holders and permits values, while exceeding the constitutional purposes of limited entry.

In 2002, the Legislature passed House Bill (HB 288) amending the Limited Entry Act by defining optimum number as an optimum range of numbers and revising the Act's buy-back provisions. (The provisions of the former law regarding establishment and administration of a buy-back program were deemed to be unconstitutional in a 1985 Attorney General's Opinion.)

Finding #9: Though the Alaska Limited Entry Act requires the Commission to establish optimum numbers of entry permits for each limited fishery, the CFEC has determined optimum numbers for only three of the 68 originally limited fisheries.

It is important to review the statute requiring the establishment of an optimum number for a limited fishery:

Sec. 16.43.290. Optimum number of entry permits. Following the issuance of entry permits under AS 16.43.270, *the commission shall establish the optimum number of entry permits for each fishery* [emphasis added] based upon a reasonable balance of the following general standards:

(1) the number of entry permits 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 number of entry permits necessary to harvest the allowable commercial take of the fishery resource during all years in an orderly, efficient manner, and consistent with sound fishery management techniques;

(3) the number of entry permits sufficient to avoid serious economic hardship to those currently engaged in the fishery, considering other economic opportunities reasonably available to them.

In the 1982 *State v. Alex* Alaska Supreme Court decision, the court found that regional aquaculture mandatory assessments on the sale of salmon violated the state constitution's

prohibition of dedicated funds. As a result, in 1985 CFEC requested an opinion from the Attorney General regarding the dedicated fund provision in the Commission's buy-back program. (At that time, AS 16.43.310 required the CFEC to establish a buy-back program when the optimum number of entry permits is less than the number of entry permits outstanding in a fishery.) The opinion found that the provisions of AS 16.43.310 and AS 16.43.230, which directed CFEC to establish and administer the buy-back program, were indeed unconstitutional violating the prohibition against dedicated funds.

A number of interviewees cited the 1985 AG's opinion as a reason why optimum number studies weren't conducted. However, in 2002, the Legislature passed House Bill (HB) 288 amending the Limited Entry Act by defining optimum number as an optimum range of numbers and revising the Act's buy-back provisions to align with the state's constitution.

In the deliberation of the 1988 *John v. State* case (cited above) at the trial court level, the Commission argued that "it is necessary to wait until final adjudications of initial permit applications before embarking on the optimum number process." *Johns*, 758 P.2d at 1266. The trial court found:

...that CFEC had discretion as to whether to wait until final adjudication of all applications was complete. The court noted that, under some circumstances, it would be unreasonable for the CFEC to wait until final adjudication was complete before embarking on the optimum number process, but, under the circumstances of this case, it was reasonable.

However, the Alaska Supreme Court, as explained in the above quote from Johns decision, articulated the mechanism by which the Limited Entry Act was constitutional, namely the optimum number designation. The optimum number would allow the Commission to add more permits into a fishery if the courts deemed a fishery "too exclusive." The exclusiveness of a fishery is constitutional if the level of exclusivity is for 1) resource conservation; or 2) to prevent economic distress in a fishery. The Alaska Supreme court went on to state, "Because 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." [emphasis added] *Johns*, 758 P.2d at 1266. The court remanded the case to the superior court with instructions to order the CFEC to begin the optimum number process.

As a result of the *Johns* decision, the first optimum number study was undertaken by the Commission's Research Section and in 1993, the Commission adopted an optimum number of 46 for the Southeastern Alaska roe herring purse seine fishery. The optimum number study reportedly took the equivalent of 2 ½ staff working full-time two years to complete.

The second optimum number was established in 2001 in a very different manner:

In response to petitions by fishers requesting an optimum number determination for the Northern Southeast inside sablefish longline fishery, the

Commercial Fisheries Entry Commission (CFEC) researched and wrote a preliminary rationale and proposed a regulation for an optimum number of 73 limited entry permits for the fishery.

Following the public comment period, the commission analyzed the record. Although some public comment on the proposal advocated a larger optimum number, public comment in general tended to reinforce the preliminary rationale and added some specific economic information in support of the proposal.

The commission concluded 73 limited entry permits represented a reasonable balance of the various factors to be considered in an optimum number determination. Therefore, the commission adopted the regulation as proposed.

This rationale includes a summary and discussion of the public comment and explains the commission's reasons for adopting the optimum number as proposed.⁷¹

In an October 13, 2014, memo, Commission Chair Bruce Twomley explained:

...[Alaska Department of Fish and Game] commissioner Collingsworth and later Tori O'Connell [fishery manager] vigorously argued that conservation required smaller numbers [of permits below the maximum number of 73 established by the commission] for the Chatham Strait Black Cod fishery [Northern Southeast inside sablefish longline fishery]. (And the almost yearly reduction in quota for the fishery that followed has demonstrated them to have been right.) I used their testimony as the legal basis to write a rationale for the optimum number ...⁷²

In *Simpson v. State, CFEC*, 101 P.3d 606 (Alaska 2004), the Alaska Supreme Court upheld CFEC's adoption of an optimum number of permits for the Northern Southeast Inside sablefish longline fishery.

The third and last optimum number study conducted was the Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report. Similar in methodology and work effort to the 1993 study, the report took the equivalent of 2 ½ staff two years to complete. This optimum number study established an optimum number range of 800-1200 Bristol Bay salmon drift gillnet permits, taking advantage of the 2002 statutory change that allowed an optimum number to be an optimum range of numbers. In 2005, the Commission adopted an optimum number of 900-1400 for this limited fishery.

⁷¹ Commercial Fisheries Entry Commission, 2001. *Commercial Fisheries Entry Commission Rationale - Northern Southeast Inside Sablefish Longline Fishery Optimum Number (20 AAC 05.1145)*.

⁷² Bruce Twomley, CFEC Chair, memo to author, October 13, 2014, Subject: Optimum Numbers.

Hypothetically, once an optimum number study is completed and an optimum number range is established by the Commission, there can be substantial changes to the fishery if the optimum number range is below or above the number of permits outstanding in the limited fishery. If the range falls below the number of permits, the 2002 statutory changes to the Limited Entry Act provide for a voluntary permit buy-back program established and administered by the Commission (AS 16.43.310-320). Or:

[U]nder AS 16.43.150(i) any permit holder can relinquish his permit back to the state. Because fishermen have this power, anyone could pay a permit holder to relinquish the individual's entry permit. In fact this is the statutory tool recently employed by the Southeast Revitalization Association to retire 35 permits from the Southeast salmon purse seine fishery—so far the only buy-back program undertaken in Alaska.⁷³

Further:

If the optimum number is greater than the number of permits outstanding, the commission is directed to issue new permits at fair market value.[AS 16.43.330] There is also a provision for revising the optimum number of permits in response to established long-term changes in a fishery. [AS 16.43.300]⁷⁴

Over the years both before and after the *Johns* case, the Research Section would conduct economic surveys as a precursor to optimum number studies. In addition, optimum number study requests from limited entry fishers do occur and in fact is what prompted the undertaking of the Bristol Bay Salmon Drift Gillnet Optimum Number Report.

A comprehensive history of optimum numbers interest and related actions by the Commission and legislature from 1973 to 2002 is found in the introduction of the Bristol Bay Optimum Number Report.

Clearly, initiating an optimum number study is a very significant event with significant changes to the fishery if the optimum number range is established either above or below the number of permits outstanding. There have been no new fishery limitations or optimum number studies since 2004. Over the last ten years, the Commission's workload has been focused on reducing the extensive adjudications backlog discussed elsewhere in this review. It is apparent that the Commission has resisted undertaking optimum number studies even though statutorily required to do so. Neither the former or current Research Section Project Leader was ever directed by the Commission to do an optimum number study after completion of the Bristol Bay Optimum Number Report.

⁷³ Bruce Twomley, CFEC Chair, to Cook Inlet Salmon Task Force, October 7, 2008, Subject: Report to the Cook Inlet Salmon Task Force on the Buy-Back Program under the Alaska Limited Entry Act at 7.

⁷⁴ Schelle, K., K.Iverson, N. Free-Sloan and S. Carlson, 2004. *Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report*. CFEC Rpt 04-3N. Alaska Commercial Fisheries Entry Commission at 2.

Finding #10: The magnitude of effort and expense necessary to conduct comprehensive optimum number studies that meet the criteria in AS 16.43.290 renders the prospect of completing meaningful optimum numbers in a timely manner unrealistic.

The Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report describes in great detail the effort undertaken to determine the optimum number. Commission Chair Twomley states:

“A full optimum number study ... is intrusive ([the] research [section] has to review individual fishermen’s tax returns for their net earnings), develop [economic] models, and the process can take 2 or more years.”⁷⁵

One interviewee explained that the Southeastern Alaska roe herring purse seine and Bristol Bay Salmon Drift Gillnet optimum number studies by design and necessity were large in scope and complex; in part to avoid a court challenge that the optimum number was arbitrary and capricious.

