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What is a commercial fishing permit?

In Alaska, a limited entry or interim-use permit entitles the holder to operate a unit of gear in a specific commercial fishery. The term "fishery" refers to a unique combination of fishery resource, gear type and area. For instance, halibut longlining, salmon trolling and salmon seining are distinct fisheries, requiring separate permits. Permits for some species are issued on a statewide basis, while others are valid only for certain areas of the state, for instance Cook Inlet or Bristol Bay. This somewhat intangible "right to fish" is embodied in a plastic permit card which is issued annually.

Are there other types of permits?

During 1996, the Alaska State Legislature directed the commission to issue annual "vessel permits" for the Korean hair crab fishery (occurring beyond 5 miles from shore in the Bering Sea) which was being placed under a moratorium. "Vessel permits" are completely different than limited entry or interim-use permits as they are vessel-specific. The vessel permit, which authorizes use of the vessel in the fishery, must be kept on board the qualifying vessel, in addition to the regular commercial vessel license. There must also be a person on board who holds a valid interim-use permit for the fishery. The vessel permit is an 8-1/2" x 11" document similar to a limited entry certificate, rather than a plastic card. There are also special types of permits that may be issued to private non-profit hatcheries and accredited educational institutions for commercial fisheries training programs.

How is the limited entry or interim-use permit card used?

The fisherman is required to have the permit card, and a photo ID, in possession at all times while engaged in commercial fishing activities. When fish are delivered for sale, the permit card is imprinted on the fish ticket which records the species, number of fish, pounds delivered, area caught, etc..

What information is printed on the permit cards?

The top line of the permit card indicates the holder's residency status and the name of the vessel designated on

the permit application. The next line is the fishery description. Third line is the person's name, fourth is the permit number, followed by the vessel ADF&G number. The bottom line is a sequence number used to track the time period for which the card is valid, followed by the holder's social security number and year of birth.

How long do permits remain valid?

There are four basic types of permits issued by the commission; they are limited entry, interim-entry, interim-use and vessel permits. Limited entry permits are the permanent permits issued for certain fisheries to applicants who received enough points on their applications. Interim-entry permits are the "temporary" permits issued on an annual basis to persons waiting to find out if they qualify for permanent permits. Interim-use permits are issued annually for all commercial fisheries which are not under entry limitation. Vessel permits are issued annually to vessels qualified to participate in the Bering Sea Korean hair crab or weathervane scallop fisheries which are under moratoria. (See the leaflet which explains the entry limitation process for additional information.)

Don't some permits cost thousands of dollars?

Yes. In order to enter a fishery which is under limited entry, a permit must be obtained by transfer from a current permit holder. Many of these transfers involve sales and the prices may range from about \$6,000 for a salmon hand troll permit to about \$300,000 for a False Pass salmon drift permit. These prices fluctuate with the market and are not regulated by the Entry Commission.

Do you have to fish a limited entry permit every year in order to keep it?

No. Limited entry permits do not have to be fished every year, however, the renewal fee must be paid each year in order to keep the permit valid (unless the fishery remains closed for the entire year). If renewal fees are not paid for two years, the permit may be forfeited to the State. Since interim-entry and interim-use permits are issued on an annual basis, applications do not have to be submitted at all unless the applicant actually intends to participate in the fishery during the year.

What happens to permits which are forfeited because fees are not paid?

Forfeited limited entry permits are simply removed from the fisheries. They are not reissued to other fishermen. The permit holder may request reinstatement of the forfeited permit if good cause can be demonstrated for the failure to renew.

Can permit fees be refunded if the permit isn't used during the year?

Permit fees are not refundable, except in the event of a season-long closure of the fishery or if some other circumstance, (applicable to all permit holders in the fishery,) prevents a substantial number from participating. The Exxon Valdez oil spill in Prince William Sound provides a good example of the type of situation in which refunds may be authorized.

If a person holds a permit for one fishery, does s/he have to buy a crewmember license to participate as a deckhand in another fishery?

No. Any valid limited entry, interim-entry or interim-use permit may also serve as a crew license for the holder to participate in other commercial fisheries. (The one exception may be in fisheries with superexclusive registration requirements - ADF&G regulations should be consulted for details.)

Can the permit holder use the permit on any boat?

In most fisheries, the permit holder may fish the permit on any vessel which is licensed, but ADF&G regulations for the specific fishery should be consulted. On the permit application the ADF&G number of the vessel to be fished must be provided and the designated vessel must be licensed for that year in order for the permit card to be issued. (One exception to this general rule involves fisheries which have "superexclusive area registration" requirements, i.e. the vessel may be used in only one area.)

What agency issues vessel licenses?

