

HB

112

<TARGET><BILL>HB 112</BILL><SUBJECT>HB
112</SUBJECT><COMM>HRES29</COMM></TARGET>

Alaska State Legislature

Chair

Fisheries Committee

Member

State Affairs Committee
Health and Social Services Committee
Transportation Committee
Economic Development Committee



REPRESENTATIVE LOUISE STUTES

District 32

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HB 112 Sponsor Statement

The Committee Substitute for House Bill 112, version N, is in response to Administrative Order 279 which moved the administrative and research functions of the Commercial Fisheries Entry Commission (CFEC) to the Department of Fish and Game (DFG).

Version N defines executive compensation for the three commissioners and compensation for employees that are moved from the exempt to the classified service under DFG. Staff salaries take effect immediately and commissioner salaries take effect on January 1st, 2017

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3/3/16

To: Rep. Dave Talerico, Co-chair House Resources Committee
Rep. Benjamin Nageak, Co-chair House Resources Committee

I kindly request a hearing for HB 112 "Repeal CFEC, Transfer Functions to ADFG" in the House Resources Committee.

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Governor Bill Walker
STATE OF ALASKA

ADMINISTRATIVE ORDER NO. 279

I, Bill Walker, Governor of the State of Alaska, under the authority of Article III, Sections 1 and 24 of the Alaska Constitution, and in accordance with AS 44.17.020 and AS 44.17.070, order the following reorganization within the Department of Fish and Game:

The administrative and research functions of the Alaska Commercial Fisheries Entry Commission (Commission) are transferred to the Department of Fish and Game (Department) under authority of the Commissioner of Fish and Game. This transfer is necessary for efficient administration and will provide for appropriate and effective performance of these functions.

BACKGROUND AND PURPOSE

The objectives of this Order are to streamline administrative and research functions of the agencies, identify cost-saving measures, and provide appropriate support to the commercial fishing industry in the state.

Administrative Order No. 60, dated July 1, 1980, transferred the Commission from the Office of the Governor to the Department, in the interest of efficient administration and logical organization of functions. The transfer was for reasons of budgeting and administration. The Department was not given authority to regulate the policies or activities of the Commission, except those that were purely administrative in nature. Administrative Order No. 60 remains in effect, but is amended as follows:

Administrative functions as defined by this Order include the following:

- (1) Licensing and permitting services (ministerial services only);
- (2) Information technology services;
- (3) Accounting services;
- (4) Payroll services;
- (5) Procurement services;
- (6) Budget services.

At the discretion of the commissioner, positions associated with these listed services and functions may be transferred from the Commission to the appropriate divisions within the Department. Additional administrative functions subject to this Order also may be transferred from the Commission to the Department at the discretion of the Commissioner.

This reorganization creates efficiency and costs savings and is in accord with sound administrative principles and practices

This Order takes effect immediately.

Dated this 16 th day of February, 2016.


Bill Walker
Governor

29-LS0485\N
Bullard
3/2/16

CS FOR HOUSE BILL NO. 112()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE STUTES

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the compensation of the members of the Alaska Commercial**
2 **Fisheries Entry Commission; relating to employees transferred from the Commercial**
3 **Fisheries Entry Commission to the Department of Fish and Game; and providing for an**
4 **effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 16.43.060 is amended to read:

7 **Sec. 16.43.060. Compensation.** Members of the commission are in the exempt
8 service and are entitled to a rate [MONTHLY SALARY] equal to [A] step A in
9 Range 27 of the salary schedule in AS 39.27.011 as adjusted by the geographic pay
10 differential provided for Juneau under AS 39.27.020. Each member of the
11 commission is also entitled to transportation and per diem expenses authorized
12 for boards and commissions under AS 39.20.180.

13 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

1 ASSIGNMENT OF STAFF MEMBERS OF THE ALASKA COMMERCIAL
2 FISHERIES ENTRY COMMISSION WHO ARE TRANSFERRED TO THE
3 DEPARTMENT OF FISH AND GAME UNDER ADMINISTRATIVE ORDER NO. 279.
4 Notwithstanding AS 16.43.080, individuals employed as staff members of the Alaska
5 Commercial Fisheries Entry Commission whose positions are transferred to the Department
6 of Fish and Game under Administrative Order No. 279 shall be assigned to the classified
7 service under AS 16.05.020. An assignment under this section may not reduce an employee's
8 pay

9 (1) solely because of the assignment described in this section; or

10 (2) because the employee is assigned to a position in the classified service that
11 is classified at a lower rate of pay than that received when the position was assigned to the
12 exempt service.

13 * **Sec. 3.** Section 1 of this Act takes effect January 1, 2017.

14 * **Sec. 4.** Except as provided in sec. 3 of this Act, this Act takes effect immediately under
15 AS 01.10.070(c).

Alaska State Legislature

Chair

Fisheries Committee

Member

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Health and Social Services Committee
Transportation Committee
Economic Development Committee



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HB 112 Version N Sectional

- Section 1** Defines compensation for members of the commission, commission members are in the exempt service.
- Section 2** Transfer language for staff from exempt to classified service, defines staff compensation.
- Section 3** Effective date for Section 1.
- Section 4** Effective date for Section 2.

Explanation of Changes HB 112, Version W to Version N

Version N contains none of the transfer of duty language in version W that would have moved certain functions within the Commercial Fisheries Entry Commission (CFEC) to the Department of Fish and Game (DFG). Administrative Order 279, dated 2/16/16, accomplished this, making transfer language unnecessary and the bill notably less complex.

Version N does three things:

- 1) Defines executive compensation for the CFEC commissioners who remain in the exempt service.
- 2) Defines compensation for staff that are moved from except service under the CFEC to classified service under DFG.
- 3) Provides effective dates. Staff salary schedules are effective immediately and commissioner salaries take effect on January 1st, 2017.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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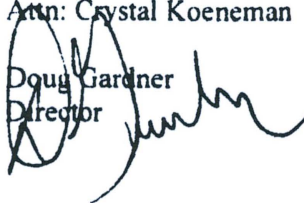
MEMORANDUM

February 23, 2016

SUBJECT: AO 279 Reorganizing CFEC Functions into ADF&G; Art. III, sec. 23 Constitution of the State of Alaska
(Work Order No. 29-LS1523)

TO: Representative Cathy Muñoz
Attn: Crystal Koeneman

FROM: Doug Gardner
Director



Question Presented

The question you asked, is whether Alaska Governor Bill Walker's use of Administrative Order No. 279 ("AO 279") violated the Alaska Constitution by transferring certain functions of the Commercial Fisheries Entry Commission ("CFEC") to the Alaska Department of Fish and Game ("ADF&G"), instead of an Executive Order as provided by article III, section 23 of the Constitution of the State of Alaska.

Brief Answer

Based on the information available, the transfer of some licensing and permitting functions by AO 279 may violate art. III, sec. 23 of the Constitution of the State of Alaska, which provides that where a reorganization requires the force of law, that the governor is required to make changes in the organization of the executive branch by way of an executive order. As you know, unlike an administrative order, an executive order may be disapproved by the legislature within the first 60 days of a regular session by a majority vote during a joint session. An administrative order may not be used to amend law, as further discussed below.

Discussion

Art. III, sec. 23 of the Constitution of the State of Alaska provides:

SECTION 23. Reorganization. The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the

members in joint session, these orders become effective at a date thereafter to be designated by the governor.

This section is discussed in the Alaska Constitutional Convention Proceedings (pages 2226 - 2229) and it appears clear that the delegates viewed this section as providing the governor the power, as an administrative matter, to reorganize the functions of the executive branch, but not to enlarge, diminish, or otherwise alter those functions. This power of reorganization applies to both department functions and functions of boards and commissions.

NORDALE: I just perhaps could amplify the Committee's thinking a bit on this. We were thinking primarily of laws setting up boards and sort of sloppy administration, as we have at the present time. Now then, when the governor sees there are too many departments set up functioning by themselves or functioning under boards and there isn't any coordination, he has the right to suggest a reorganization and a different assignment of functions. . . .

LONDBORG: Mr. President, just another word along that line, and I think Mrs. Nordale brought it out quite clear, now the other way would be if the governor wanted some reorganization he would have to go to the legislature and have a bill introduced by somebody or on his own request and that bill would be acted upon to make this necessary change. For instance, deleting a certain board or ceasing its functions and putting it under the single department head or something of that nature, whatever major change he would want he would have to depend upon the legislature to pass that bill and get it into operation. Doing it this way, he sets forth an executive order but it does not become effective until it slips through the next session of the legislature without being voted on by the legislature. I suppose you could call it reverse legislation. The governor makes a new law and if the legislature does not want it done away with, well, then they can let it go through, but I think it runs in line with the strong executive we have where he can set forth his changes and the legislature by being silent on it, in that way they approve of the order. (Constitutional Convention Proceedings, Part III, Page 2229; emphasis added)

Please note that an executive order does not become effective until after the legislature has had an opportunity to disapprove it. The legislature disapproves an executive order by majority vote of the members in joint session (at least 31 votes). AS 24.08.210 provides that executive orders are to be submitted to each house on the day it organizes, but the governor has taken the position that his power to submit an executive order cannot be so restricted in time (*see* Senate Journal, January 23, 1991, Page 60).