The Commission’s Research Section conducts optimum number studies that serve as the basis for the Commission’s establishment of an optimum number for a limited fishery. Assuming a moderate size limited fishery, the Research Section’s mix of staff that would work on such an optimum number study, (stated with annual salary and benefit costs in current year dollars) would be: Research and Planning Project Leader: \$158.9; Economist: \$128.6; Fisheries Analyst: \$128.6; Research Analyst: \$100.0; Total: \$516.1 or an average of \$129.0 per full-time equivalent (FTE) position. Assuming that the work load of 1 ½ FTE of the 2 ½ FTE needed to conduct an optimum number study could be absorbed by existing staff with a reprioritization of existing workload, 1 FTE would need to be added at an estimated additional cost of \$129.0 per year or \$258.0 for a study that would take a minimum of two years.⁷⁶

In today’s dollars, if done consecutively, the cost to complete optimum number studies for the remaining 65 limited fisheries would be \$16.8 million above the current staffing and funding levels over the course of 130 years.

Further, the methodology established for the optimum number studies completed may not be applicable in all limited fisheries. In a 2008 report to the Cook Inlet Salmon Task Force on the Buy-Back Program under the Alaska Limited Entry Act (Appendix H), Chair Twomley further described the practical challenges of conducting optimum number studies on different types of Salmon fisheries and where ongoing regulatory changes in fishing opportunities by the Board of Fisheries occur:

...[T]he commission has never performed an optimum number study for a set net fishery, and doing so could be problematic. The commission’s research staff warns of difficulties with data in a set net fishery, where landings

⁷⁵ Bruce Twomley, CFEC Chair, memo to author, October 13, 2014, Subject: Optimum Numbers.

⁷⁶ Kurt Iverson, Research Section Project Leader, CFEC, personal communication.

attributable to a number of entry permits may be recorded under only a single permit.

...In previous optimum number studies, variables like price and availability of the resource generally change according to cycles within a range that can be determined, while the regulatory treatment remains fairly constant. In contrast, the regulatory treatment [reduction of fishing opportunities by the Board of Fisheries] of these Cook Inlet [drift net and set net] fisheries present a moving target of a different nature. Projecting the effects of this variable into the future would be very difficult and could undermine the utility of an optimum number study.⁷⁷

Recommendation #6: Revise AS 16.43.290, Optimum number of entry permits, and AS 16.43.300, Revisions of optimum number of entry permits, to a formula. Type: Legislative.

While establishment of an optimum number for each fishery was clearly a critical element in the original design of the Limited Entry Act, in practice it hasn't turned out that way. In making every effort to fully meet the intent of the statute, an optimum number study is a herculean effort using the current methodology and is too slow and costly. From year to year, a fishery is a moving target in terms of availability of the resource, regulatory constraints, economics, and weather, making it difficult to predict the future of the fishery. For a variety of reasons, optimum numbers for only three of 68 originally limited fisheries have been established.

None of the three optimum numbers has needed revision under the terms of AS 16.43.300. However, if there was "long-term change to the biological condition of the fishery" and/or "in the market conditions affecting the fishery," per AS 16.43.300, the optimum number revision would have to meet the standards set in AS 16.43.290, generating another round of study likely using the current methodology.

In *Johns v. CFEC*, the Alaska Supreme Court clearly recognized the importance of establishing the optimum number for each limited fishery in order to maintain the:

...constitutional purposes of limited entry, namely, prevention of distress to fishermen and resource conservation. 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

⁷⁷ Bruce Twomley, CFEC Chair, to Cook Inlet Salmon Task Force, October 7, 2008, Subject: Report to the Cook Inlet Salmon Task Force on the Buy-Back Program under the Alaska Limited Entry Act at 6.

*fishery to ensure the wealth of the permit holders and permits values, while exceeding the constitutional purposes of limited entry.*⁷⁸

The methodology for establishment of an optimum number needs to be simplified. For this to occur, the optimum number provisions in statutes needs to be revised to a formulaic approach. This will take significant effort by economists, biologists, and related experts, but the goal is to streamline the methodology in determining the optimum number of a limited fishery.

Staffing and Administration

CFEC's authorized positions for the current fiscal year are 28 PFT and 3 PPT. From FY2004 through FY2012 there were 29 PFT and 4 PPT positions authorized. In FY2013 and FY2014, 28 PFT and 4 PPT positions were authorized.⁷⁹ Figure 1 is the CFEC organizational chart as submitted in the FY2016 governor's operating budget request of December 2014. Staffing is maintained at the FY2015 levels.

The State Personnel Act exempts CFEC employees from the personnel rules.⁸⁰ Compensation for commissioners is set at "... a monthly salary equal to a step in Range 27 ..." ⁸¹ Appendix I is a Legislative Audit released in 1999. While somewhat dated and not specific to CFEC, the audit does carefully explain differences between exempt, partially exempt, and classified service employees of the executive branch, and personnel rule options and compensation for exempt employees of "governmental corporations," including CFEC, of the State of Alaska:

[t]hose exempt [agencies] from the personnel rules have the flexibility to design and implement personnel rules that provide a framework for personnel and salary decisions if specific pay guidelines are not statutorily dictated elsewhere in statute.

Although many exempt agencies and appointing authorities have chosen to use the statutory pay scale (AS 39.27.011) in lieu of contracting or developing their own pay scale, personnel policies for

⁷⁸ *Johns v. State*, 758 P.2d 1256, 1266 (Alaska 1988)

⁷⁹ Alaska Budget System.

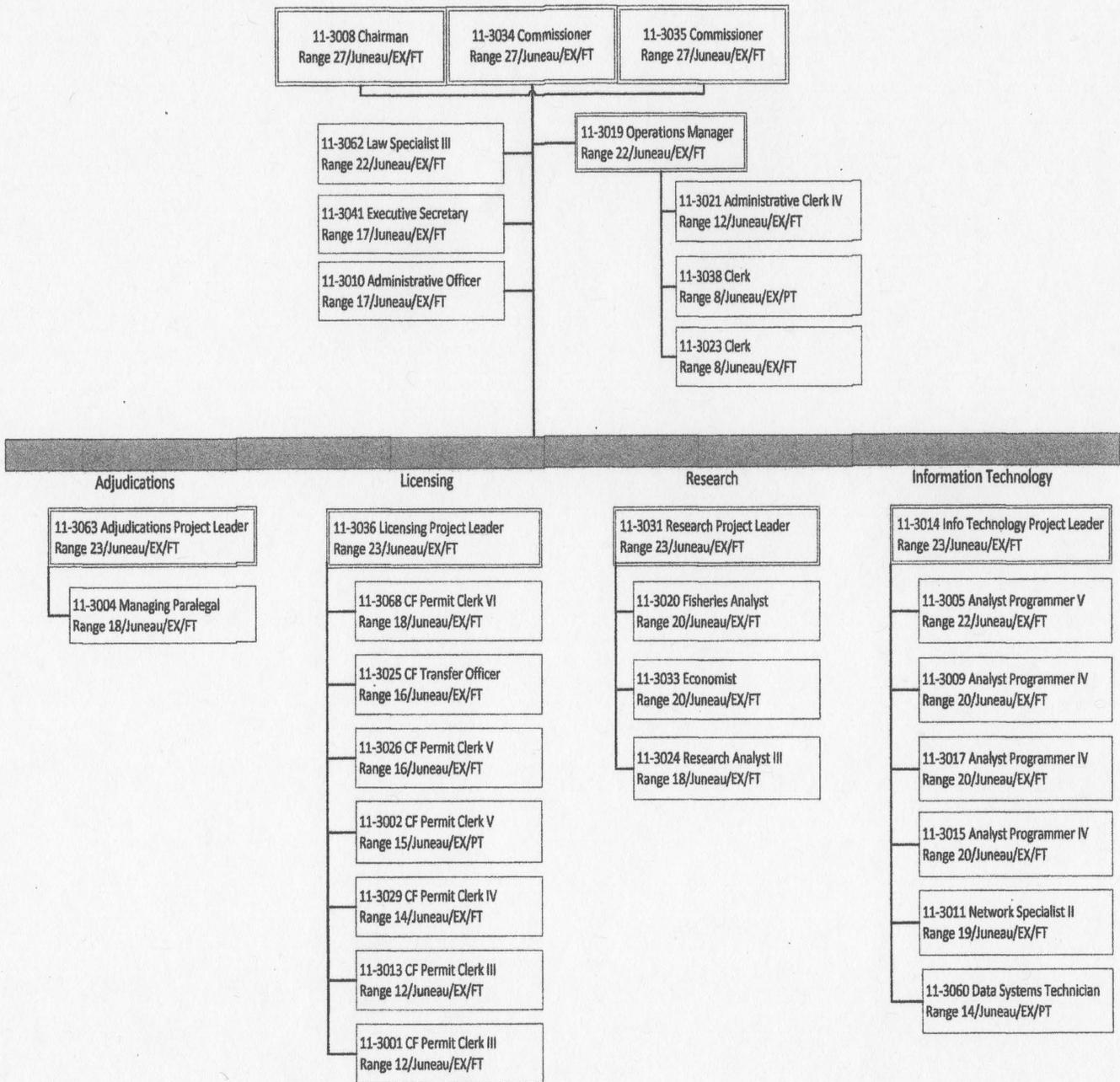
⁸⁰ AS 39.25.110 (11) (D). CFEC does not have to follow certain personnel procedures which have been put in place to carry out the intent of the State Personnel Act. The primary purpose of this act is "to establish a system of personnel administration based upon the merit principle..." Alaska Statute 39.25.010(b) defines the merit principle, in part, as including:

- (1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (2) regular integrated salary programs based on the nature of the work performed;
- (3) retention of employees with permanent status on the basis of the adequacy of their performance, reasonable efforts of temporary duration for correction in inadequate performance, and separation for cause;
- (4) equal treatment of applicants and employees with regard only to consideration within the merit principles of employment; and
- (5) selection and retention of an employee's position secure from political influences.