Vessel licenses are also issued by the Entry Commission. In 1996, the annual fee for a vessel license changed from a flat \$20 per vessel to 6 fee categories ranging from \$20 to \$750, depending upon the overall length of the vessel. Once licensed, the vessel may be used in any commercial fishery, provided it is in compliance with applicable Alaska Department of Fish and Game regulations.

Can a partnership or corporation hold a permit?

No. Entry and interim-use permits must be held by an individual person and the person named on the permit must be actively involved in the fishing operation. The permit holder must be able to present personal identification, including a photo ID, if so requested by authorities. "Vessel permits" issued to owners of qualifying vessels (such as in the Korean hair crab and weathervane scallop fisheries) may be held by business entities or individuals.

What may be done if the permit holder is NOT able to participate in the fishery for some reason?

The regulations include provisions for permits to be transferred in certain situations. The permit holder may permanently transfer the permit to someone else upon sale or as a gift or, if unable to participate in the fishery due to a problem temporary in nature, s/he may be able to transfer the permit for the season on an emergency basis, subject to the commission's approval. (See the leaflet dealing with permit transfers for additional information.)

Is it legal for a permit to be leased out, or fished by someone else, if the permit holder doesn't want to fish?

No, permits cannot be leased simply because the permit holder does not want to fish; leasing is prohibited by the Limited Entry Statutes. However, if the permit holder has a legitimate reason for requesting an emergency transfer of the permit, and the transfer is approved, the permit holder may legally

receive a payment for the use of the permit.
Why is it illegal to lease permits?

The legislature made it illegal to lease permits to ensure that fishermen would maintain control of their own livelihoods, and that permits would be controlled by active participants in the fisheries who would have a stake in conservation of fishery resources. The concern with leasing was that permits would be bought up by large companies or speculators and fishermen would be subject to their demands.

Can aliens obtain permits?

Aliens lawfully admitted to the United States may hold permits. Proof of lawful admission may consist of:

- 1) a "green card" (Alien Registration card); or
- 2) a Naturalization Certificate; or
- 3) a Certificate of Citizenship

An alien applying for an interim use permit or limited entry permit, or, seeking to obtain one through permanent or emergency transfer, must show proof of being lawfully admitted to the United States for employment purposes. AS 16.05.905 prohibits alien persons not lawfully admitted to the United States from engaging in commercial fishing activities. If you have questions about your status, call CFEC for more information.

(rev. 04/00)

State of Alaska

COMMERCIAL FISHING PERMITS

Summary information for commercial fishermen
presented courtesy of the licensing section of the:

Commercial Fisheries Entry Commission
8800 Glacier Hwy, #109
Juneau, AK 99801

(907) 789-6150



Bruce Twonley, Chairman
Marlene Johnson, Commissioner
Mary McDowell, Commissioner

This pamphlet is not intended to replace the agency's governing statutes (AS 16.43) and regulations (Title 20 Alaska Administrative Code)

What is the Commercial Fisheries Entry Commission?

The CFEC (aka Limited Entry Commission) is one agency involved in regulation of Alaska's commercial fisheries. Its purpose is to promote the conservation and sustained yield management of fisheries resources and the economic health and stability of the industry by regulating entry into the fisheries in the public interest.

Why and how does the Commission "limit entry" in a fishery?

The limited entry process is usually initiated when CFEC receives a petition from participants in a fishery who believe the number of gear operators must be limited in order to preserve the resource and/or economic health of the fishery. If research indicates that there is a problem which would be mitigated by limiting entry, the Commission establishes the maximum number of permits for the fishery, based upon historic participation levels. The next step is to develop a point system to rank eligible applicants according to the relative degree of hardship they would suffer if not awarded an entry permit.

Are there different types of limited entry programs?

The original Limited Entry Act only provided for one type of program, primarily designed with the salmon fisheries in mind, but that program is not ideal for all other fisheries. At this time, no other permanent entry limitation programs have been implemented in the state. However, in 1996 a temporary moratorium on vessels (rather than gear operators) participating in the Bering Sea Korean hair crab fishery was approved by the Legislature and the Commission is studying this, and other, types of limitation. Also, 1991 legislation authorized temporary moratoria to be established to cap growth in fisheries while research is undertaken to evaluate the need for permanent entry limitation. In 1995, legislation was enacted which gave the Commission authority to further restrict the fishing capacity of an entry permit, (for example, permits for 100, 200 or 300 pots may be issued in a crab fishery).

What are the point systems based upon?

The basic criteria used to evaluate hardship are: (1) economic dependence upon the fishery, which may include percentage of income from the fishery, availability of (and reliance on) alternative occupations and investment in vessels and gear; and (2) past participation in the fishery,

which may include the number of years and consistency of participation.

Who is eligible to apply for a limited entry permit?