Administrative Order 279 provides:

ADMINISTRATIVE ORDER NO. 279

I, Bill Walker, Governor of the State of Alaska, under the authority of Article III, Sections 1 and 24 of the Alaska Constitution, and in accordance with AS 44.17.020 and AS 44.17.070, order the following reorganization within the Department of Fish and Game:

The administrative and research functions of the Alaska Commercial Fisheries Entry Commission (Commission) are transferred to the Department of Fish and Game (Department) under authority of the Commissioner of Fish and Game. This transfer is necessary for efficient administration and will provide for appropriate and effective performance of these functions.

BACKGROUND AND PURPOSE

The objectives of this Order are to streamline administrative and research functions of the agencies, identify cost-saving measures, and provide appropriate support to the commercial fishing industry in the state.

Administrative Order No. 60, dated July 1, 1980, transferred the Commission from the Office of the Governor to the Department, in the interest of efficient administration and logical organization of functions. The transfer was for reasons of budgeting and administration. The Department was not given authority to regulate the policies or activities of the Commission, except those that were purely administrative in nature. Administrative Order No. 60 remains in effect, but is amended as follows: Administrative functions as defined by this Order include the following:

- (1) Licensing and permitting services (ministerial services only);
- (2) Information technology services;
- (3) Accounting services;
- (4) Payroll services;
- (5) Procurement services;
- (6) Budget services.

At the discretion of the commissioner, positions associated with these listed services and functions may be transferred from the Commission to the appropriate divisions within the Department. Additional administrative functions subject to this Order also may be transferred from the Commission to the Department at the discretion of the Commissioner.

This reorganization creates efficiency and costs savings and is in accord with sound administrative principles and practices. This Order takes effect immediately.

Dated this 16th day of February, 2016

In my opinion, the focus of this discussion regarding application of art. III, sec. 23, is on the assigned functions transferred by AO 279 from CFEC to ADF&G: "(1) Licensing and permitting services (ministerial services only)." The reason for this focus is that while the other functions transferred appear to have an administrative or ministerial function, the licensing and permitting functions exercised by CFEC are statutory duties and in certain circumstances, may include the exercise of decision making and in some cases the weighing of evidence. The difficulty with analyzing AO 279 is that on its face, it transfers administrative or ministerial functions, but it is unclear which permitting and licensing functions have been transferred. Currently, CFEC's statutory duties are set forth in AS 16.43.100, which provides in relevant part:

Sec. 16.43.100. Duties and general powers.

(a) To accomplish the purposes set out in AS 16.43.010, the commission shall

(1) regulate entry into the commercial fisheries for all fishery resources in the state;

(2) establish priorities for the application of the provisions of this chapter to the various commercial fisheries of the state;

(3) establish administrative areas suitable for regulating and controlling entry into the commercial fisheries;

(4) establish, for all types of gear, the maximum number of entry permits for each administrative area;

(5) designate, when necessary to accomplish the purposes of this chapter, particular species for which separate interim-use permits or entry permits will be issued;

(6) establish qualifications for the issuance of entry permits;

(7) **issue entry permits to qualified applicants;**

(8) **issue interim-use permits as provided in AS 16.43.210, 16.43.220, and 16.43.225;**

(9) establish, for all types of gear, the optimum number of entry permits for each administrative area;

(10) administer the buy-back program provided for in AS 16.43.310 and 16.43.320 to reduce the number of outstanding entry permits to the optimum number of entry permits;

(11) provide for the transfer and reissuance of entry permits to qualified transferees;

(12) provide for the transfer and reissuance of entry permits for alternative types of legal gear, in a manner consistent with the purposes of this chapter;

(13) establish and administer the collection of the annual fees provided for in AS 16.43.160;

(14) administer the issuance of commercial fishing vessel licenses under AS 16.05.490;

(15) issue educational entry permits to applicants who qualify

under the provisions of AS 16.43.340 - 16.43.390;

(16) establish reasonable user fees for services;

(17) issue landing permits under AS 16.05.675 and regulations adopted under that section;

(18) establish and collect annual fees for the issuance of landing permits that reasonably reflect the costs incurred in the administration and enforcement of provisions of law related to landing permits;

(19) establish a moratorium on entry into commercial fisheries as provided in AS 16.43.225;

(20) when requested by a regional development organization formed under former AS 44.33.895, provide to the organization, without charge, public information contained in the commission's data with respect to relevant fisheries, including limited fisheries, fishery participants, and limited entry permit holders' harvests and earnings; and

(21) administer, when necessary to accomplish the purposes of this chapter, a Bering Sea hair crab fishery vessel permit system under AS 16.43.451 - 16.43.521.

(b) The commission may do all things necessary to the exercise of its powers under this chapter, whether or not specifically designated in this chapter. [Bold and italics added for emphasis.]

Based on the language of AO 279 (licensing and permitting services, limited to ministerial services only) and a letter from CFEC Commissioners Ben Brown and Bruce Twomley to Senator Dunleavy, Senate Department of Fish and Game Finance Subcommittee, Senator Stoltze, Senator Micciche and Senator Egan, dated February 17, 2016, it appears that ADF&G will be engaging in permitting and licensing functions that are by statute *specifically committed to the lawful statutory authority of CFEC*.

For example, the transfer of entry permits may only be accomplished "through the commission" under AS 16.43.170 (transfer of entry permits). AS 16.43.180 (emergency transfer of permits) establishes a process that is also committed to the discretion of CFEC and conducted under regulations adopted by the commission. Emergency transfer of a permit may require review and evaluation of facts and documents submitted by the permit holder, that may ultimately require agency expertise by CFEC to make these decisions.

Again, based on the language in AO 279 it is hard to evaluate how ADF&G can perform either of these licensing functions which are: (1) specific statutory duties of CFEC that in some cases affect the rights and liabilities of permit holders; and (2) where these statutory functions could be more than purely "ministerial." See, 1991 Alaska Op. Atty. Gen. File No. 663-92-0294 WL 542010 (transfer permissible under AS 44.17.060 where the duties being transferred are "purely administrative in nature").

Conclusion

Under AO 279, ADF&G appears to be issuing licenses that are currently committed

Representative Cathy Muñoz
February 23, 2016
Page 6

solely to the statutory authority of CFEC to issue. Under AO 279, ADF&G could in some cases, be doing more than just collecting fees and performing ministerial functions at least with respect to issuing a permit in certain situations like emergency transfers of permits. For these reasons, based on the information available, the transfer of licensing duties may require the force of law by the passage of legislation, or through the use of an executive order, before ADF&G can perform statutory duties which it does not currently appear to have and which may be more than ministerial.

If the governor intends to move the responsibilities for issuing permits and licenses from CFEC to ADF&G, reassignment of those functions will likely require an executive order or legislation, to amend current statutes to provide ADF&G with the authority to conduct licensing and permitting activities that are currently the statutory responsibility of CFEC.

DDG:dla
16-194.dla



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Law

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March 1, 2016

Honorable Mike Chenault
Speaker, House of Representatives
Alaska State Legislature
State Capitol
Room 208
Juneau, Alaska 99801-1182

Re: Administrative Order No. 279 – Commercial Fisheries Entry Commission

Dear Speaker Chenault:

This letter responds to your request for this office to review the memorandum issued on February 23, 2016, by Doug Gardner, director of legislative legal services, with respect to the Governor's Administrative Order No. 279 (AO 279). Director Gardner's memorandum addressed whether use of AO 279 violated the Alaska Constitution by transferring functions of the Commercial Fisheries Entry Commission (CFEC) to the Alaska Department of Fish and Game (ADF&G) instead of an executive order under article III, section 23, of the Alaska Constitution.

AO 279 lists out the following administrative functions that may be transferred from the Alaska Commercial Fisheries Entry Commission ("CFEC") to the Department of Fish and Game ("ADF&G"): (1) licensing and permitting services (*ministerial functions only*); (2) information technology services; (3) accounting services; (4) payroll services; (5) procurement services; (6) budget services.

In his memorandum, Director Gardner acknowledges that the functions listed in (2)-(6) concern administrative or ministerial functions, and he raises no question regarding the appropriateness of an administrative order addressing the transfer of those functions. (Memo at 4). Regarding item (1), the memorandum suggests that there are limitations to the reach of an administrative order addressing licensing and permitting services, noting, for example, that there may be circumstances that require an "exercise of decision making and in some cases the weighing of evidence," and that ADF&G "could in some cases, be doing more than just collecting fees and performing ministerial functions at least with respect to issuing a permit in certain situations like emergency transfers of permits." *Id.* at 4; 6.