⁸¹ AS 16.43.160. The salary for commissioners was set at a range 26, step C for decades until amended in 2008.

Figure 1 – Commercial Fisheries Entry Commission

(Administratively attached to the Department of Fish and Game)



Revised 11/18/2014

merit or longevity increases often differ among exempt agencies and between those employees classified and partially exempt.⁸²

Finding #11: The current policy manual is out dated and incomplete.

CFEC adopted the statutory pay scale set out in AS 39.27.011. CFEC's current policy manual, prepared in 2003, does not cover step placement for new hires or promotions and says very little about merit increases. CFEC began the process to revise the current policy manual in November 2013 after concerns of an atypical salary increase for a CFEC employee were expressed by the Director of the Division of Personnel and Labor Relations. Step placements and merit increases are addressed in the new manual draft that is currently out to management staff for review and edits.⁸³

Finding #12: There are no position descriptions.

According to the CFEC operations manager, there are no CFEC position descriptions. A position description (PD):

... record[s] the duties, responsibilities, reporting relationships, and federal requirements related to an individual position ... *The PD is also a management tool for documenting assigned duties, evaluating employee performance, hiring new employees, etc.*⁸⁴ (emphasis added.)

Finding #13: Without position descriptions and job class specifications, it is difficult to compare compensation levels for CFEC positions with positions in the classified service.

A few definitions are in order:

Classified Service. The classified service consists of all positions in the state service not included in the exempt service or in the partially exempt service.⁸⁵ They are required to follow the Alaska Administrative Code which supports the State Personnel Act unless a bargaining unit contract has been negotiated for a specific area.⁸⁶

Job Class. A group of positions (or a single position) that are sufficiently similar in duties and responsibilities, degree of supervision exercised or required, and entrance requirements that they may be treated the same for purposes of recruitment,

⁸² Division of Legislative Audit, 1999. Departments of Administration and Commerce and Economic Development Selected State Compensation Issues Including Alaska Seafood Marketing Institute and Alaska Industrial Development and Export Authority. Audit Control Number 08-4569-99 at 13.

⁸³ Shirley Penrose, Operations Manager, CFEC, personal communication.

⁸⁴ Classification Glossary of Terms, Division of Personnel and Labor Relations, Department of Administration.

⁸⁵ AS 39.25.100.

⁸⁶ Division of Legislative Audit, 1999. Departments of Administration and Commerce and Economic Development Selected State Compensation Issues Including Alaska Seafood Marketing Institute and Alaska Industrial Development and Export Authority. Audit Control Number 08-4569-99 at 9.

selection, compensation, transfer and layoff. The kind and level of work assigned to positions in a job class must be essentially the same.

Class Title. The official name given to a class of positions to identify the class and all positions in the class (e.g., Human Resource Specialist). It is intended to concisely and accurately convey the kind and level of work performed and should be brief, easily recognized, gender neutral, and understood by potential applicants...

Job Class Specification (or Spec). A written guide for and description of a job class. Per AS 39.25.150 and 2 AAC 07.010, this information must include:

1. The official **Class Title**;
2. **Class Definition**;
3. Typical **Examples of Duties** and responsibilities; and,
4. The **Minimum Qualification (MQ)** requirements for appointment to a position in the class.⁸⁷

Table 9 lists CFEC positions by title in descending pay range order, with a similar classified service job class title and assigned pay range. CFEC has used similar or the same position titles as classified service job class titles especially with research, adjudications, IT and administrative positions but not with licensing positions. However, with the exceptions of the CFEC Analyst/Programmer V and Research Analyst, there are no CFEC job class specs. No CFEC job class specs and no PDs make it exceedingly difficult to compare CFEC job classes with established duties and responsibilities of similarly titled classified service job classes. Consequently, questions of excessive, adequate or inadequate compensation levels of CFEC employees are difficult to answer.

Finding #14: Employees can be easily promoted through manipulation of the personnel system.

Since there are no CFEC personnel rules specific to promotion, no position descriptions and no job class specs, a promotion can easily occur as long as the action is approved by the commissioners and requisite Governor's Office approvals are obtained. The only applicable executive branch rules are that the Governor's Office of Management and Budget (OMB) "...must approve any [position] reclassification that results in an increase of more than two ranges..." and "[d]epartments must request approval from the Chief of Staff (COS) via memo prior to recruiting and/or hiring an exempt or partially exempt position range 16 and above."⁸⁸

During the course of this review examples were found regarding filled CFEC positions simply being bumped up one range. In other situations, a vacant position at a higher range is renamed and the employee is transferred to the renamed position. Without comment on the worthiness of the resultant promotion, these actions could not occur in the classified service.

⁸⁷ Classification Glossary of Terms, Division of Personnel and Labor Relations, Department of Administration.

⁸⁸ Office of Management and Budget, 2008. Revised Program Manual at 15, 16.

Commercial Fisheries Entry Commission Review

Table 9 - CFEC Position Titles with Salary Ranges Compared to Similar Classified Service Job Class Titles with Salary Ranges

CFEC PCN	Job Class Code	Job Class	CFEC Exempt Position Title	Salary Range	Comparable Classified Service Job Class Titles	Salary Range	Job Class Specs Code
113035	X0005	No	COMMISSIONER, CFEC	27	N/A		
113034	X0005	No	COMMISSIONER, CFEC	27	N/A		
113008	X0005	No	COMMISSIONER, CFEC	27	N/A		
113063	X1103	No	ADJUDICATIONS PROJECT LEADER	23	N/A		
113059	X1007	No	HEARING OFFICER III	23	HEARING OFFICER	21	PI0321
113014	X1104	No	IT DATA PROCESSING SVCS LEADER	23	N/A		
113036	X1102	No	LICENSING PROJECT LEADER	23	N/A		
113031	X1105	No	RESEARCH&PLANNING PROJ. LEADER	23	N/A		
113005	X1284	No	ANALYST/PROGRAMMER V	22	ANALYST/PROGRAMMER V	22	PB0405
113062	X1616	No	LAW SPECIALIST III	22	N/A		
113019	X1227	No	OPERATIONS MANAGER	22	ADMINISTRATIVE OPERATIONS MANAGER I/II	22/23	PB0157/PB0158
113017	X1283	Yes	ANALYST/PROGRAMMER IV	20	ANALYST/PROGRAMMER IV	20	PB0404
113015	X1283	Yes	ANALYST/PROGRAMMER IV	20	ANALYST/PROGRAMMER IV	20	PB0404
113009	X1283	Yes	ANALYST/PROGRAMMER IV	20	ANALYST/PROGRAMMER IV	20	PB0404
113033	X0839	No	ECONOMIST	20	ECONOMIST III	20	PD0203
113020	X1333	No	FISHERIES ANALYST	20	N/A		
113011	X1199	No	NETWORK SPECIALIST II	19	N/A		
113068	X0521	No	COMM FISH PERMIT CLERK VI	18	N/A		
113004	X1010	No	MANAGING PARALEGAL	18	PARALEGAL II (NO MANAGING PARALEGAL)	16	PI0122
113024	X0121	Yes	RESEARCH ANALYST III	18	RESEARCH ANALYST III	18	PB0513
113010	X0658	No	ADMINISTRATIVE OFFICER	17	ADMINISTRATIVE OFFICER I	17	PB0154
113041	X0808	No	EXECUTIVE SECRETARY III	17	EXECUTIVE SECRETARY III	16	PB0137
113026	X0123	No	TRANSFER OFFICER	16	N/A		
113025	X0522	No	COMM FISH PERMIT CLERK V	16	N/A		
113002	X0522	No	COMM FISH PERMIT CLERK V	15	N/A		
113029	X0523	No	COMM FISH PERMIT CLERK IV	14	N/A		
113060	X1173	No	DATA SYSTEMS TECHNICIAN	14	DATA PROCESSING TECHNICIAN I	13	PB0411
113021	X0137	No	ADMINISTRATIVE CLERK IV	12	OFFICE ASSISTANT IV	12	PB0105
113013	X0112	No	COMM FISH - PERMITTING CK III	12	N/A		
113001	X0112	No	COMM FISH - PERMITTING CK III	12	N/A		
113038	X0417	No	CLERK	08	OFFICE ASSISTANT I	8	PB0102
113028	X0417	No	CLERK	08	OFFICE ASSISTANT I	8	PB0102
113023	X0417	No	CLERK	08	OFFICE ASSISTANT I	8	PB0102

Sources: Stacie Bentley, ADFG HR Manager, FY2016 Governor's Proposed Operating Budget, Workplace Alaska.