A person must have participated in the fishery legally, e.g., held the required permits and/or licenses, and made at least one landing of fish prior to the established qualification date. The qualification date is usually January 1 of the year in which the CFEC adopts limited entry for the fishery.

When can a person apply for a limited entry permit?

A specific application period, usually a few months, is established for each limited fishery. All persons who are eligible to apply must submit their applications during the specified time period. Sometimes lawsuits result in the reopening of an application period. An example of this was the Wassilie class action which involved a group of Alaska Natives that claimed the Commission had not done enough initial public outreach to explain the limited entry program. Due to their lack of understanding they had failed to submit timely applications. The settlement provided them another opportunity to apply.

How long does it take for the Commission to decide who qualifies for limited entry permits?

The time period can vary in individual cases from a couple months to several years. The first step is for CFEC staff to review the evidence submitted with the application to verify the points that have been claimed; they then make an initial determination as to the number of points awarded. Permits may be issued fairly quickly to applicants who are classified at the high end of the point range.

Applicants who wish to contest their point determinations may request hearings and submit additional testimony and evidence. Permits are issued first to applicants with the highest number of points, and then on down through the range of point levels until the established maximum number of permits has been issued. It is actually a bit more complicated than this, since a block of permits must be held in reserve for applicants who are going through the appeal process and may eventually be found to qualify for permits. The Southeast herring gillnet fishery may be a good example. There are 3 permits left to be issued before the maximum number is reached. However, there are 7

applications classified at the next lower point level and 8 more still in the hearing process. The Commission must await the final decisions in those hearings to see how many permits may be left to issue. Permits may then be issued to all applicants at the next point level, if the maximum number would not be exceeded by more than 5% or 10 permits, (whichever is greater), otherwise the permits would be issued by lottery.

Are people allowed to fish while they are waiting to find out if they qualify for a limited entry permit?

In most cases the answer is "yes". From the time that the Commission adopts limited entry for a fishery, until limited entry permits are actually issued, applicants who may eventually qualify for a permit are allowed to fish using interim-entry permits which are issued annually.

Does the Commission ever issue special permits in "hardship" cases?

No. There are no special provisions for awarding limited entry permits in hardship situations. In order to qualify for a permit, an applicant must meet the standard requirements for eligibility and have sufficient points verified on the application.

If someone wants to fish, but doesn't qualify to apply for a limited entry permit, how can s/he get into the fishery?

Most of the limited entry permits may be freely transferred once issued. In other words, if the permit holder no longer wishes to fish the permit, s/he may permanently transfer it to another person. A transfer may take place as the result of a sale, gift, inheritance, trade, or other type of transaction. All requests for permanent transfers of permits must be approved by the Commission. (See the leaflet on permit transfers.)

Which fisheries in Alaska have been put under limited entry?

The salmon fisheries in all areas of the state and most of the roe herring fisheries have been limited. A partial list of other fisheries which are under limitation or moratoria, by area, follows:

Southeast Alaska: King, Tanner and Dungeness crab, shrimp pot gear and beam trawl, sablefish longline and pot gear, herring spawn on kelp pounding, dive fisheries for abalone, geoduck, sea cucumbers and sea urchins
Prince William Sound: herring roe on kelp pounding, sablefish fixed gear and net gear
Cook Inlet: Dungeness crab pots and ring nets
Bristol Bay: herring spawn on kelp

Fisheries which are not under limited entry include: King, Tanner and Dungeness crab in some areas, halibut, ling cod, sablefish in some areas, miscellaneous finfish, rockfish, shrimp in some areas, food/bait herring, roe herring in a few areas, clams other than geoducks, snails, octopi and other miscellaneous species. As of July 1996, the Korean hair crab fishery in the Bering Sea (beyond 5 miles from shore) is under a moratorium restricting vessels which may participate, and requiring issuance of "vessel permits." A similar vessel permit moratorium was enacted during 1997 for the weathervane scallop fishery. (Some fisheries are subject to federal limitation programs (i.e. halibut and sablefish IFQ's,) or moratoria which may restrict eligibility to participate in fisheries. Fishers are advised to review state and federal requirements before engaging in fishing activities.)

What else does the CFEC do besides put fisheries under limited entry?

The Commission has four major sections: (1) adjudications, which deals with limited entry applications, point verification and hearings; (2) licensing, which deals with the annual issuance of all commercial fishing permits and vessel licenses for Alaska, as well as permit transfers; (3) data processing, which responds to ad hoc requests for data and maintains the computer system which enables the agency to operate efficiently; and (4) research, which monitors the development of fisheries and produces economic data utilized by a variety of management agencies. There is a Chairman and two additional commissioners, who perform a quasi-judicial function, hearing and voting upon decisions in disputed cases. In addition, the agency has a small administrative staff. Approximately 35 persons are currently employed.