We agree that the functions listed in (2)-(6) are proper subjects of an administrative order and that those functions can be reassigned. We also agree that an administrative order cannot reassign statutory responsibilities such as CFEC's licensing and permitting responsibilities and that such reassignments would require legislation or an executive order. This is why the administrative order limits any transfer of licensing and permitting functions to those that are *ministerial only*. The interpretation and implementation of an administrative order has to be in keeping with its legal authority and plain language – it cannot do more than it can legally do. Accordingly, activities such as weighing evidence, resolving disputes, and similar activities that go beyond performance of administrative or ministerial functions are beyond the scope of the administrative order. The language of the administrative order does not include these types of activities, since these activities go beyond the “ministerial only” restriction set forth in the order.

Upon issuance of the administrative order, the administration knew it would need to discuss the various functions and activities of CFEC and determine which functions could be transferred and to what extent functions could be transferred. This office will continue to assist CFEC and ADF&G in implementing the administrative order including identifying, in relation to the licensing and permitting responsibility, the administrative or ministerial functions that can be reassigned consistent with the order.

Sincerely,

CRAIG W. RICHARDS
ATTORNEY GENERAL

By:



Marjorie L. Vandor
Chief Assistant Attorney General

CWR:MLV:jc

cc: Darwin Peterson, Legislative Director, Office of the Governor (*via email*)

29-LS0485\P
Bullard
3/31/16

CS FOR HOUSE BILL NO. 112()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE STUTES

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the compensation and benefits provided to members of the Alaska**
2 **Commercial Fisheries Entry Commission; relating to employees transferred from the**
3 **Commercial Fisheries Entry Commission to the Department of Fish and Game; and**
4 **providing for an effective date."**

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 16.43.060 is amended to read:

7 **Sec. 16.43.060. Compensation, hours, and benefits.** Members of the
8 commission are in the exempt service and **shall be compensated with an hourly**
9 **wage that is** [ARE ENTITLED TO A MONTHLY SALARY] equal to **the monthly**
10 **salary for** [A] step **A** in Range 27 [OF THE SALARY SCHEDULE] in AS 39.27.011
11 **divided by 162.5. A member of the commission may not be compensated for more**
12 **than eight hours a day or 15 hours a week and is not eligible to receive group life**
13 **and health insurance provided under AS 39.30.090 - 39.30.095. A member is**
14 **entitled to per diem and travel expenses authorized for boards and commissions**

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under AS 39.20.180.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ASSIGNMENT OF STAFF MEMBERS OF THE ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION WHO ARE TRANSFERRED TO THE DEPARTMENT OF FISH AND GAME UNDER ADMINISTRATIVE ORDER NO. 279. Notwithstanding AS 16.43.080, individuals employed as staff members of the Alaska Commercial Fisheries Entry Commission whose positions are transferred to the Department of Fish and Game under Administrative Order No. 279 shall be assigned to the classified service under AS 16.05.020. An assignment under this section may not reduce an employee's pay

(1) solely because of the assignment described in this section; or

(2) because the employee is assigned to a position in the classified service that is classified at a lower rate of pay than that received when the position was assigned to the exempt service.

* **Sec. 3.** Section 1 of this Act takes effect January 1, 2017.

* **Sec. 4.** Except as provided in sec. 3 of this Act, this Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

Chair

Fisheries Committee

Member

State Affairs Committee
Health and Social Services Committee
Transportation Committee
Economic Development Committee



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District 32

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HB 112 Sponsor Statement

The Committee Substitute for House Bill 112, version P, is in response to Administrative Order 279 which moved the administrative and research functions of the Commercial Fisheries Entry Commission (CFEC) to the Department of Fish and Game (DFG).

Version P defines executive compensation for the commissioners and limits working hours to no more than eight hours a day or 15 hours a week. Commissioners are not eligible to receive group life and health insurance provided under AS 39.30.090 - 39.30.095. Commissioners are entitled to per diem and travel expenses authorized for boards and commissions.

Transition language defines compensation for employees that are moved from the exempt service under CFEC to the classified service under DFG.

Staff salaries take effect immediately and commissioner salaries take effect on January 1st, 2017.

Alaska State Legislature

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HB 112 Version P Sectional

Section 1 Defines compensation for members of the commission. Commissioners are part time and work no more than 15 hours per week. Commission members are in the exempt service.

Section 2 Transfer language for staff from exempt to classified service, defines staff compensation.

Section 3 Effective date for Section 1.

Section 4 Effective date for Section 2.

Explanation of Changes HB 112, Version W to Version P

Version P does not contain transfer-of-duty language like version W. This language would have moved certain functions within the Commercial Fisheries Entry Commission (CFEC) to the Department of Fish and Game (DFG). Administrative Order 279, dated 2/16/16, accomplished this, making transfer language unnecessary.

Version P does three things:

- 1) Defines executive compensation and limits working hours for the CFEC commissioners, who remain in the exempt service.
- 2) Defines compensation for staff that are moved from except service under the CFEC to classified service under DFG.
- 3) Provides effective dates. Staff salary schedules are effective immediately and commissioner salaries take effect on January 1st, 2017.



Southeast Alaska Fishermen's Alliance

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April 3, 2016

House Resources Committee
Representative Nageak Co-Chair; and
Representative Talerico, Co-Chair
Alaska State Legislature
State Capitol, Room 124
Juneau, AK 99801

Dear Resources Committee Members,

RE: OPPOSE HB 112

Southeast Alaska Fishermen's Alliance (SEAFA) is opposed to committee substitute HB 112 version P that will be in front of you today. First we must put on record that **we oppose Administrative Order (AO) 279 moving functions of CFEC to ADF&G.**

CSHB112 ver P sets executive compensation for the CFEC commissioners by Statute. **This seems extremely inappropriate to set salaries by statute as well as the number of hours that may be worked.** In addition, you are taking away the Commissioners "step increases" that have been earned by service to the State. The more appropriate way is to set a budget for the CFEC commissioner's salaries and then let the Commissioners and agency have the flexibility to find the structure/ combination of hours among Commissioners that is most appropriate to serve the state and functions of the agency best.

The legislative audit finished last fall suggested moving the commissioners to part time and that is not what we are opposing here. It is setting in statute the hours that may be worked, the salary where a long time state employee's recognition (steps) are taken away and no opportunity to earn that recognition moving forward.

In addition to cutting their salary by removing their "steps" you are also taking away their benefits and restricting the number of hours that can be worked while having to now pay their own health and life insurance out of a significantly reduced income.

CFEC Commissioners are judicial lawyers with a specialized knowledge/background. Quick back of the envelope calculations reduce the commissioners salary by at least \$11 - \$17 dollars an hour plus the loss of benefits.

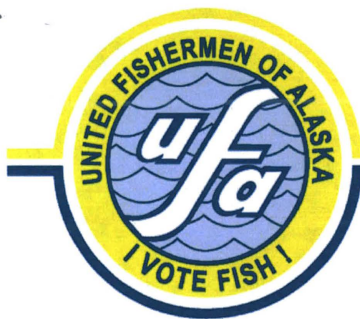
SEAFAs would like to take this opportunity and state that we believe the savings to the state that AO 279 would generate is possible while maintaining CFEC as an independent agency. **The Legislative Audit recommends and provides significant justification for the importance of maintaining CFEC as an independent agency.** Please call the office if you would like more information or testimony on our views on the importance of maintaining CFEC as an independent agency.

Southeast Alaska Fishermen's Alliance (SEAFAs) is a multi-gear/multi-species commercial fishing association representing our 300+ members involved in salmon, crab, shrimp and longline fisheries in Southeast Alaska and longline fisheries in the Gulf of Alaska.

Sincerely,

A handwritten signature in black ink that reads "Kathy Hansen" followed by a long horizontal line extending to the right.

Kathy Hansen
Executive Director



UNITED FISHERMEN OF ALASKA

Mailing Address: PO Box 20229, Juneau AK 99802-0229

Physical Address: 410 Calhoun Ave Ste 101, Juneau AK 99801

Phone: (907)586-2820 **Fax:** (907) 463-2545

Email: ufa@ufa-fish.org **Website:** www.ufa-fish.org

April 4, 2016

Representative David Talerico, Co-Chair
Representative Benjamin Nageak, Co-Chair
House Resources Committee
Alaska State Legislature
State Capitol
Juneau AK 99801

RE: Opposition to HB 112 regarding Commercial Fisheries Entry Commission

Dear Representatives Talerico, Nageak and Committee Members,

United Fishermen of Alaska is the statewide commercial fishing trade association, representing 34 commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters.

This letter is a follow up to our letter of April 3, 2015, in which we expressed our opposition to HB 112 and urged the committee to not take action until the release of the legislative audit that was then in progress. We appreciate that the committee has waited for the audit's results before taking further action.

Now that the audit has been completed, we continue to oppose HB 112 and generally support the conclusions of the audit – especially the recommendation of the legislative audit that CFEC remain as an independent agency, separate and distinct from the Alaska Department of Fish and Game.

We believe that cost savings similar to those projected in Governor Walker's Administrative Order 279 can be accomplished within the agency through streamlining as recommended in the audit, without the disruption to CFEC personnel and operations that would result from a partial transfer of CFEC personnel and functions to ADF&G. Regarding cost savings, we understand that there may be a need for flexibility regarding part time status of CFEC Commissioners.