Finding #15: There are five State of Alaska Public Employee Retirement System (PERS) retirees, currently employed in temporary CFEC positions.

Table 10 displays the temporary positions currently occupied by retirees receiving PERS benefits; none of the temporary positions are in the budget. The associated vacant permanent positions, if applicable, are also listed. All five retirees worked at CFEC, four of them retired from CFEC.

Table 10 – Filled Temporary Positions and Associated Vacant Permanent Positions

PCN	Temporary Position Title	Range	Term of position approval by OMB	COS Appointment approval	PCN	Vacant Permanent Position Title	Range
113059	Hearing Officer III	23	n/a	1/13/10	n/a		
11T012	Adjudications Project Leader	23	n/a	3/9/11	113063	Adjudications Project Leader	23
11T013	Executive Secretary III	16	6/1/13-6/30/15*	5/30/13	n/a		
11T014	Law Specialist III	22	8/16/14-6/30/15	8/22/14	113062	Law Specialist III	22
11T015	Operations Manager	22	8/16/14-6/30/15	8/22/14	113019	Operations Manager	22

*position originally expired 6/30/14, but a term extension request to 6/30/15 was approved on 6/20/14.

Sources: Stacie Bentley, ADF&G HR Manager, Shirley Penrose, CFEC Operations Manager, John Masse, ADF&G Budget Analyst.

Temporary PCN 113059 was established in 1993. It was deleted from the operating budget in the FY2000 Management Plan scenario. PCN11T012 was created in 2011 when the hiring of incumbent was approved. Neither of these temporary positions has an expiration date.⁸⁹

In the hiring approval request to the COS, PCNs 11T012 and 11T014 were to be part-time, up to 20 hours per week; PCN11T015 20-30 hours per week. From March through November, 2014, the incumbent in PCN 11T014 averaged about 22 hours per week. The average work week for the other two incumbents during the same period was within the hours per week terms requested in the approval memos to the COS.⁹⁰

Some of the incumbents in the temporary positions work from home and are rarely seen in the office. Others have irregular in-office schedules due to sporadic workload. The operations manager works a very early part-time shift so is not in the office for most of the regular office hours.

⁸⁹ Stacie Bentley, HR Manager and John Masse, Budget Analyst, Division of Administrative Services, ADF&G, personal communication.

⁹⁰ Stacie Bentley, HR Manager, personal communication.

Finding #16: There is a lack of operational sustainability that is exemplified by the part-time retirees in temporary positions.

The justification put forth for hiring the retirees on a part-time basis is workload, a specialized skill set, saving money, and training subordinate staff. There is no real evidence that such training has occurred; the Adjudications Section is skeletal because of workload and yet an adjudication backlog exists. However, funds have been saved; beginning in FY2010, CFEC has spent 85 to 89% of its authorized budget, with annual unspent authorizations of between \$400.0 to over \$600.0 (see Table 4).

Both the operations manager and adjudications project leader are senior management positions that are vacant although part-time employees in temporary positions perform the functions. It is likely that had there been a full-time adjudications project leader, all the appeals at the hearing officer stage would have been wrapped up a few years ago. In the case of the operations manager position, interviewees felt that the position should be full-time with regular office hours. The findings and recommendations of this section certainly document that there is sufficient full-time workload for the operations manager.

Recommendation #7: Complete the Policy manual by June 30, 2015. Type: Administrative.

State of Alaska executive branch agencies that are exempt from the State Personnel Act have the ultimate flexibility in personnel matters. However, it is vital that personnel rules and procedures be established and kept current for the protection of the agency and the benefit of employees, regardless of whether or not the rules are similar to personnel rules for classified or partially exempt employees.

The personnel policies section of the manual, existing policies on: equal employment, working and office hours/time sheets, absences/leave/leave slips, harassment, nepotism, grievance procedure for CFEC staff, and ethics should be updated/fine-tuned as appropriate. The hiring and personnel performance evaluations policies should be expanded to address the following:

- 1) Recruitment methods, including advertising
- 2) Step placement upon initial appointment including whether advance step is allowed upon initial appointment and, if so, specify guidelines
- 3) Step placement upon promotion
- 4) Merit increases/pay increments and what criteria is used for an employee to get a 1 step or 2 step merit increase
- 5) Evaluation appeals/rebuttals
- 6) Retiree/rehire provisions

Recommendation #8: Prepare position descriptions for all employees by the end of FY2015. Type: Administrative.

In essence, the PD is the foundation upon which the bond between the employee and supervisor is built. A clear understanding of duties and responsibilities between the employee

and supervisor is a necessity. There is no point of reference for a supervisor in conducting an employee performance evaluation without a PD. For an employee to meet expectations, duties and responsibilities must be clearly defined. It is unclear what information is used as a recruitment tool to fill a vacant position without a PD.

Recommendation #9: Terminate the practice of hiring retired employees in long-term, non-permanent positions. Type: Administrative

Typically, the use of a temporary position is to perform a project within a specified short-term duration. State of Alaska retirees cannot return to active employment in a permanent full-time job without suspending their retirement benefits. In theory, state retirees may be a good solution to perform a project as a short-term, non-permanent or project employee with a specialized skill set. In the case of CFEC however, of the five temporary positions filled with former CFEC employees/retirees, one incumbent has been in the unbudgeted “temporary position” with no expiration date for five years. Another has been in their temporary position for almost four years. All five employees receive PERS benefits in addition to their temporary position salaries.

The Adjudications Project Leader, Executive Secretary III and Operations Manager temporary positions should be terminated no later than June 30, 2015. If the Hearing Officer III and the Law Specialist III are needed to assist the Commission in completing the adjudication backlog per Recommendation #2, those two temporary positions should be retained no later than June 30, 2016.

Finding #17: Release of the annual report is not timely and may not meet the intent of the reporting requirement.

AS 16.43.980 (a) requires CFEC to prepare an annual report and notify the legislature when it is available. There is no deadline for submission of the annual report. AS 16.43.980 (a) continues:

...The report must include but not be limited to the following:

- (1) A progress report on the reduction of entry permits to optimum levels;
- (2) Recommendations for additional legislation relating to the regulation of entry of participants and vessels into Alaska commercial fisheries.

As stated in the optimum numbers section above, there has not been an optimum number established for a limited fishery since 2005. The Research Section narratives of 2006-2008 annual reports included sub-sections on “Optimum Numbers and Salmon Restructuring” stating that no optimum number proposals were made by the Commission that year and referenced the Bristol Bay salmon drift gill net fishery optimum number adopted in 2005. Beginning in the 2009 annual report, there is no longer any narrative regarding optimum numbers.

A review of the annual reports from 1997-2012 reveals that there are no “[r]ecommendations for additional legislation relating to the regulation of entry of participants and vessels into Alaska commercial fisheries,” However, there is often proposed and passed legislation discussed. In essence, each report documents CFEC’s tracking of and/or participation in legislation regarding commercial fisheries limitations and related issues.⁹¹ This is necessarily the result of the lag time in issuance of the annual report. In other words, CFEC has already taken positions and action on proposed or pending legislation by the time the annual report is released.

Table 11 lists the month/year of the annual report release since 2005:

**Table 11 – CFEC Annual Reports
Release Dates, 2005 – 2012**

Annual Report	Release Date
2005	May 2006
2006	August 2007
2007	June 2008
2008	September 2009
2009	July 2010
2010	August 2011
2011	November 2012
2012	December 2013

Source: CFEC annual reports

Especially the last two years, the annual report is released almost a year later. At the time of this writing, the 2013 annual report still has not been released. The operations manager is responsible for preparation of the annual report. The reason for the delay this year according to more than one interviewee, was that the preparation of CFEC’s administrative (policy) manual took precedence. Except for research and historical purposes, the relevancy of the annual report diminishes with the length of time it takes to produce.

Recommendation #10: Require issuance of the annual report by June 30 of the following year. Type: Administrative.

Annual report statutory requirements for many State of Alaska independent agencies include an annual deadline of submission to the legislature. Based on Table 11, it is clear that completing the annual report by mid-calendar year is possible. Timely issuance of the annual report would assist policy makers in monitoring the progress and activities of CFEC.

⁹¹ For example, see Commercial Fisheries Entry Commission 2002 Annual Report at 7-8.