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**COMMERCIAL
FISHERIES
ENTRY
COMMISSION**

(aka "Limited Entry")

What It Is



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Limited Entry Facts

- The overall interests of Alaskans have been far better served under limited entry than they would have been without it. Without the constitutional amendment allowing for limited entry, and implementation of the program, there would have been a rush into Alaska's fisheries by non-residents as fisheries elsewhere collapsed or became subject to such impacts as the Boldt decision, which displaced non-Alaskan fishermen from their own fisheries. Even with all of these potential external pressures on our fisheries over the years, the percentages of residents in Alaska's various fisheries have remained roughly consistent with historic (pre-limited entry) levels.
- There are currently about 14,300 limited entry permits in existence. Of those, over 11,000 (about 77%) are held by Alaska residents.
- It is true that some permits held at one time by resident Alaskans, later come to be held by non-residents. However, *migration of permit holders*, rather than transfer of permits, has had the greater cumulative effect on the resident/nonresident balance. That is, between 1975 and 1999, the number of permits held by non-residents increased by only 140 due to the net result of transfers of permits, while resident Alaskan permit holders moving out of state (and continuing to hold their permits) resulted in a net increase of 483 in the number of nonresident permits. (In fact, during most recent three year period, 1997 through 1999, 106 *more* permits were transferred *from* non-residents *to* Alaskans than the other way around).
- Commercial fisheries are subject to federal constitutional provisions and laws pertaining to *interstate commerce*. Therefore, access to this commercial enterprise by all residents of the United States is protected by the federal privileges and immunities clause.
- Alaska's Limited Entry program has survived constitutional challenges while serving to protect the place of Alaskans in the state's fisheries. Without creating a "closed class," the program's system of "freely transferable" permits has been effective in keeping permits within families and communities. Over the last 20 years, between 30 and 40 percent of all permit transfers have been by GIFT rather than by SALE. These are primarily transfers between family members.

ALASKA'S LIMITED ENTRY PROGRAM

Overall, limited entry has worked well for Alaska residents:

- ☐ The program grandfathers into each fishery Alaskans who most depend upon the fishery.
- ☐ Limited entry is a critical component of Alaska's fishery management as it stabilizes one major variable, the number of participants, in a given fishery.
- ☐ Transferability of permits (the ability of permit holders to choose who to give or sell their permits to) provides the mechanism for keeping permits within Alaskan families and communities.
- ☐ More than half of the permits transferred to rural Alaskans are transferred by gift, rather than by sale.
- ☐ The courts have repeatedly ruled that the limited entry program meets constitutional requirements regarding equal access, interstate commerce, and prohibition against creation of a "closed class."
- ☐ Today, 77% (more than 10,000) of all limited entry permits are held by Alaska residents. It is reported that in 1962, well before limited entry, only about two-thirds of commercial fishers licensed in Alaska fisheries were Alaska residents.
- ☐ More than one-half of permits held by Alaskan residents are held by rural Alaskans.
- ☐ In the absence of limited entry, a rush into our fisheries by thousands of displaced fishermen from outside of Alaska would certainly have occurred, placing our fishery resources and commercial, sport and subsistence fishers under tremendous additional pressure.
- ☐ There are currently available mechanisms that can help to retain and even increase the number of permits in the hands of residents.

Further elaboration on these points and on the history and structure of the limited entry program can be found in a July, 1998 report to the Governor by the Commercial Fisheries Entry Commission, entitled "Alaska's Limited Entry Program: Is it Working for Alaskans?"

**ALASKA'S LIMITED ENTRY PROGRAM:
IS IT WORKING FOR ALASKANS?**

**A Report to Governor Knowles
by the Commercial Fisheries Entry Commission**

July, 1998

ALASKA'S LIMITED ENTRY PROGRAM: IS IT WORKING FOR ALASKANS?

I. Overview & History of Alaska's Limited Entry Program

Why and how was the program created? Why is it structured as it is?

Alaska's limited entry system is the product of years of effort by the State beginning in 1961. Two early attempts to limit entry into Alaska's fisheries were struck down by courts.

The Alaska legislature persisted, however, because Alaska's salmon fisheries were experiencing a long and threatening overall decline, which began in the 1930's under federal management and continued into the early 1970's. Despite this decline, the number of participants continued to increase substantially, which resulted in more and more fishing pressure on a diminishing resource. A limited entry system was the only means by which the State could control a critical variable in the management of its fishery resources: the number of fishers participating in a given fishery.

Following action by the legislature to put the issue on the ballot, Alaska voters, in 1972, approved an amendment to Article VIII, Section 15 of the Alaska Constitution, which authorized 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.