Regarding organizational efficiency, we understand that the CFEC has accomplished the audit's recommendation to hire an Executive Director and is in the process of streamlining its operations for increased efficiency.

We have separately written to ADF&G Commissioner Cotten with a thorough list of questions regarding the mechanics of the changes that would occur from AO-279 (and similarly with HB 112 for most of the questions). We have not received answers in the two weeks since the letter, an illustration of the complexity and intricacy inherent in such a move.

Alaska's commercial fisheries rely on the limited entry permitting system as the foundation of an orderly, sustainable and highly regulated industry. Commercial fishing permits are in many cases the single largest business investment for commercial fishermen and family businesses, altogether representing approximately \$1 billion in business investment. Alaska's limited entry statutes have been carefully crafted over a span of decades to provide stability in the industry while conforming to federal commerce law. Fishermen rely on the stability of the CFEC and its capability to vigorously defend challenges to limited entry decisions.

We are extremely concerned with what we feel to be short-sighted actions to move CFEC or CFEC functions to ADF&G, and urge you to oppose HB 112.

Thank you for your consideration.

Sincerely,



Jerry McCune
President



Mark Vinsel
Executive Administrator

Alaska State Legislature

State Capitol, Room 208
Juneau, Alaska 99801-1182
Phone: 907-465-3779
Fax: 907-465-2833
Toll Free: 800-469-3779

145 Main St. Loop
Second Floor
Kenai, Alaska 99611
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Fax: 907-283-7184



REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

February 25, 2016

The Honorable Bill Walker
Governor, State of Alaska
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Walker:

It has been brought to my attention that there may be legal issues with Administrative Order 279, issued on February 16, 2016.

Representative Cathy Munoz requested a legal opinion from Legislative Legal in regards to Administrative Order 279 and whether it is a violation of the State Constitution by transferring certain functions of the Commercial Fisheries Entry Commission to the Department of Fish and Game by issuing an Administrative Order rather than an Executive Order. A copy of that opinion is enclosed.

I respectfully request the attorney general review the opinion and issue a response in regards to the issues raised in the Legislative Legal opinion. As you are aware, there is a significant difference between an executive order and an administrative order particularly in regards to the Legislature's having the ability to review an executive order.

I also note that Representative Louise Stutes has legislation, House Bill 112, that would accomplish the goals established in your administrative order. I believe proper protocol should have been heeded and that your staff would have discussed the transfer of certain duties of CFEC to ADF&G with Representative Stutes before your administrative order was issued. However, how this was handled is your decision and I am not trying to be critical. I do however feel compelled to point out that it would have been a matter of common courtesy to inform Representative Stutes beforehand.

Thank you for looking into this matter. I look forward to a response from the attorney general.

Please don't hesitate to contact me if you would like to discuss this further.

Sincerely,

A handwritten signature in cursive script that reads "Mike Chenault".

Representative Mike Chenault
Speaker, Alaska State House of Representatives

cc: Senator Kevin Meyer, Senate President
Representative Cathy Munoz
Representative Louise Stutes



4 April 2015

Co-Chairmen Talerico and Nageak
House Resources Committee
Capitol Room 124
Juneau, AK 99801

OPPOSE HB 112

Co-Chairmen and Committee Members,

Southeast Alaska Seiners Association remains vigorously opposed to HB112, as passage of this bill legitimizes the Governor's Administrative Order 279, an over-reaching order whose action we believe should have remained explicitly with the Alaska State Legislature. **Passage of this bill legitimizes executive overreach, plain and simple.**

Furthermore, we are uncomfortable with the compensation change to the Commissioner positions. The undercurrent is that the CFEC Commissioners should be compensated less because of the workload perceived to be light at one point in time. As CFEC is funded entirely by commercial fishing fees (above the required amount by roughly \$3 million), and the permit holders of the S01A fishery pay nearly \$400,000 annually to CFEC, we believe that we have the right to say we want competent, highly capable, and well compensated Commissioners defending Limited Entry and continuing their good work in the years to come. We do not want a weakened CFEC and part-time Commissioners is a bad idea.

Finally, as HB 112, in its current iteration during this Legislative Session, has been proposed as a cost-saving measure, we would like to see the fiscal effects to the State, over the next few years, by such a transfer of employees from exempt service to classified service. Mandatory increases in pay as well as almost certain overtime expenditures under such a scheme will result in money that the State will not be able to afford in tight budgetary times. But this fiscal situation has not been addressed or even acknowledged.

I thank you for your consideration and appreciate your adherence to the legislative process which allows our voice to be heard.

Sincerely,

Dan Castle
President

Southeast Alaska Seiners Association
PO Box 23081 Juneau, AK 99802
907-463-5080

Report Highlights

Why DLA Performed This Audit

This audit was requested to determine whether efficiencies and cost savings could be achieved by consolidating CFEC within existing state agencies, while still meeting legislative intent for limited entry.

What DLA Recommends

1. CFEC's commission chair should hire an executive director to facilitate an agency-wide restructure to improve operational efficiency.
2. CFEC's commission chair should prioritize the licensing system upgrade to ensure it is completed in a timely manner.
3. CFEC's commission chair should ensure the archiving project meets agency needs and proceeds in a cost-effective manner.

A Performance Audit of the Department of Fish and Game, Commercial Fisheries Entry Commission

July 7, 2015

Audit Control Number 11-30081-15

REPORT CONCLUSIONS

The audit concluded significant efficiencies could be achieved; however, efficiencies were not predicated on eliminating the agency and merging its functions with other state agencies. The audit recommends merging only the Commercial Fisheries Entry Commission's (CFEC) administrative functions with the Department of Fish and Game. There was no compelling reason to move its other functions. Alternately, \$1.2 million of annual savings could be achieved by reorganizing CFEC and maintaining its status as an independent agency.

The audit also concluded that, in general, its commissioners have not adequately managed CFEC's daily operations. Two projects, the licensing system upgrade and the archival of agency documents, have not been prioritized or properly managed. Finishing these agency-wide projects would greatly improve workflow and allow for significant reductions in staff. Furthermore, the audit found that the agency's workload no longer justifies full-time commissioner positions.

The audit recommends: (1) hiring an executive director to manage daily operations and facilitate an agency-wide restructure; (2) prioritizing the completion of CFEC's licensing system upgrade; and (3) properly managing the archival project. These three recommendations should improve operations and result in significant savings while maintaining an independent agency capable of responding to future needs.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@akleg.gov

September 4, 2015

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the
attached report is submitted for your review.

DEPARTMENT OF FISH AND GAME
COMMERCIAL FISHERIES ENTRY COMMISSION

July 7, 2015

Audit Control Number
11-30081-15

This audit examines the Commercial Fisheries Entry Commission's operations to determine whether efficiencies and cost savings could be achieved by consolidating the agency within existing state agencies and still meet legislative intent for limited entry.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

ACN	Audit Control Number
ALDER	Alaska Data Enterprise Reporting
AS	Alaska Statute
CFEC	Commercial Fisheries Entry Commission
CISA	Certified Information Systems Auditor
CPA	Certified Public Accountant
CY	Calendar Year
DFG	Department of Fish and Game
DLA	Division of Legislative Audit
DOA	Department of Administration
FY	Fiscal Year
HB	House Bill
IT	Information Technology
OAH	Office of Administrative Hearings
SLA	Session Laws of Alaska
UFA	United Fishermen of Alaska

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ORGANIZATION AND FUNCTION

In 1973, the Commercial Fisheries Entry Commission (CFEC or commission) was created to implement and administer the limited entry program. According to AS 16.43.010(a), the *limited entry program* is intended 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.

The commission is a regulatory and quasi-judicial state agency administratively located within the Department of Fish and Game (DFG). It consists of three commissioners appointed by the governor and confirmed by the legislature. Two members of the commission constitute a quorum for carrying out CFEC functions and activities. Commission members must have a broad range of professional experience and may not have a vested economic interest in interim-use permits, entry permits, commercial fishing vessels or gear, or in any fishery resource processing or marketing business.

CFEC duties, as mandated in AS 16.43.100, are described below.

- Regulate entry into the commercial fisheries for all fishery resources in the state.
- Establish priorities for the application of the statutory provisions to the various state commercial fisheries.
- Establish administrative areas suitable for regulating and controlling entry into the commercial fisheries.

Exhibit 1

CFEC Commissioners As of July 7, 2015

Bruce C. Twomley, Chair
Term expires March 1, 2018

Benjamin E. Brown,
Term Expires March 1, 2019

Commissioner
Vacant

-
-
- Establish for all types of gear the maximum number of entry permits for each administrative area.
 - Designate, when necessary, particular species for which separate interim-use permits or entry permits will be issued.
 - Establish qualifications for issuing entry permits.
 - Issue entry permits to qualified applicants.
 - Establish, for all types of fishing gear, the optimum number of entry permits for each administrative area.
 - Administer buyback programs to reduce the number of outstanding limited entry permits to the optimum number of entry permits.
 - Provide for transferring and reissuing entry permits to qualified transferees.
 - Provide for transferring and reissuing entry permits for alternative types of legal gear in a manner consistent with program statutes.
 - Establish and collect annual fees.
 - Issue commercial fishing vessel licenses.
 - Issue educational entry permits to qualified applicants.
 - Establish reasonable user fees for services provided.
 - Issue landing permits in accordance with relevant statutes and regulations.
 - Establish and collect annual fees for issuing landing permits that reasonably reflect the costs incurred in administering and enforcing provisions of law related to landing permits.
 - Establish a moratorium on entry into commercial fisheries when determined necessary as dictated by statute.