Information Technology

The duties of the Information Technology (IT) Section are:

- Licensing Systems
- Fisheries Database
- Technology Development for Adjudications and Research
- Agency Technical Support
- Website Design and Maintenance⁹²

In particular,

[t]he Information Technology Section (IT) is responsible for all technological infrastructure at CFEC. This includes networking and desktop hardware for all internal and external technical support, technology maintenance, reporting of data, and application development. IT maintains a small but responsive staff that must be flexible and capable in several disciplines. Working closely with the Commission, IT's primary duty is to manage the incoming and outgoing data integrity, and to ensure reliable and timely access for the private sector, government agencies and the general public.⁹³

The IT Section consists of seven positions, all currently filled: IT data processing services manager, an analyst/programmer V, three analyst programmer IV's, a network specialist II, and a data systems technician.

Finding #18: The upgrade of the licensing system has been discussed in annual reports and operating budget narratives, beginning in 2002 and has yet to be accomplished.

The licensing system is archaic. It is an in-house application written in 1982 and still in use today. Data from each entry permit, vessel license and all transfer applications or renewals forms are keyed in by clerks to all entry screen fields. Because of its antiquated design, the entry screen allows the licensing staff to unintentionally key errors into the data base that then have to be corrected by the Licensing Project Leader or IT staff; it is very inefficient.

The 2002 CFEC annual report noted:

... [t]he Commission contracted with Wostmann and Associates to assist in the development of a work plan for a complete rewrite and upgrade of CFEC's licensing system. The work plan calls for conversion to an Oracle database and use of Java as the development language. Use of this more current technology will enhance the flexibility and security of the system and facilitate exchange

⁹² Commercial Fisheries Entry Commission 2012 Annual Report at 3.

⁹³ *Id* at 7.

of data with other state and federal agencies. Additionally, switching to more widely-used technology will help to ensure the long-term maintenance and stability of the system by improving the Commission's ability to hire personnel with relevant training and experience to fill future IT position vacancies. During FY2002, the Commission acquired Oracle 9i software and upgraded the server hardware in preparation for the licensing rewrite project. The project plan was completed in October of 2002 and the target date for completion of the project is August of 2005.⁹⁴

The Oracle based rewrite/upgrade of the licensing system never occurred. The long tenured IT Section project leader left in 2002 and was replaced the following year.

As reported in the 2008 CFEC annual report:

... the IT staff completed and deployed a web-based application for permit and vessel on-line renewals. This represents CFEC's first major effort to bring 24-hour self-service to customers, and give them the flexibility to manage their permits and vessels throughout the year, at any time, with any standard web browser.⁹⁵

Unfortunately, the web-based permit and vessel license renewal, while increasingly popular with fishers, is really nothing more than a data capture screen. On-line, fishers renew permits or license, pay with a credit card, and get a confirmation. In-house however, the licensing staff must re-key every data field completed by the fisher into the licensing system, again allowing for the possibility of errors. Sometimes when the staff submits a credit card charge for approval from a pending on-line renewal, they are declined or the credit card number is invalid and staff has to call the fisher for another source of payment. It is awkward because with the web confirmation page they receive at the time of checkout, the fisher assumes the charge was approved

When the current Licensing Section project leader was promoted in 2007, she requested that the licensing system be redone with no result.

Beginning in the FY2008 Governor's operating budget request and continuing to FY2015, the "Significant Changes in Results to be Delivered in the Fiscal Year" section annually included the following narratives:

FY2008-2009: The evolution of electronic reporting will require the CFEC current licensing system to be updated. Substantial changes to the licensing system will need to be made to accommodate this new technology. The change is necessary to support our ability to respond to increasing fishery

⁹⁴ Commercial Fisheries Entry Commission 2002 Annual Report at 9, 10.

⁹⁵ Commercial Fisheries Entry Commission 2008 Annual Report at 10.

data demands, including real time validation of the permit holder during a landing and timely communication with other fishery management agencies.

FY2011: The major rewrite of the CFEC licensing system when completed will provide improved fishery management data capabilities, more efficient customer service for the Alaska commercial fishing industry and enhanced communications internally and externally with state and federal agencies responsible for management of Alaska's fishery resources.

FY2014-2015: CFEC labors to replace outdated legacy information technology with current flexible and more user friendly technology (including a reprogrammed licensing system). CFEC's goal is to provide improved fishery management data capabilities, more efficient customer service for the Alaska commercial fishing industry, and enhanced communications internally and externally with state and federal agencies and the public. As the repository for state fisheries economic data, information technology is the critical foundation for CFEC to meet its statutory duties.⁹⁶

The "result" has yet to be delivered.

Recommendation #11: Complete the Licensing system upgrade by the end of 2015. Type: Administrative

This upgrade is long past due. Appendix J is a project charter for a licensing modernization of ADF&G sport fish, hunting, and trapping licensing system approved in the FY2014 capital budget. It describes in detail the benefits of a modern on-line licensing system, including budget savings regarding fewer data entry staff, paper reduction, and quicker availability of data. While obviously different than the CFEC licensing system, there are several insights from which CFEC could benefit. With data entry screen controls for both on-line renewals and paper renewals keyed in by clerks, errors would be significantly reduced and there would be an anticipated reduction in data entry hours. Further, allowing on-line renewals to directly populate the data base would further reduce redundant data entry.

Finding #19: Portions of the website are out of date and do not meet the current state website standards.

The current website was launched in the spring, 2006.⁹⁷ Many sections of the website are kept up-to-date, but other sections are not. For example, the linked version of the statutes includes

⁹⁶ Alaska Budget System.

⁹⁷ Commercial Fisheries Entry Commission 2006 Annual Report at 6.

weathervane scallop fishery that was repealed December 30, 2013 and does not include AS 16.43.100(a)(21) added in 2009 and later revised in 2014. An up-to-date statutory link is available: <http://www.legis.state.ak.us/basis/statutes.asp#16.43.010>.

Another example is the Alaska Supreme Court Cases Affecting CFEC which was last updated in 2010, available in the Adjudications, Judicial Appeals section of the website. The Supreme Court Case list does not include the State, *CFEC v Carlson (Carlson V)* 2012 case discussed in the Background section of this report; the last appeal decision regarding this landmark case. However, the website does have a specific Carlson Information section that links to a PDF of the 2012 Supreme Court decision.

Beginning during the Murkowski Administration, 2002-2006, the Governor's Office established State website look and feel standards, applicable to all state departments and independent agencies. The most current standards are available at: <http://alaska.gov/LookAndFeel/>. The purpose section of the *Look and Feel Standards* document states:

[t]he Governor's Office has mandated that the State of Alaska's public-facing Internet website in the executive branch will have a uniform look and feel and must meet standards as specified by the State. This document describes the minimum standards for State of Alaska web pages. The State of Alaska's public-facing Internet website is defined as all publicly accessible pages providing official State of Alaska information by departments, their divisions, programs and all sub-pages including subcontracted sites that represent official business; commissions, authorities, institutes, corporations, boards and councils created by the state which have websites that are hosted on state servers, and/or are supported by state funds.

Clearly, these state standards apply to CFEC but the CFEC site still has the look and feel of the first state website standards established during the Murkowski Administration.

Recommendation #12: Update website to meet the state's current look and feel standards and insure content and links are up-to-date. Type: Administrative.

A website is a collection of web pages and a home page is the front page or starting point of a website. An agency's website is its window to the world. It is essential that an agency's web presence always shows its professional nature and reflect positively on the agency. For many users, an agency's website serves as its entry way and first reference to its services, information, activities, and opportunities. Ease of use and up-to-date information are critical to the effectiveness of a website.

Recommendation #13: Contract with a third party to conduct a comprehensive technical review of the IT system and staff by December 31, 2015. Type: Administrative.

As of this writing, there are 29 filled permanent or part-time positions in CFEC. The IT Section has seven filled positions, equating to 25% of CFEC's workforce. While every agency can claim unique IT needs and requirements, the ratio of one IT employee out of every four CFEC employees is exceptionally high. In FY2014, for all of ADF&G, including CFEC, the total IT positions as a percentage of total ADF&G full-time equivalent positions was 5.5%.⁹⁸

The number of CFEC IT staff coupled with productivity issues warrants a review of the CFEC IT function by a qualified IT contractor. The IT review, including findings and recommendations, should include but not be limited to: network and data center infrastructure, data storage, backup system and recovery plan, in-house and custom applications, productivity applications and desktop reliability, security, documentation, IT budget, IT personnel, and alignment to state IT standards.

Licensing Section

As stated in the 2012 CFEC Annual Report:

The Licensing Section is responsible for collecting fees and issuing limited entry, interim-entry and interim-use permits, as well as issuing vessel licenses required for participation in Alaska's commercial fisheries. Often the staff expedites the issuance of licenses to ensure that fishermen do not lose fishing time during the season by employing forms specifically to achieve immediate fishing, obtain duplicate licenses, change vessel information, and process emergency transfers. Licensing is also responsible for processing permanent transfers of permits, tracking salmon net area vessel registrations, and assessing demerit points.⁹⁹

The Licensing Section consists of seven positions: the licensing project leader, a commercial fish permit clerk VI, two commercial fish permit clerk V's, a commercial fish permit clerk IV, and two commercial fish permitting clerk III's. One of the commercial fish permit clerk V's is a seasonal position and currently vacant.