Building upon this constitutional foundation, in 1973, the Alaska legislature adopted the Limited Entry Act, which has resulted in the largest limited entry program of its kind in the United States. Limitation of entry into all twenty-six of Alaska's salmon fisheries followed shortly. During 1976, by referendum, the voters of Alaska again supported limited entry by a margin of almost two-to-one. Today, nearly sixty of Alaska's fisheries are under limitation.

Alaska's fisheries employ a substantial segment of the state's population, and many remote communities rely upon commercial fishing as their primary economic base. Therefore, sound fisheries management is crucial to the State of Alaska, and limited entry is an important part of the state's management system.

Extensive biological, economic, historic, and cultural data and analyses have been generated to aid the development, enactment, and review of entry limitation in Alaska. Thousands of hours of hearings throughout the state and before the legislature have informed the choices made in shaping Alaska's limited entry system. Alaska's courts have carefully scrutinized the program and developed a body of law governing limited entry in Alaska that is both extensive and unique.

Under AS 16.43.140, no commercial fisher may operate fishing gear in a limited fishery without a valid fishing permit. The Alaska Commercial Fisheries Entry Commission (CFEC) issues entry permits and administers the program. The entry permit is the critical element of the system and, to Alaska fishers, a legally required tool of their trade. In establishing limited entry and considering the needs of the State and Alaska fishers, the Alaska legislature gave careful consideration to the nature of an entry permit and the privileges that a permit would extend to its holder.

If the legislature had been committed only to simplicity and economy, it could have authorized conducting of a lottery or auctioning of a limited number of fishing rights. The legislature rejected these approaches because they would not have been consistent with the State's most important objectives in establishing a limited entry system. The legislature believed that, in view of the substantial reliance on their fisheries by fishers and those dependent upon them, privileges should be initially extended only to qualified, individual fishers who could demonstrate their dependence. At the same time, the legislature wished to restrain the growth of state bureaucracy.

Although, under state law, entry permits do not constitute property belonging to their holders, the legislature authorized holders to transfer their permits subject to control and approval by CFEC. Doing so advanced several of the State's objectives. Because the law provides holders with uninterrupted use of their entry permits and authorizes fishers to transfer their permits, fishers hold the means to continue their access to the fishery and their livelihood. This transfer system allows permit holders the option of transferring their permits to other family members who are physically able to fish, and thereby maintain permits within families over time. Additionally, by not cutting off the interest of fishers or their heirs (as could be the case through a lottery or a system of reversion and reissue), the holders are granted a sufficiently long-term privilege in the fishery so as to be encouraged to both conserve and enhance the fishery resource. Finally, to avoid generating additional state bureaucracy, the legislature did not require the State to select who would be a subsequent recipient of the privilege. (The task of initially awarding permits has been sufficiently burdensome in itself.)

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgment or under any other process or order of any court." Additionally, a fisher may not pledge his or her entry permit as security for a debt. [The legislature recognized that the absence of a property right might impair a fisher's ability to obtain financing for the purchase of a permit and fishing operation, and, therefore, established two state authorized loan programs: the Commercial Fishing Loan Program and Commercial Fishing and Agriculture Bank (CFAB)]. Just as fishers cannot, contrary to state law, create a security interest in their fishing privileges, neither can a creditor.

The legislature recognized the earnings of fishers are seasonal and subject to many variables from year-to-year beyond their control (for example, weather, ex-vessel fish prices, survival rates, predation, and interception). If creditors were allowed to seize and force the sale of an entry permit, fishers without other means of earning a living, together with those

dependent upon them, could well be left destitute. In Alaska, where many communities in remote areas of the state depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self-support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 20 C.F.R. § 416.1222(b); 50 Fed. Reg. 42683, 42685 (1985).]

To avoid intemperate transfers, a permit holder may permanently transfer a permit only after a 60-day waiting period during which the holder can withdraw from any agreement to transfer. Permits can be transferred only to a living individual who can demonstrate his or her present ability to participate actively in the fishery. They may not be transferred to a corporation or a partnership. Furthermore, an individual may not own more than one permit in any given fishery. These provisions keep fishers from becoming "share croppers," and prevent absentee ownership of fishing privileges and displacement of fishers through the consolidation or vertical integration that might otherwise occur.

Finally, because only a limited number of privileges would be extended, the legislature wished to ensure that the State would be reasonably compensated by regular permit fees. CFEC charges fishers fees for its licensing functions, including fees for the required annual renewal of limited entry permits, interim use permits, and vessel licenses. Fees vary according to permit value and vessel size. Today these fees generate revenues equaling more than two times the operating budget of CFEC and thus contribute a net of over 2.5 million dollars annually to the state General Fund.

The open access alternative: What might Alaska's commercial fisheries look like today without Limited Entry?