-
- Upon request from a regional development organization, provide without charge CFEC’s public information relevant to fisheries, such as limited fisheries, fishery participants, and limited entry permit holders’ harvests and earnings.
 - Administer, when determined necessary, a Bering Sea hair crab fishery vessel permit system.

The commission may employ staff as necessary to fulfill its duties. CFEC’s FY 15 budget was \$4.5 million; it included 28 full-time and three part-time positions. All commission employees are in exempt service. Employees are grouped into one of six sections. Section duties are described in CFEC’s organization chart in Exhibit 2.

Department of Fish and Game

DFG is responsible for managing the State’s fish and game resources. DFG’s mission is:

To protect, maintain, and improve the fish, game, and aquatic plant resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle.

The department includes the Commissioner’s Office, six divisions, and a Boards Support Section. The six divisions include Commercial Fisheries, Sport Fish, Wildlife Conservation, Habitat, Subsistence, and Administrative Services. There are also two state agencies administratively located within DFG: CFEC and the Exxon Valdez Oil Spill Trustee Council. DFG employees work in 47 offices located throughout the state.

Department of Administration, Office of Administrative Hearings

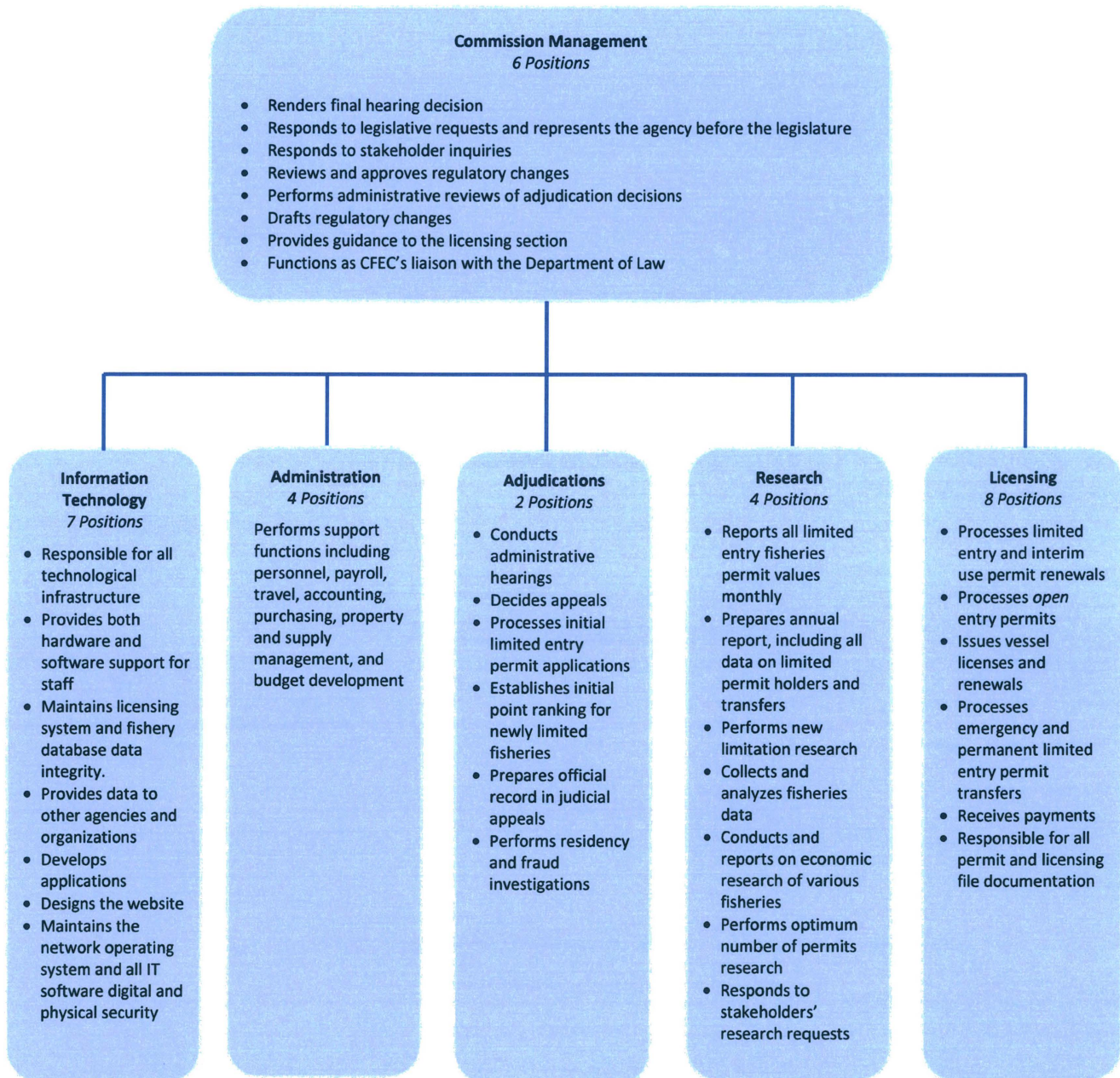
The Office of Administrative Hearings (OAH) is an independent agency within the Department of Administration. OAH’s mission is:

To provide for the delivery of high-quality adjudication services that ensure fair hearings conducted in a timely, efficient and cost effective manner.

Exhibit 2

Commercial Fisheries Entry Commission

FY 15 Organization Chart by Section



OAH's chief administrative law judge oversees 11 administrative law judges located in Juneau and Anchorage. The agency is charged with providing administrative adjudication services, regulatory review, and training.¹ Depending on the complexity, some cases may be resolved within a few weeks, while others may take many months to complete and render a decision. The types of adjudication services provided include:

- Proposing decisions based on written submittals from both parties;
- Conducting multi-day evidentiary hearings, typically for complex matters; and
- Using alternative formal and informal dispute resolutions methods.

¹*Eleventh Annual Report to the Governor of Alaska and the Alaska Legislature* from the Office of Administrative Hearings, January 31, 2015, 1. II. A. Adjudication Services, page 3.

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BACKGROUND INFORMATION

Establishment of the Commission

The Commercial Fisheries Entry Commission (CFEC or commission) was established in 1973 to administer the commercial fisheries² limited entry program as stipulated in the *Alaska Limited Entry Act*. Since being established, CFEC has limited entry into 68 Alaskan fisheries with the last limitation occurring in 2004. The program was intended to stabilize the number of fishermen and, therefore, the amount of gear used in the state's fisheries.

Basic Process for Limiting Fisheries

The limitation process starts with CFEC identifying the potential need for limitation through data analysis and research. The maximum number of permits to be issued in a given fishery is also established through the analysis. Public input is sought prior to finalizing a limitation, which is approved by CFEC commissioners.

Under the *Alaska Limited Entry Act*, permits are intended to be held by individuals who will fish them. Specific ranking criteria are developed by CFEC to ensure consistency and fairness in scoring limited permit applications. Denied applicants may appeal a decision. Applicants going through the appeal (adjudication) process are allowed to obtain an interim-use permit to fish the limited fishery pending the outcome of their appeal.

Permits Issued by CFEC

A limited entry permit entitles the holder to operate in a specific commercial fishery in accordance with Board of Fisheries regulations. Some permits are issued on a statewide basis for certain species, but others are valid in one designated area. All CFEC limited entry permits are permanent and must be renewed annually; most can be transferred to another person after initial issuance either as an emergency or permanent transfer. Limited entry permits may be transferred from parents to their children, and family members may inherit a permit. Permits may also be sold.

Vessel permits which authorize the use of a specific vessel in a

²The CFEC defines a *fishery* as a unique combination of fishing gear used in a designated area, for a species of fish or shellfish. As an example, long lining for bottom fish such as halibut and gillnetting for salmon require separate permits.

fishery are another type of limited permit authorized by CFEC. Vessel permits require a commercial vessel license and a person on board who holds a valid interim-use permit for a fishery. Additionally, CFEC issues specialty permits such as education entry, mariculture, and special harvest area (hatchery) permits. These types of permits are not permanent and must be applied for annually.

The limited entry program also contains a provision for a fishermen-funded buyback program. If an optimum number study concludes the optimum number of permits is less than the number of permits outstanding in a fishery, a buyback program may be used to reduce the number of active permits.