Finding #20: The Licensing Section is well run and highly respected.

Almost all interviewees gave high marks to the section project leader and the staff:

- "The Licensing Section is awesome. They are very responsive to fishermen and very knowledgeable as well."
- "They do a great job. They are sensitive to the fishermen and efficient."

⁹⁸ Department of Fish and Game, 2012. FY14 Annual IT Plan at 4.

⁹⁹ Commercial Fisheries Entry Commission 2012 Annual Report at 9.

- “The staff are committed to the fishermen. They are compassionate, bend over backwards to help. They have great relationships with ADF&G, brokers, and fishermen. They are able to do massive amounts of work.”
- “Licensing Section is very efficient. Emergency transfers are quick.”
- “Their email and phone call feedback is really good about customer service.”

Finding #21: The Licensing Section has suffered because the licensing system hasn't been updated in years, resulting in inefficiencies and conflicts between the IT and Licensing Sections.

One of the Licensing Section's most time-intensive functions is processing transfers as well as the payment for entry permit and vessel license renewals and then issuing the licenses. Because of the 32-year old system technology, data input controls are limited and entry screens are archaic. Data entry is very inefficient and can have a higher rate of errors (see Finding #18). Further, all on-line renewals must be re-keyed as if they were paper applications. Errors have to be corrected by IT staff.

Most interviewees acknowledged the conflicts between the IT and Licensing Sections. The root of the issue is clearly that for more than ten years, the update of the licensing system has been queued up, only to never be completed. There is no rational explanation for the delay and the IT Section hasn't been held accountable for the inaction.

For a recommendation regarding this finding, see Recommendation #11 in the IT Section.

Finding #22: During the 2014 permit renewal period, the Licensing Section was overwhelmed and was unsupported by management.

The Licensing Section workload yearly cycle begins in November with the annual renewal mailout for all permit and vessel licenses. In the first 2 ½ to 3 months more than \$3 million in revenue can come in. The section then issues permits and vessel licenses. All year transfers are processed. The highest numbers are processed during the months of March, April, May, June and July. In February license revocations occur if permit fees haven't been paid in two years. In March and April, revenue picks up again and licenses are issued, often times staff must expedite licenses by using immediate fishing applications or request for duplicate applications. May, June and July are the most critical months as fishers need to get their gear in the water. Year round the section also posts notice of intent to permanently transfer permits (by statute, a 60 day notice must be given before the transfer can occur), assesses demerit points to fishers and issuing specialty type permits. August and September are clean-up months and preparing reports. September and October are spent preparing for the next season and issuing revocation notices.

June is the busiest time of the year; five people handled the 5000 phone calls in June. Staff had never worked overtime in the past but did in the 2014 season. The season was the worst one in the tenure of the current project leader because staff vacancies were not approved by

management to be filled. Staff worked with three transfer officers (historically there were at least five) and two permits clerks (historically there were at least four). Fishermen lost time fishing because the section was seven days behind at times (the core service target is to “process 90% of all vessel licenses and permit renewals within three days, emergency transfers within four days and permanent transfers within five days).

For a recommendation regarding this finding, see Recommendation #18.

Research Section

The duties of the Research Section are:

- Fisheries Data Collection
- Economic Profiles
- New Limitations Research
- Priority Hardship (“Point” System) Development and Testing
- Optimum Number Research¹⁰⁰

In particular,

[t]he Research Section provides the fishery limitation studies, the CFEC program audits and reports, economic analyses, and much of the program support needed by the Commission. The reports, analyses, and databases compiled by the Research Section are used by the Commission, by other government agencies, and by the public to address a wide range of issues related to commercial fishing.

Among the tasks routinely accomplished by the Research staff to support the day-to-day functions of CFEC are monthly reports of estimated permit values, ex-vessel price and gross earnings estimates of statewide fish and shellfish harvests, permit transfer reports, and analyses used to determine fees levied for the annual renewal of limited entry permits. The Research staff is also very active in building and maintaining several electronic databases used not only by the CFEC, but also shared with NMFS and the North Pacific Fishery Management Council through the Alaska Fisheries Information Network. These data allow CFEC staff and others to produce many unpublished specialized reports and service requests from the Alaska Legislature, researchers, consultants, user groups, and other entities.

Working with the IT Section, CFEC researchers also issue many standard and specialized reports, nearly all of which are available on the CFEC web site. The reports typically include basic economic data on Alaska’s fisheries, patterns of permit

¹⁰⁰ Commercial Fisheries Entry Commission 2012 Annual Report at 3.

holdings, permit transfer statistics, and basic characteristics of Alaska’s fishing fleets and permit holders, including data on residency.¹⁰¹

The Research Section consists of four positions: research and planning project leader, a fisheries analyst, an economist, and a research analyst. At this writing, the section is recruiting to fill the vacant research analyst position.

Finding #23: The Research Section is crucial in the role of establishing limitations, optimum numbers, permit values, and fees.

Previous sections of this report describe the critical role of the Research Section in reviewing petitions proposing to limit fisheries, establishing a limited fishery, and performing optimum number studies.

Additionally, the section performs “production tasks” including: annually setting permit fees, the annual transfer study, and publishing permit values. These tasks cycle through on a yearly basis; the permit fee setting is statutorily mandated and the monthly permit values report is used in the permit fee setting. The monthly permit value report is used by the Division of Economic Development’s Commercial Fisheries Loan Program and the Commercial Fishing and Agriculture Bank, as well as fishers, brokers, and published in Pacific Fishing magazine. The transfer study is a long running tradition and in essence is an annual audit of the limited entry program, taking a yearly snapshot of the status of permits and how they have changed overall. The Research Section works very hard to present unbiased, objective information and analysis.

Finding #24: The Research Section has the best economic information on Alaska’s commercial fisheries.

The emphasis of the Research Section is on economic commercial fisheries versus ADF&G’s biological research emphasis. The gross earnings file created by the section is the lynch pin in the section’s economic data bases information and analyses. The gross earnings file is the ADF&G fish tickets enhanced with proprietary CFEC information resulting in an annual price for species, gear, fisheries management area, delivery type (e.g. pink salmon, gillnet, PWS, in the round). Cumulatively, the gross earnings file provides basic economic information for all state fisheries by year and is used in fisheries limitations, optimum number studies, and setting permit fees. The gross earnings file is shared with AKFIN (Alaska Fisheries Information Network).¹⁰²

¹⁰¹ *Id.* at 18.

¹⁰² AKFIN was established in 1997 under the direction of the Pacific States Marine Fisheries Commission (PSMFC). Its mission is (1) to acquire and consolidate the vast quantity of data generated by the Alaska fisheries, (2) to provide quantitative analyses and interpretations of these data, and then (3) to disseminate the processed information to fishery analysts, scientists, economists, and other administrative agencies.

Finding #25: The Research Section is underutilized at present.

The Research Section experiences a somewhat odd situation, in that it must stand at the ready to assist the Commission in limiting fisheries or performing optimum number studies, but not currently. The top priority of its work obviously has to be tasks that support the statutory functions of CFEC, but at the same time, much of that work is specialized tasks that come in fits and starts. A good example is a fishery limitation. The section dives into a limitation and it consumes a great deal of its time, but then the project eventually ends. The Research Section will put that particular body of work to bed and move on to other tasks. In that context, if other work for other agencies and/or the public can be fit it, it is done.

For example, the Research Section assisted the ADF&G Commissioner's Office with the Southeast Alaska Chinook Fishery Mitigation Program from the Chinook Salmon Treaty Agreement.¹⁰³ The section assisted in preparing and populating fisherman information. The section has worked for the Board of Fisheries.

Recommendation #14: Develop a clear process to establish priorities. Type: Administrative.

While some Research Section tasks are clearly defined, it appears that the section is at times left to its own devices in outlining studies it wishes to undertake. The section could benefit from establishment of a process that proactively establishes its priorities.

Recommendation #15: Formalize the provision of services to the Board of Fisheries. Type: Administrative.

The Research Section has occasionally provided assistance to the Board of Fisheries. In addition to occasional special requests, the executive director of the Board of Fisheries would welcome general reports on the economics of fisheries.¹⁰⁴ One issue that would need to be addressed is that proposals submitted to the board often have sport fish and subsistence economic aspects that would presently be beyond the scope of CFEC research boundaries. Further, in 2014 the board received 270 proposals, so performing an economic review of each proposal would be unrealistic.

Adjudications Section

The duties of the Adjudication Section are:

- Application Processing and Classification
- Administrative Hearings
- Case Management

¹⁰³ See: <http://www.adfg.alaska.gov/index.cfm?adfg=fisherymitigation.main>.

¹⁰⁴ Glenn Haight, Executive Director, Board of Fisheries, personal communication.