While shortcomings of the limited entry program can be identified, in analyzing its effectiveness, it is important to consider the alternatives. How would Alaska's fisheries evolve in the absence of limited entry? As mentioned, even with Alaska's salmon fisheries in decline in the nineteen-sixties and seventies, participation levels continued to rise. One can imagine how much participation would have grown as Alaska's salmon stocks rebounded in subsequent decades (assuming the rebound would have occurred without the limitation of participation).

In addition to the increase in Alaskan salmon harvests, there would have been other likely sources of pressure. The construction of the Alaska pipeline during the 1970's drew a large work force into Alaska. Upon completion of the pipeline, displaced former pipeline workers could well have sought to enter Alaska's salmon fisheries.

Of more significance, the troubles that have befallen west coast salmon fisheries over the last two decades could well have spawned additional pressure from displaced west coast salmon fishers entering Alaska's salmon fisheries. Alaska's system of limitation was barely in

place when the Boldt decision came down in 1974. Among other things, the Boldt decision required that a substantial portion of the salmon harvests in the northwestern United States be reserved for certain Native American tribes. That decision dislocated large numbers of northwest salmon fishers, who would likely have looked to Alaska to offset their losses. In more recent years, many U.S. fisheries have crashed and been closed. Without limitation, many of those out of work fishers would likely have entered Alaska's fisheries. In short, had Alaska's license limitation system not stood as a bulwark, these various pressures likely would have caused additional growth in the numbers of participants in its fisheries and even greater pressure upon the resource itself as well as commercial, sport, personal use, and subsistence users.

It is especially difficult to envision how Alaska's fisheries would have evolved over time without limited entry, or to predict how they would be affected by a return to open access, because the limited entry system does not operate by itself. While limited entry stabilizes one major variable in a fishery (the number of participants), the State Board of Fisheries consistently provides gear and vessel restrictions applicable to commercial fishers. These restrictions, when coupled with license limitation, result in a limitation of overall fishing capacity and further allow fishery managers to calculate with some assurance the amount of fishing power to be managed. Without license limitation, state fishery managers would face a much more complicated and difficult task. Indeed, in the absence of license limitation, in a situation where managers believe there is a risk of more participation than the resource could withstand, a fishery would likely not be opened at all.

II. How has limited entry worked for Alaskans, and, specifically, rural Alaskans?

Levels of Alaska residency among permit holders

The purpose of limited entry, under AS 16.43.010, is "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 in the public interest and without unjust discrimination."

Directing benefits to Alaska fishers is not a purpose of the limited entry program and *cannot be* under the state and federal constitution. However, grandfathering in participants through the limited entry program and giving those participants the power to transfer their limited entry permits tends to *maintain historic levels of Alaskan participation in most limited fisheries*. While the Limited Entry Act is neutral with respect to residency, overall, Alaskans hold a substantial portion of the permits. In 1962, well before limited entry, Alaska residents constituted about two-thirds of the licensed commercial fishers in the state. Brown v. Anderson, 202 F. Supp. 96, 99 (1962). According to CFEC data, as of the end of 1996, 77% (more than 10,000) of Alaska's limited entry permits are held by Alaskan residents. More than one-half of the Alaskans holding entry permits are rural residents living

in areas where other sources of cash income are very limited. Some limited fisheries like the Lower Yukon and Lower Kuskokwim salmon fisheries have 99% Alaskan participation.

Again, while we can take satisfaction from these historic results, under the state and federal constitutions, the state cannot as a matter of law or policy discriminate unjustly against nonresident fishers.

Permit transferability: How does it affect levels of Alaska resident participation?

An entry permit secures a fisher's access to his or her fishery. Limited entry empowers fishers by giving them control of that access. The various protections that apply to entry permits help to insulate fishers from control and exploitation by others. In turn, fishers are free to transfer their entry permits to family members or to any other individuals with the ability to participate in the fishery. This "transferability" of permits, the ability of permit holders to transfer their permit to another person by gift, inheritance, or sale (with values determined by the private sector market) is a controversial aspect of Alaska's limited entry system. Yet, it is this free transferability that has allowed permits to remain in families, transferring between generations or from one family member to another, rather than having to revert back to the state at the end of one person's use of the permit, for reissuance. Transferability of permits is the aspect of the limited entry program probably most responsible for maintaining such high percentages of residents in Alaska's fisheries while meeting constitutional requirements of equal access.

In some rural areas of the state, because of the choices fishers have made regarding transfer of their permits, more permits have departed from the area by transfer than have been received by transfer. This is the case in Bristol Bay. This net drain of entry permits in areas where economic alternatives to commercial fishing are limited is a very serious concern.