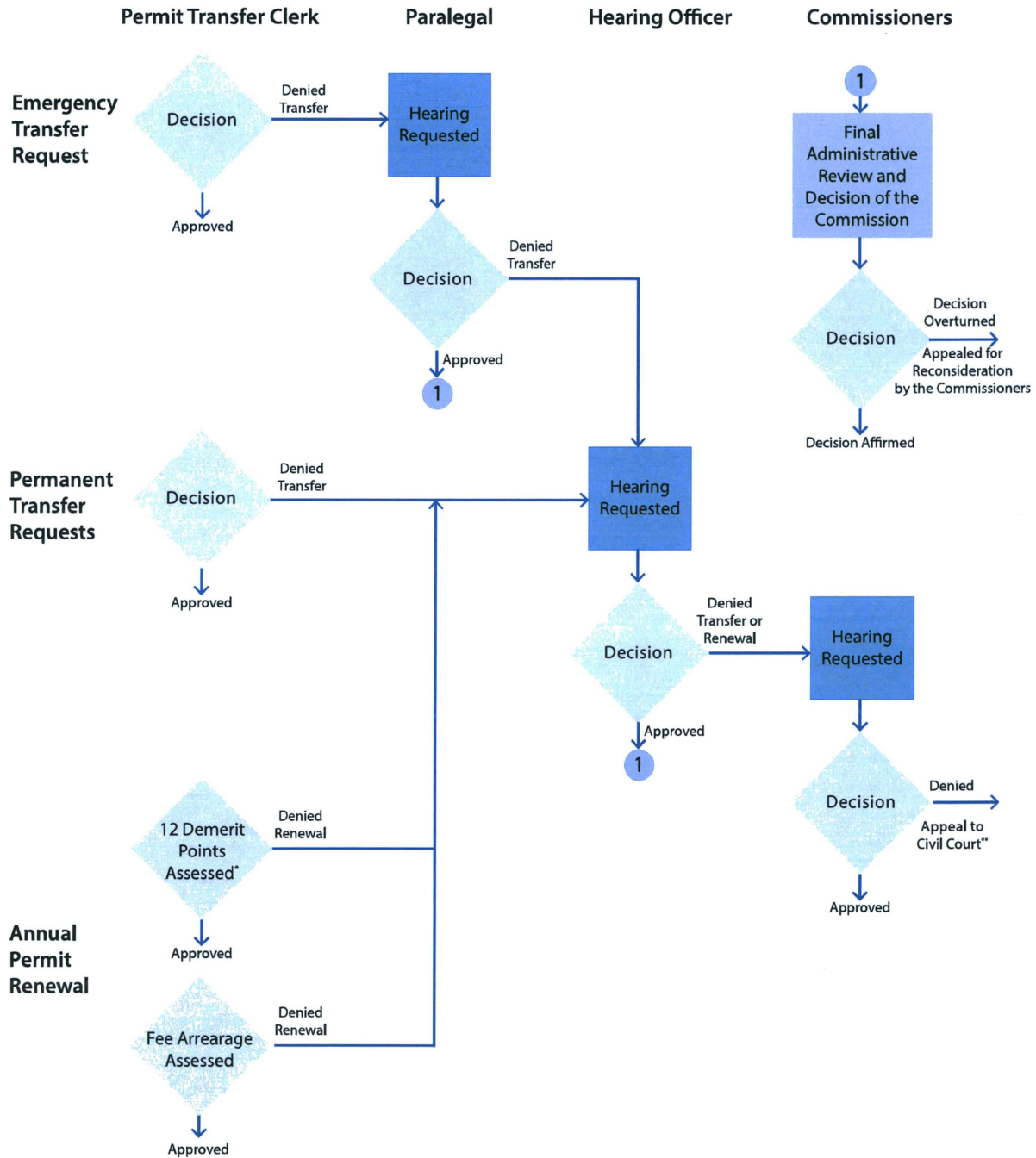
Adjudications Process and Backlog

CFEC provides applicants up to three opportunities to appeal CFEC decisions. Exhibit 3 presents the CFEC appeal process. All adjudication decisions are reviewed by the commissioners, who ultimately issue the final decision. If an applicant is not satisfied with the commissioners' final decision, he or she may seek relief through the civil court system.

As of May 2015, there were 28 limited entry applications awaiting final decisions. Five of the 28 had not received first level hearings. For various reasons, these cases have stalled within CFEC's adjudicative process. All of the cases have been in the adjudicative process for over 10 years, with two of the 28 dating back to the mid-1970s and 19 dating to the 1980s. All 28 applicants have remained eligible to fish with interim-use limited entry permits since the decisions were first appealed.

Exhibit 3

CFEC Adjudication Appeals Process



*Twelve or more demerit points in a 36 month period per AS 16.43.850.

**If the final decision results in a suspension or denial of a limited entry permit, the fisherman can appeal to the Civil Court.

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REPORT CONCLUSIONS

Recognizing the State's fisheries have stabilized in terms of limited entry, an audit was requested to determine whether efficiencies and cost savings could be achieved by consolidating the Commercial Fisheries Entry Commission (CFEC or commission) within existing state agencies while still meeting legislative intent for limited entry. Detailed audit objectives included the following:

- *Identify CFEC's efforts in limiting fisheries, processing appeals, conducting research activities, and monitoring transfers of permits from CY 05 through CY 14. Compare those duties to staffing levels and analyze how each has fluctuated during the 10-year period.*
- *Research state law and legislative intent in creating CFEC to determine whether CFEC's purpose and ascribed functions could be performed by another state agency. Analyze whether cost savings could be achieved through merging similar functions performed by CFEC with other state agencies.*
- *Determine whether the Department of Fish and Game (DFG) has sufficient capabilities to support CFEC's information technology (IT) requirements.*
- *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 personnel services.*
- *Determine whether the adjudication functions performed by CFEC could be performed by the Office of Administrative Hearings (OAH) in an appropriate and timely manner. Additionally, determine whether the increased case load in OAH would require additional staffing.*
- *Identify and report CFEC fees collected, and the uses of fees from FY 10 through FY 14.*

The audit concluded significant efficiencies could be achieved; however, efficiencies were not predicated on eliminating the

agency and merging its functions with other state agencies. The audit recommends merging only CFEC's administrative functions with DFG. There was no compelling reason to move its other functions. Alternately, \$1.2 million of annual savings could be achieved by reorganizing CFEC and maintaining its status as an independent agency.

The audit also concluded that, in general, commissioners have not adequately managed CFEC's daily operations. Two projects, the licensing system upgrade and the archival of agency documents, have not been prioritized or properly managed. Finishing these agency-wide projects would greatly improve workflow and allow for significant reductions in staff. Furthermore, the audit found that the agency's workload no longer justifies full-time commissioner positions.

The audit recommends: (1) hiring a director to manage daily operations and facilitate an agency-wide restructure; (2) prioritizing the completion of the CFEC licensing system upgrade; and (3) properly managing the archival project. These three recommendations should improve operations and result in significant savings while maintaining an independent agency capable of responding to the limited entry program's future needs.

CFEC should continue to operate as an independent, regulatory, and quasi-judicial agency.

The basis for creating CFEC as an independent agency continues to have merit because it promotes public trust in the program and limits undue influence. Separating the biological management of fisheries and the economic management of fisheries minimizes the influence one has on the other and promotes confidence in both functions. The agency's current organizational structure restricts the influence of the executive branch administration on CFEC decisions. CFEC commissioners do not report to DFG's commissioner, and commissioners may only be removed for cause.

Maintaining CFEC as an independent, regulatory, and quasi-judicial agency continues to make sense, even though its adjudicative responsibilities have declined. In addition to adjudication, the

audit found that independence was also important to the research and licensing functions. Permit transfers, fee setting, and fisheries monitoring are examples of ongoing CFEC functions which benefit from being conducted in an independent manner.

CFEC has not limited a fishery since 2004; however, it may be necessary in the future. Maintaining CFEC's organizational structure allows the agency to expand as necessary without changing statutes or regulations.

The limited entry program is fully supported by fees paid by permit and license holders. To understand how stakeholders regarded CFEC operations and potential changes to the agency, a survey was conducted of the United Fisherman of Alaska (UFA) board members. UFA is a trade association representing 35 Alaska commercial fishing organizations, which in turn represent thousands of fishermen. The survey was sent to all 85 UFA board members. Members were asked to respond to the survey based on the prevailing views of the fishermen their respective organizations represent. The following are key survey results:

- Respondents viewed CFEC operations favorably. Most functions were rated as generally excellent or good. Processing appeals was the one function less than 50 percent of survey respondents rated as excellent or good.
- Independence was generally viewed as very important or important to CFEC functions.
- A high percentage of respondents believe performance of limited entry functions would decline if those functions were transferred to DFG.
- A high percentage of respondents believed transferring adjudicative functions to OAH would negatively impact the consistency, timeliness, and accuracy of hearing decisions.