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- Decisions on Claims
- Preparation of Official Record in Judicial Appeals
- Residency and Fraud Investigations¹⁰⁵

In particular:

[t]he Adjudications Section evaluates, classifies, and adjudicates applications for limited entry permits. Permit applicants are classified and ranked against each other under point systems that measure each applicant's past participation and economic dependence on a fishery. Entry permits are issued first to applicants shown by their point levels to be most dependent on a fishery and then to applicants at successively lower classification levels, until a maximum number of permits for the fishery has been issued.

Adjudication functions are performed by paralegals, hearing officers, and commissioners. Paralegals evaluate entry permit applications and make the initial determination accepting, denying, or classifying each application. An applicant may challenge the denial or classification of an entry permit application by requesting a hearing. Commission hearing officers conduct administrative hearings and issue decisions based on the record.

Hearings may also be requested if the Commission's Licensing Section denies requests for emergency transfers or permanent transfers of entry permits. Emergency transfer hearings are typically held and decided by paralegals. Permanent transfer hearings are held and decided by hearing officers.

Commissioners review each paralegal and hearing officer decision and may order further review and hearings on their own motion or upon the request of an affected party. Commissioners may also take formal action to modify, reverse, or affirm the decisions.

Hearing officers also preside over hearings that arise from enforcement proceedings, where the Commission may impose fines, revoke, or suspend permits of those who attempt to mislead the Commission with false information. These hearings are held in the presence of the commissioners.¹⁰⁶

The Adjudication Section currently consists of two permanent positions: adjudications project leader (currently vacant) and managing paralegal. A temporary adjudications project leader position was established in 2011 and is filled with the retired former adjudications project leader who works on a part-time basis.

The Adjudications Backlog finding and recommendations presented previously provide extensive discussion regarding adjudications.

¹⁰⁵ Commercial Fisheries Entry Commission 2012 Annual Report at 3.

¹⁰⁶ *Id.* at 6.

Recommendation #16 Contract with the Office of Administrative Hearings to perform adjudications at the administrative hearing stage, beginning July 1, 2015 and terminate any remaining permanent or temporary Adjudications Section staff. Type: Administrative

As described above, the bulk of the Adjudications Section's work relates to limiting a fishery and the aftermath of unhappy permit applicants. There haven't been any limitations since 2004. The number of section staff has dwindled as the adjudications backlog has been reduced. Assuming Recommendation #1 is followed, the backlog of first level appeals handled should be completed. At that point, if no new limitations have occurred, the workload of the section will be minimal: hearings of emergency or permanent transfer denials, most recently averaging about 30-40 per year, and enforcement proceedings.

The Office of Administrative Hearings (OAH) was established through legislation effective January 1, 2005. Its mission is "to provide for the delivery of high-quality adjudication services that ensure fair hearings conducted in a timely, efficient and cost effective manner." OAH's FY2015 clientele includes divisions within ten cabinet level departments, handling a multitude of complex programs.¹⁰⁷ Contract for services are done through a reimbursable services agreement (RSA) and is authorized through CFEC statute AS 16.43.080(b). The OAH rate is \$165 per hour.

Cost savings are expected to occur with the termination of staff. However, the annual cost of the OAH service is difficult to estimate without a track record.

If a new limited entry fishery were to occur, CFEC would need to re-establish hearing officers within CFEC.

¹⁰⁷ Examples of the complex services OAH provides include:

Production, Fish, and Income Taxes: OAH functions as the state tax court, hearing and deciding all cases involving corporation income taxes, oil and gas production taxes, and fisheries taxes.

Property Taxes: For the annual State Assessment Review Board (SARB) hearings involving the valuation of the Trans-Alaska Pipeline System (TAPS) for property tax purposes, OAH supplies a hearing officer to assist the board with all aspects of the proceeding and to draft an opinion expressing their decision.

Professional Licensing: OAH hears cases for a large number of professional licensing boards, such as the State Medical Board, the Board of Dental Examiners, and the Board of Registration for Architects, Engineers, and Land Surveyors. An OAH administrative law judge (ALJ) conducts the hearing alone and prepares a proposed decision. Parties may object to the proposed decision and, with certain limitations, the board can accept, reject, or modify the proposed decision. Traditionally, the ALJ participates in the board's final deliberative session and assists the board in drafting any alterations to the decision

Economic and Social Regulation: In a variety of case categories, OAH hears cases alone and then submits proposed decisions to a single agency head, typically a commissioner.

Human Rights Commission: OAH handle Human Rights Commission cases in the same manner as professional licensing cases (that is, the hear them alone, with the board reviewing OAH's proposed decision), but this commission has a comprehensive set of procedures that are applied, in lieu of OAH's own AS 44.64 procedures.

Recommendation #17: Once the backlog of first level appeals is completed, streamline the appeal process so that it is the same or similar to the OAH appeal process. Type: Legislative

Several interviewees indicated that the three stages of appeals within CFEC draws out the process and the costs of adjudication. The OAH procedure for hearings, established in AS 44.64.060, is certainly more streamlined. If the OAH appeal process isn't specifically adopted, establishing time limits for hearings, and decisions by both hearing officers and the Commission is critical.

Management

Through the course of this review, an executive director position was mentioned as a victim of budget reductions and an explanation of how those duties were absorbed was explained by Chair Twomley in 2014:

The CFEC cut its executive director's position in order to meet budget cuts; however, such a cut meant the remaining 28 full-time positions had to absorb additional responsibility. The administrative functions have essentially been absorbed and distributed...¹⁰⁸

The executive director terminated in 1983. Since then, the commission chair as designated by the governor has inherited the overall responsibility of managing the agency in addition to chairing the three-member commission.

Finding #26: There is a lack of leadership and accountability leading to office atrophy, issues between sections, and low morale.

Reportedly, the last executive director did a good job communicating with the Commission, project leaders, and providing direction. They all got along well. When the individual left, he told the commissioners that they didn't need an executive director because everyone got along. Over a period of years, with the departure of the executive director, and the eventual turnover in the section project leader positions, relationships changed and deteriorated. According to several interviewees, issues ebbed and flowed between sections. Additionally, those interviewed described numerous issues centering on lack of leadership and accountability, leading some staff to depart.

¹⁰⁸ House Special Committee on Fisheries, April 17, 2014, minutes. House Bill No. 386, "An Act repealing the Alaska Commercial Fisheries Entry Commission and transferring its duties to a commercial fisheries entry division established in the Department of Fish and Game and the office of administrative hearings," at 7.

Perhaps the most discussed example is the issue between the IT and licensing sections regarding the update of the licensing system. The IT section should have been held accountable for the lack of completion of this project years ago.

The history of the CFEC is described elsewhere in this report and various appendices. Needless-to-say, the early period through the mid-2000's can best be described as a triage situation. The workload was immense and the adjudications backlog daunting. Since then however, the workload has diminished, along with the output.

According to one interviewee, "running the agency with three commissioners is very cumbersome. The chair really doesn't have any extra authority. The weakness in the structure is that it is not just a three panel adjudicating body but is also a three panel administrative body."

CFEC has suffered without an executive director or a similar position.

Recommendation #18: Reclassify the vacant operations manager position to an operations director and fill the position immediately. Type: Administrative.

The reclassified position would serve as a hybrid position combining responsibilities of an administrative services director and executive director but scaled down to the size of the agency. The reclassified position must be established at one or more salary ranges above the section project leaders who are range 23. The project leaders and administrative staff would be supervised by the new operations director position and the position in turn would be supervised by the commission chair.

The position would manage the administrative and programmatic operations of CFEC, insure regular communication and coordination with and between each section, serve as the commission's ethics officer, monitor projects in each section and hold all sections accountable for their functions and timeliness of projects. The successful candidate for the position would have proven administrative and management skills. The temporary operations manager would focus on completing the CFEC policy manual (Recommendation #7) and annual report (Recommendation #10). The term of the temporary operations manager position should not be extended beyond its June 30, 2015, expiration (Recommendation #9).

Organizational Structure

AS 16.43.020(a) states:

There is established the Alaska Commercial Fisheries Entry Commission as a regulatory and quasi-judicial agency of the state. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

Under AS 16.43.020(b), the governor designates one of the commissioners as the chair for a two-year term and can be designated again for subsequent two-year terms. AS 16.43.040 reads: “[t]wo members of the commission constitute a quorum for the transaction of business, for the performance of a duty, or for the exercise of a power of the commission.” Further, AS 16.43.030(c) states: “[a] vacancy on the commission does not impair the authority of a quorum of commissioners to exercise all the powers and perform all the duties of the commission.” Under AS 16.43.080(a), “[t]he commission may employ those persons necessary to carry out the purposes of this chapter. Employees of the commission are in the exempt service...” Collectively, these statutes have remained unchanged since the passage of the Limited Entry Act in 1973.