The situation, however, varies from place-to-place and from fishery-to-fishery. This is true even within Bristol Bay, where, for example (again using CFEC data as of the end of 1996), in five of the last ten years, more salmon set net entry permits have transferred to local Bristol Bay residents than from them. Additionally, residents of Port Heiden held 13 entry permits in 1975, but held 18 by the end of 1996. Similarly, during the same time period, the number of Togiak residents holding salmon limited entry permits increased from 92 to 129. And, near Bristol Bay, the number of permits held by the residents of Chignik communities has increased.

The power to transfer has helped many Alaskan families, including those of Bristol Bay. Over time, there have been more than 1,200 transfers of entry permits to local Bristol Bay residents. More than 60% of these transfers have been by gift.

Overall, among permits transferred to rural Alaskans living near their fisheries, more than 50% of the transfers have been by gift. When permits have transferred from rural areas of the state, they have tended to transfer to other Alaskans (as opposed to nonresidents).

What has been done, or could be done, to minimize negatives and maximize positives of limited entry for Alaskans?

No system, whether open access or license limitation, is without drawbacks for some people. While Alaska's policy-makers have adopted a form of limited entry believed to be the "best" overall for the state and its fisheries, the state recognizes the need to help local Alaskans work within this system to maintain their place in their traditional fisheries.

The expense of obtaining a vessel, gear, and a limited entry permit can make entering a fishery difficult for those without ready access to financing. Traditionally, young people in many areas of the state have gotten their start in fishing by working as crew to obtain the experience needed to be successful and to save up the capital necessary to enter the fishery. Others have gotten their start by participating at little cost in "entry level" fisheries. Where such local "small boat" fisheries have come under limitation, the added expense of purchasing a permit has sometimes created an obstacle to this avenue to entering the fisheries.

The State has sought to assist Alaska residents in maintaining access to their fisheries by providing a loan program through the State Department of Commerce and Economic Development. This Commercial Fishing Revolving Loan Fund provides loans only to resident Alaskans. One of the authorized purposes of the program is financing of limited entry permits. Within this loan program, the state developed a special loan program for the benefit of Rural Alaskan residents. As of the end of 1996, the state's revolving loan program had loaned over \$148 million to Alaskans for the purchase of 2238 limited entry permits.

The state loan program presents opportunities for additional special cooperative efforts. For example, the Lower Yukon CDQ Corporation is participating with the Commercial Fishing Loan Program to help Lower Yukon residents obtain limited entry permits.

The Alaska Commercial Fishing and Agriculture Bank (CFAB), another state-authorized lending program, also finances limited entry permits for Alaskans. CFEC helped CFAB amend their statute to provide a new opportunity for local village residents to transfer permits to each other. Several Alaska Native villages are participating in this program.

These two programs are the only lending institutions allowed by state law to use the permits themselves as collateral for loans. The availability of these financing options for Alaska residents, and the ability of the two programs to use the permits as security, give Alaskans an edge in obtaining permits not available to non-residents.

At two AFN conventions in recent years, the Commission conducted workshops to help local people get and keep limited entry permits. CFEC has observed some groups become very successful at getting and keeping limited entry permits for the benefit of their

families and local communities. At an Economic Summit of all Southeast ANCSA Corporations, CFEC conducted a similar workshop. CFEC has made an effort to share information about how to use the limited entry system effectively with all interested Alaskan communities and Alaska Natives.

One idea sometimes proposed as a solution to the desire for more access to permits is to expand the program to allow additional permits to be acquired. Salmon fisheries in particular are under great stress right now because of some run failures and because of depressed worldwide salmon market conditions. Nonetheless, the Commission does have statutory authority to create more permits if it can satisfy the legal requirements. However, the state would not have the power under either the state or federal constitutions to direct permits exclusively to local village residents or any other exclusive group. Alaska residents and nonresidents alike would have to be allowed to compete for any additional limited entry permits created.

Another idea aimed at maintaining high numbers of permits in rural Alaska would be to assign permits to Alaska Native village councils or other local entities which would have the authority to transfer permits only among village members or local residents. Under the state and federal constitutions, the state would not have power to create a "closed class" of permit holders. Additionally, the state would not have the power to directly assign benefits exclusively to local Native villages (as opposed to other communities in other areas which might wish to compete for fishing privileges). All citizens must be equally free to come and go from commercial fisheries in order for the program to pass constitutional muster.

It is illustrative to note that Alaska's own State Supreme Court struck down the state's statutory rural preference for subsistence use. Additionally, under federal constitutional standards, the state Supreme Court struck down a 50% local hire requirement in financially disadvantaged rural areas. As we have noted, in contrast to this modest 50%, the limited entry program (which treats all applicants alike) has yielded 77% Alaskan participation in limited fisheries with some fisheries running as high as 99%. Despite the substantial percentage of Alaskan beneficiaries, limited entry has withstood numerous court challenges.