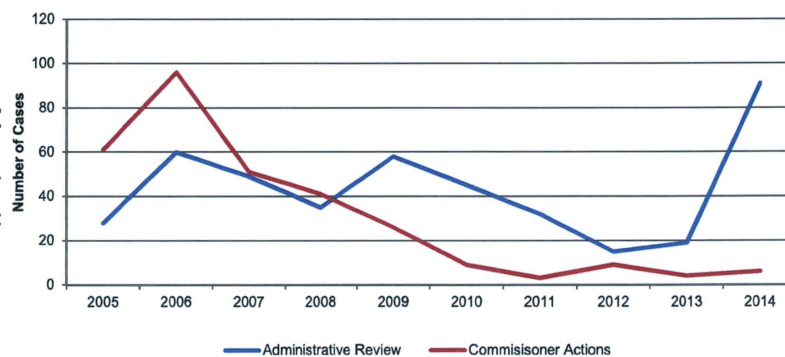
The survey questions and responses are summarized in Appendix B.

Current commissioner workloads do not support the need for full-time commissioner positions.

During the first 25 years of the limited entry program, commissioners' workloads were consumed by appeals and litigation. These appeals and court cases established case law upon which future decisions were based. Once case law was established, appeals and litigations subsided which resulted in a significant reduction in the commissioners' adjudicative workload.

Exhibit 4

**CFECE Commissioner Activity
Commission Actions and Administrative Reviews
Calendar Years 2005 through 2014**



Commissioners' workloads can be divided between commissioner actions and administrative reviews. Commissioner actions include conducting hearings, researching case law, and rendering decisions on appeals. Commissioner administrative reviews are reviews of decisions already issued by the adjudication section for consistency and reasonableness.

Exhibit 4 shows that commissioner actions have steadily declined over the 10-year period 2005 through 2014. Administrative reviews have also declined until 2014, at which point the case load increased. There are two reasons for the 2014 increase. First, commissioners addressed the backlog of reviews from 2013. Second, as a result of increasing permit values, transfers greatly increased, leading to more appeals and more administrative reviews.

Two key projects, the licensing system upgrade and the archival of documents, should be completed to allow for significant cost savings.

Commissioner actions and administrative reviews are markedly different in terms of the amount of time and resources needed for completion. Generally, commissioner actions consume more resources as these types of decisions take time to research and deliberate. Although there are exceptions, administrative reviews are generally much less time and resource intensive.

As discussed above, the audit recommends maintaining CFEC's general organizational structure including all three commissioner positions. Although the audit found that the positions should remain, current workloads justify part-time rather than full-time positions. (See Recommendation 1.)

Two key projects are currently underway at CFEC: upgrading the licensing system and archiving CFEC documentation. Both projects employ staff positions that could be eliminated once the projects are completed.

The licensing system is a legacy system that supports CFEC's licensing, adjudications, and research functions. Its outdated programming language and lack of effective user interface causes CFEC's licensing process to require more resources than would be necessary using an updated system. Upgrading the system will improve the reporting functions and allow for efficient electronic payments and systematically generated licensing documents. Once the upgrade is complete, three IT staff positions dedicated to the project could be removed from the budget. The efficiencies gained in the licensing process would also allow for the reduction of one lower level licensing position. (See Recommendation 2.)

The archival project is a cross-sectional effort to archive agency documents for future reference. There is a valid need for the project as CFEC's important decisions and related support had not been actively archived since the agency was created. The project has been ongoing for several years with no timeframe for completion. Which specific documents should be archived is unclear, and

indexing is not being coordinated across sections. Three positions, two full-time and one part-time, work on the project; however, no specific position was tasked with managing the project. Once completed, the three archiving project positions could be removed. Given the level of resources dedicated to archiving and the lack of project management, it may be more cost effective to contract out the project. (See Recommendation 3.)

Organizational changes could produce significant cost savings while retaining the agency's basic structure.

An analysis of position titles and job duties found all functions performed (i.e. licensing, research, adjudications) were necessary to meet CFEC's purpose. However, workloads did not justify the current number and type of positions. Changes to the organizational structure are needed to realign CFEC resources with the program's current needs. The changes proposed on the following pages are intended to reduce operational costs while maintaining the agency's ability to respond to future needs.

Proposed organizational changes include adding a CFEC director, completing two key projects, and reducing commissioners to part-time. The director position is needed to manage day-to-day operations, address operational deficiencies, and oversee the transition of the agency to a leaner structure. Completing the licensing upgrade and archival projects would improve workflow, improve services, and provide efficiencies and savings. The reduction of commissioner positions to part time allows continued leadership and agency representation while aligning with current workload activity.

The changes are proposed to occur over a three-year period with the full impact being realized year three through estimated annual cost savings of \$1.2 million. Specific recommendations and estimated personal service savings based on the FY 16 budget, by position, are summarized below:

**Changes proposed for
FY 17 (\$367,300
estimated savings)**

- As of July 1, 2016, a new CFEC director position should be hired to develop annual work plans and section goals, organize and schedule commissioner activities, oversee the completion of key projects and manage daily operations. The addition of a director position is estimated to increase annual costs by approximately \$141,200.³
- After gaining an understanding of the administrative functions, the new CFEC director should work with DFG's Division of Administrative Services to move CFEC's administrative functions to DFG. If this move occurs on October 1, 2016, the subsequent removal of two administrative positions is estimated to save \$159,700 over the remaining nine months.
- Also as of October 1, 2016, the commissioner positions could be reduced to 35 percent (less than 15 hours a week) with no benefits, at which point the executive director could facilitate commissioners' work sessions as needed. The commissioners would supervise the executive director and continue to represent the agency. The reclassification of commissioner positions is estimated to save \$348,800 over the remaining nine months.

**Changes proposed for
FY 18 (\$536,700
estimated savings)**

- CFEC's lease is up for renewal in FY 17. Under the lease's current terms, a reduction of up to 1,000 feet is allowed with a 90 day notice. CFEC's executive director should consider reducing the agency's square footage or pursue more competitively priced lease space.
- Estimated ongoing annual savings from FY 17 organizational changes are \$536,700.

**Changes proposed
for FY 19 (\$1,277,900
estimated savings)**

- Upon completion of the archiving project, one IT position, and two administrative positions could be removed with the ongoing archiving activities re-tasked to other positions within the agency. The resulting costs savings is estimated at \$210,200.

³The position is estimated to include annual pay and benefits at a range 25.

-
- Following completion of the licensing system upgrade, three IT positions will no longer be necessary for system and agency support, resulting in estimated savings of \$456,700.
 - After licensing workflows are adjusted to reflect efficiencies gained from the new licensing system, one licensing position could be eliminated resulting in estimated cost savings of \$74,300.
 - Estimated ongoing annual savings from FY 17 and FY 18 are \$536,700.

CFEC support activities could be carried out by other state agencies; however, core functions should remain.

State law and legislative intent support maintaining CFEC as a separate independent regulatory quasi-judicial agency. However, support positions unrelated to CFEC limited entry program decisions could be carried out by other state entities without compromising legislative intent. An evaluation of each CFEC section and a determination of whether the functions could be merged with a different state agency follows.

Administration:

DFG Division of Administrative Services could absorb CFEC administrative functions such as purchasing and processing payments without additional positions. This would allow the elimination of two CFEC administrative positions. Under this arrangement, the proposed CFEC executive director position would serve as liaison between CFEC and DFG's Division of Administrative Services.

Information Technology:

CFEC's IT section includes both network support and programming. DFG's Division of Administrative Services' IT section does have the physical capacity to house CFEC's licensing system hardware and could provide network support without the need for additional staff. Conversely, IT programming support for CFEC's legacy licensing system could not be absorbed within DFG's available resources. Once the system is upgraded, DFG's IT section could take on the system maintenance; however those functions would require additional positions. Since IT staff work closely with the licensing, research, and adjudication staff to assist in carrying out daily CFEC activities, continuing to co-locate IT staff with core functions is recommended. Additionally, this audit recommends CFEC programming staff seek assistance and support from DFG to help facilitate the licensing system upgrade.

Licensing:

CFEC's annual licensing and permit renewal process could be carried out by DFG's licensing section without compromising independence because the process is routine; whereas, CFEC's permit transfer functions require more independent analysis. Since DFG would likely need the same quantity of staff to carry out the renewal functions, efficiencies would not be gained through moving those functions. Furthermore, moving the positions would negatively impact agency communications because permit staff works closely with the permit transfer staff, research staff, and adjudicative staff.

Research:

Research functions require staff to conduct analyses free from influence. CFEC research functions should not be merged with DFG's research functions. Keeping biological research separate from economic research promotes public trust in both functions. Furthermore, staffing savings would not be achieved by merging both functions as the work could not be absorbed by DFG's available resources.

Adjudications:

Adjudicative functions include reviewing appeals, conducting hearings and rendering decisions (referred to as the first phase of adjudications). Under CFEC's current process, decisions by adjudicative staff can be appealed to CFEC commissioners (referred to as the second phase of adjudications).

The first phase of adjudications could be carried out by OAH; however many decisions are time sensitive and OAH would have to develop a process to meet those time requirements. Additionally, under OAH's current process, case decisions would be provided to CFEC commissioners who issue the final determination, thereby allowing only one level of appeal within CFEC. The second level of appeal would be through the civil court system. According to OAH management, the additional hearing caseload would not require a full-time position; instead, hearing responsibilities would be contracted out as needed.