HB 386, introduced last session, proposed to repeal the Alaska Commercial Fisheries Entry Commission and transfer its duties to a commercial fisheries entry division established in ADF&G and the office of administrative hearings, drastically changing the organizational structure and the program’s operations. One hearing was held on the bill the last week of the second session of the twenty-eighth legislature. The bill expired when the legislature adjourned. The introduction of HB 386 coupled with the subsequent audit request, the diminishing workload of the Commission over the past 10 years, the high salaries of the commissioners, and budget uncertainties, begs the question what is the best, most efficient organizational structure for the limited entry program while maintaining its integrity?

Recommendation #19: Maintain the current organization structure with three commissioners until the entire adjudications backlog is eliminated. Type: Administrative.

The consensus of the interviewees was that maintaining the existing organizational structure is critical until the entire adjudications backlog at all administrative levels is eliminated. Some went further to state that if cases were then challenged in court and then remanded to CFEC, from a legal perspective, it would be disastrous if the structure had been changed.

Recommendations #1 and #2 establish a deadline of June 30, 2015, for adjudications to be completed at the hearing office level and June 30, 2016, for adjudications to be completed at the administrative review (commissioner) level, respectively.

Alternatives for the future

Regardless of organizational structure changes, there are several statutory ongoing responsibilities that must be considered including, but not limited to: establishment of optimum numbers for each limited fishery; possible optimum number revisions; buy-back programs; issuances of new permits at fair market value; review of petitions proposing new limitations; establishment of new limitations; monitoring the economics of each fishery; administering permit transfers; adjusting and collecting annual permit and vessel license fees; and adjudications.

The key to the organizational structure puzzle is solving how to maintain the limited fisheries and the research and licensing functions (which are on-going), scale down the other functions, but be ready for a new limited fishery. Because of all the Alaska Supreme Court decisions, coupled with CFEC

experience and legislative fine-tuning, the point systems devised for subsequent limited fisheries got simpler. So future limited entry fisheries should be easier to conceive (at least from the point system perspective) and implement. Further, future limitations, if any, are likely to be less important economically since the high value fisheries have been addressed already.

Below, different alternatives are presented for consideration. The alternatives center on the changes to the three-member commission and operations director and not on individual sections or positions except where noted. Per Recommendation #16, all alternatives include transferring the hearing officer-level adjudications to the Office of Administrative Hearings. In addition, all recommendations assume that Recommendation #18 regarding the reclassification of the operations manager to operations director will have been implemented.

Alternatives 1-5 retain CFEC's exempt agency status. In addition to what is presented for these five alternatives, efficiencies could be possible through contracting via an RSA with ADF&G's Division of Administrative Services for administrative support services including: accounting, fiscal management, budget services, personnel, and/or desktop computer support.

Alternative 1 – three commissioners. Maintain the current three commissioner structure and the operations director. Agency remains fully exempt.

Pros: This is the status quo option. It requires no legislation and is likely the least controversial of alternatives with no disruption to staff or services.

Cons: The need for three full-time commissioners is a serious question, once the adjudications are complete. Some controversy could arise for not taking any action to update CFEC's organizational structure.

Alternative 2 – two commissioners and a deputy commissioner. Maintain two commissioners and a deputy commissioner of operations; eliminate the operations director. Agency remains fully exempt.

Pros: This option reduces CFEC's budget by eliminating the operations director at an estimated savings of at least \$150.0 per year. One commissioner position would be reclassified to a deputy commissioner at a range 26 with some additional savings and possibly would not require legislation. There would be no quorum issues that might exist in other alternatives. This structure is a more reasonable fit for the future workload of the Commission.

Cons: The deputy commissioner appointed by the governor would have to be an experienced administrator/manager to avoid issues that have plagued the Commission over the past several years. With the eventual departure of either of the two commissioners, the expectation would be that the deputy commissioner would be promoted leaving an important void to fill.

Alternative 3 – one commissioner and a deputy commissioner. Eliminate one commissioner position; retain one commissioner and one deputy commissioner of operations; eliminate the operations director. Agency remains fully exempt.

Pros: This option reduces CFEC’s budget by eliminating two senior positions to an estimated savings of at least \$315.0. This structure is likely to be a good fit for the future workload of the Commission.

Cons: The revision would require legislation to eliminate one commissioner. The deputy commissioner appointed by the governor would have to be an experienced manager to avoid management issues that have plagued the Commission over the past several years. There can be quorum issues with just two commissioners if one has to recuse themselves from a decision because of a conflict of interest. The legislation would have to address this situation. With the eventual departure of either of the two commissioners, the expectation would be that the deputy commissioner would be promoted leaving an important void to fill.

Alternative 4 – one commissioner and an operations director. Eliminate two commissioner positions; retain one commissioner and the operations director. Agency remains fully exempt.

Pros: This option reduces CFEC’s budget by eliminating two commissioners at an estimated savings of at least \$350.0. This structure is likely to be a good fit for the future workload of the Commission.

Cons: The revision would require legislation to eliminate two commissioners. It would be problematic if the sole commissioner had to recuse themselves from a decision; this would have to be addressed in the legislation. Of alternatives 1-4, this alternative most radically departs from the legislature’s original intent of the program to have an adjudicatory body where at least two of the three commissioners had to agree. The power and weight of every decision would be on one individual with a single commissioner. Without a second commissioner or a deputy commissioner, there would be a lack of continuity when the sole commissioner departs.

Alternative 5 – three part-time commissioners. Establish three executive branch cabinet commissioners as the Commission; reclassify positions to create an executive director and a full-time legal advisor. Agency remains fully exempt.

This alternative is perhaps the most innovative of all. The commissioners of ADF&G and the Department of Commerce Community and Economic Development (DCCED) and the Attorney General would serve as the part-time CFEC Commission. The part-time Commission would convene several times a year (or less) to attend to major decisions and some parts of CFEC business. The rest of their work would be done outside of the meetings and would be facilitated by the CFEC staff. Key support staff would be a CFEC executive director, range 27 reclassified from the operations director, and a full-time legal advisor, range 27, reclassified from the currently vacant law specialist III position, range 22. The legal advisor would be an experienced attorney. Legal counsel from the Attorney General’s Office would still occur if judicial appeals were filed. The organizational structure and staff support concept is

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somewhat akin to the North Pacific Fishery Management Council or the Exxon Valdez Oil Spill Trustee Council but with commission membership limited to the three commissioners.

Pros: Three commissioner positions are eliminated for a cost savings upwards of \$600.0 while generally retaining the three commissioner structure. Some program continuity would exist with CFEC executive director and legal advisor positions independent of cabinet commissioner turnover. This alternative would encourage more transparency by conducting public meetings of the part-time Commission where decisions could be discussed and decided upon but where executive sessions could occur as appropriate. Cabinet commissioners serve a four-year term and must be confirmed by the legislature; similar to current CFEC commissioners. This structure is likely to be the best fit for the future workload of the Commission.

Cons: Legislation would be needed to eliminate the current commissioner structure and add the duty of serving as a CFEC commissioner to the statutes of ADF&G, DCCED and the Department of Law. Legislation would have to define if commissioners can delegate the part-time Commission service responsibility to a deputy. There would be some additional expense in upgrading salaries of the two CFEC positions. Part-time commissioners lack CFEC knowledge, expertise and history and in addition are very busy. Cabinet commissioners serve at the pleasure of and can be influenced by the governor. Unlike CFEC commissioners, cabinet commissioners can be removed without cause.

Alternative 6 – HB 386. Repeal CFEC as an independent, fully exempt agency and establish a line division within ADF&G. Staff, with the exception of the director, would be in the classified service.

Pros: This alternative would likely be the most cost effective as it would eliminate three commissioner positions, and staff positions and salaries would be aligned with the classified service.

Cons: This alternative is the most disruptive and radical of all alternatives. Public trust and support of CFEC may be compromised as the original autonomous design of the Commission would be gone. It is likely that fishers would be very concerned with such a significant change to CFEC and perceive that rolling CFEC into ADF&G may degrade the CFEC service to the fishermen. CFEC staff salaries may be frozen when staff are transferred from the exempt to classified service, affecting staff morale. The IT, Licensing and Research Sections could eventually be transferred or absorbed into other sections of ADF&G, affecting CFEC functions, data, analysis, and service to fishers.

A division director serves at the pleasure of the Governor and commissioner; director-level decisions can be influenced or overruled before issuance. The CFEC division director could be terminated without cause which would affect the continuity of the division. There could be a perception of conflict of interest if the same entity, ADF&G that limits entry in a fishery regulates the fishery as well. If future fisheries are limited, CFEC adjudications at the administrative review level might have to be conducted by the OAH

Overarching Recommendation

Recommendation #20: Update CFEC statutes to reflect court decisions that have modified the program over the years. Type: Legislative

Interviewees noted that Alaska Supreme Court decisions have modified the program over 40 years. However, some of the modifications are not reflected in the statutes. If legislative-type recommendations are sought, then CFEC staff should provide a list of limited entry program modifications that have been made by the court so statutes can be appropriately updated.