The Limited Entry Commission participated in the Bristol Bay Native Association (BBNA) Commission on Limited Entry which led to the creation by BBNA and the Bristol Bay Economic Development Corporation (BBEDC, the Bristol Bay CDQ Corporation) of the Bristol Bay Permit Brokerage based in Dillingham. The function of a local permit brokerage (as CFEC has advocated for years) is to protect permit holders from the IRS and to help local individuals obtain and retain limited entry permits.

Taking action to limit a fishery is another way CFEC can often help rural Alaskans maintain their position in fisheries, since permits are initially issued based upon participation in the fishery and economic dependence upon it. For example, in order to protect their places in Western Alaska herring fisheries, 537 Alaska Natives from villages

up and down the coast of Western Alaska petitioned the Entry Commission to limit entry into their herring fisheries. The Commission responded to this request and limited Western Alaska herring fisheries.

CFEC participates on the Alaska Federation of Natives Task Force concerning the Internal Revenue Service and Alaska Native fishers. The Task Force was instrumental in persuading the Alaska Legislature to create (within the state's Commercial Fishing Loan Program) the Tax Obligation Loan Program, which has helped many rural and Native fishers come into voluntary compliance with the IRS.

In 1996, CFEC issued the Carle decision which denied a request by the IRS to force transfer of an entry permit held by an elderly Alaska Native living in a coastal village. CFEC has worked aggressively with Governor Knowles, the Congressional delegation, AFN, the Bristol Bay Native Association, the Commercial Fishing Loan Program, and the Bristol Bay Permit Brokerage to avoid IRS seizure and forced sale of entry permits. As the result of these efforts, so far, no Alaskan has lost commercial fishing privileges due to an IRS forced sale.

CFEC and the state settled the Wassillie class action in 1988, authorizing Alaska Native class members to file very late applications for salmon limited entry permits. CFEC made Wassillie cases the highest priority and moved them ahead of other pending cases in the Commission's workload. The Wassillie settlement has allowed the Commission to issue many new limited entry permits to Alaska Natives. Additionally, CFEC has taken special measures to reduce pressure on the older Wassillie permit holders to sell their permits. CFEC wished to allow them sufficient time to consider transferring their permits to family and other community members.

The Limited Entry Act, as originally passed, was designed with the state's salmon fisheries in mind. Its provisions have proven less well-suited to some other fisheries which may lack long term participation track records upon which to base eligibility criteria or have very different patterns of participation or gear or vessel use. CFEC has worked very hard, within its statutory authority, to develop point systems to best meet the needs in each fishery. In addition, the legislature has passed several revisions to the limited entry statutes over the years, such as authorizing the use of capacity restrictions when appropriate, to address specific needs or problems.

Still, several other shortcomings of the limited entry law have yet to be addressed. For example, some developing fisheries are very different from the individual owner/operator model presented by Alaska's salmon fisheries. At the direction of the legislature, the commission is working to draft legislation to allow for license limitation based on vessels, rather than operators, for such fisheries. In addition, the existing statutory provisions for fishery moratoriums have proven to be unusable. The ability to efficiently impose a moratorium to protect a resource and participants when a fishery is growing very quickly is critical. A bill correcting this shortcoming in the law came very

close to final passage during the 1998 legislative session. The commission will seek its introduction and passage again in 1999.

Additionally, in response to the continuing salmon industry crisis and in cooperation with Governor Knowles' Salmon Forum, the Commercial Fisheries Entry Commission is developing an outline of possible options for reducing fleet size and improving cost effectiveness in salmon harvests. The outline will include discussion of legal and practical problems as well as potential benefits of the options. It will further suggest the practical steps required to pursue each option: for example, whether an option can be achieved right now under existing statutes or would require a change of law by the Legislature. The Commission hopes this outline will facilitate discussion of remedies on a fishery-by-fishery basis.

In short, while the limited entry law is not perfect, limited entry has, we believe, served Alaska's fishers and fisheries well overall. Despite having largely benefited Alaskans, limited entry has withstood constitutional challenges all the way to the U.S. Supreme Court. Any proposed changes to the law must be carefully considered so that limited entry can continue to survive court challenges. A change in the law resulting in a court finding limited entry unconstitutional could lead to opening Alaska's fisheries to fishers everywhere. Given the unfortunate state of salmon and other fisheries in Washington, Oregon, and California, one can easily imagine the potential influx of fishers from outside Alaska if limited entry were overturned by the courts.

The Commercial Fisheries Entry Commission stands ready to work with the Governor, Legislature, fishers and Alaskan organizations and communities to ensure that Alaska's limited entry system works well for the people and resources it is intended to serve.