The audit also identified that CFEC positions performing the first phase of adjudication also conduct other support functions which could not be moved to OAH such as, drafting decisions, assisting

CFEC has consistently generated more revenues than required to fund operations.

the research section, and drafting portions of the annual report.

CFEC statutes authorize an annual permit fee. Generally, permit fees are not required to reflect the actual cost of administering the limited entry program. Over the audit period, CFEC has consistently collected more revenue from licensing and permitting fees than it cost to operate. Annually CFEC has been authorized to carry forward the excess receipts. Excess CFEC receipts have been appropriated to DFG and the Department of Commerce Community and Economic Development for fisheries-related projects and to DFG for operations. The following schedule shows the annual sources and uses of funds by fiscal year. In FY 14, \$7.5 million of excess revenue was carried forward to FY 15. However, \$9.7 million of CFEC receipts had been obligated by capital appropriations. This over-obligation of funds was corrected by the end of FY 15.⁴

CFEC revenue is considered “*program receipts*” by fiscal staff. Alaska Statute 37.05.142 defines the accounting for program receipts. Program receipts are not considered unrestricted general funds. Per AS 37.05.144:

The annual estimated balance in each account maintained under AS 37.05.142 may be used by the legislature to make appropriations to state agencies to administer the programs generating the program receipts, to implement the laws related to the functions generating the program receipts, or to cover costs associated with the collection of the program receipts.

A strict interpretation of AS 37.05.144 indicates that CFEC program receipts may only be used to fund CFEC operations and are not available for other purposes. Given that receipts have been appropriated for non-CFEC purposes, the audit questions whether CFEC receipts should be considered program receipts rather than unrestricted general fund revenues.

⁴The carry forward amount is based on fiscal year totals and is lower by \$43,171 from DFG’s calculations.

Exhibit 5

Commercial Fisheries Entry Commission
 Schedule of Sources and Uses of Funds
 Fiscal Years 2010 through 2014

	FY 10	FY 11	FY 12	FY 13	FY 14
Receipts Carryforward	\$2,324,940	\$2,842,153	\$ 4,795,338	\$ 8,107,848	\$ 9,369,367
Revenue Receipts	6,525,935	6,706,143	7,534,588	7,651,266	7,804,676
Revenue Adjustment		10,214			
Total Sources of Funds	8,850,875	9,558,510	12,329,926	15,759,114	17,174,043
Transferred to DFG Commercial Fisheries Appropriations	(1,583,036)	-	-	-	-
Transferred to Capital Appropriations	(564,904)	(856,415)	(291,509)	(2,305,624)	(5,255,846)
Transferred to Fishermen's Fund*	(372,713)	(375,745)	(365,575)	(365,238)	(362,299)
CFEC Operating Expenditures	(3,488,069)	(3,531,012)	(3,564,994)	(3,718,885)	(4,014,299)
Total Uses of Funds	(6,008,722)	(4,763,172)	(4,222,078)	(6,389,747)	(9,632,444)
Total Carry Forward	\$2,842,153	\$4,795,338	\$8,107,848	\$ 9,369,367	\$ 7,541,599

*Per AS 23.35.060(a)(1), 39 percent of the limited entry permit fee, not to exceed a maximum of \$50 for each permit holder, is transferred to the Fishermen's Fund.

The number of licensing, adjudications, and research positions at CFEC were reasonable given workloads during the audit period.

Licensing:

The audit identified CFEC's work efforts by core function from CY 05 through CY 14 and compared those efforts to staffing levels. Commissioner workload, is excluded from this analysis since it was already discussed. Overall, current staffing levels in licensing, adjudications, and research were found to be reasonable and appropriate. Detailed work efforts are reported in Appendix A.

Over the 10-year period, licensing activity generally decreased. No new fisheries have been limited since 2004, and limited entry permit licensing work has stabilized. The 2008 recession did temporarily increase limited entry permit activity, but increases leveled out by 2010. Other limited permits and vessel license work efforts also increased due to the 2008 recession but have steadily declined since 2010. Other limited entry permits and

vessel licenses processed in 2005 totaled 17,000 compared to only 15,500 in 2014. Permit transfer activity has increased in recent years. Licensing staff remained at seven filled positions throughout the audit period. The audit found the current number of licensing positions was reasonable given current workloads and the inefficiencies caused by the legacy licensing system.

Adjudications:

Adjudicative decisions by CFEC's paralegal and hearing officer declined from 24 in 2005 to 17 in 2008. The increase in licensing activity in 2008 led to an increase in adjudication activity which remained around 30 for years 2009, 2010, and 2011. Since 2011, adjudications have steadily increased to 56 in 2014. The increases were primarily the result of the increase in emergency transfers. Adjudication staff were reduced from five positions to four in 2008 and from four to three in 2010, with two staff as of 2014. The audit found the current number of adjudicative positions was reasonable given current workloads.

Research:

The research function performs routine research that does not fluctuate from year to year. The research section also conducts research requested by other agencies and organizations. Over the 10-year period, research has produced from 35 to 55 reports and other publications annually. It is difficult to gauge efforts by number of reports and publications because each does not take an equal amount of work effort to produce. Research staff was reduced from five to four in 2010, with three staff as of 2014. The audit found the current number of research positions was reasonable given current workloads.

Actual personal service costs were consistently lower than budget from FY 05 through FY 14.

An analysis was performed comparing actual personal service costs to budgeted positions to identify differences. Exhibit 6 reports CFEC personal service costs for FY 05 through FY 14.

As shown in Exhibit 6, actual personal service costs were consistently lower than the authorized budget. The difference grows to over \$600,000 in 2012. The vacancy of a commissioner position in 2012 contributed to the difference. Additionally, several CFEC long-term employees retired and were rehired as part-time non-permanent staff rather than full-time staff. CFEC's budget was not reduced when declining workloads clearly allowed for the reduction.

Exhibit 6

Commercial Fisheries Entry Commission
Comparison of Personal Service Costs: Budgeted and Actual
Fiscal Years 2005 through 2014
(In Thousands)

	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
Budget	\$2,444.5	\$2,742.2	\$2,905.6	\$3,028.4	\$3,217.9	\$3,270.0	\$3,395.9	\$3,517.1	\$3,599.9	\$3,755.5
Actual	<u>2,327.0</u>	<u>2,670.0</u>	<u>2,768.1</u>	<u>2,832.5</u>	<u>2,937.9</u>	<u>2,838.8</u>	<u>2,851.3</u>	<u>2,914.2</u>	<u>3,026.1</u>	<u>3,300.5</u>
Over (Under)										
Budget	<u>\$(117.5)</u>	<u>\$ (72.2)</u>	<u>\$(137.5)</u>	<u>\$(195.9)</u>	<u>\$(280.0)</u>	<u>\$(431.2)</u>	<u>\$(544.6)</u>	<u>\$(602.9)</u>	<u>\$(573.8)</u>	<u>\$(455.0)</u>

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FINDINGS AND RECOMMENDATIONS

Recommendation 1: CFEC commissioners should hire a director to facilitate an agency-wide restructure to improve operational efficiency.

The Commercial Fisheries Entry Commission's (CFEC or commission) organizational structure is no longer operationally efficient or effective. Deficiencies are based on three key issues: commissioners' adjudicative workloads no longer support full-time positions; commissioners' ineffective management of day-to-day operations; and a legacy licensing system which contributes to inefficient work flow. Some specific management deficiencies include:

- Agency priorities and goals not communicated to staff.
- The licensing system has not been upgraded although sufficient resources are available.
- An effort to archive agency documents has not been appropriately coordinated across section functions.
- Conflicts between agency staff and between competing priorities have not been actively resolved by commissioners.

The findings above were caused by several factors. Commissioners' adjudicative workloads have decreased because the limited entry program has not limited a fishery since 2004. According to commissioners, they consciously avoided "micro-managing" operations by leaving management to section lead positions with minimal direction over work objectives, or assistance in addressing cross-section conflicts. It is unclear why the licensing system has not been upgraded given the agency had sufficient financial resources. The upgrade project has suffered from lack of management's direction and prioritization.

Alaska Statute 16.43.080 states that the commission may employ those persons necessary to carry out the purpose of the program. Prudent management dictates that organizational goals be accomplished in an effective and efficient manner. Lack of leadership and management direction has led to inefficient operations. By adding a director position, completing key projects, and making several staffing changes, the cost of CFEC operations could be reduced by approximately \$1.2 million annually.

Accordingly, we recommended CFEC commissioners hire a director to facilitate an agency-wide restructure to improve operational efficiency. Specifically, restructuring of CFEC operations over a three-year period is recommended as follows.⁵

1. Develop a position description and hire a director. The director position would, under guidance and in consultation with the commissioners, set the strategic direction of the agency, develop work-plans, and actively manage staff and projects.

2. Subsequent to establishing the agency's strategic direction and work-plans, commissioners should be moved into part-time positions without benefits. By working part-time for less than 15 hours a week, it is anticipated commissioners could adequately perform administrative review; provide guidance to the executive director; render decisions on the limited cases before CFEC; and represent the agency before the legislature and other commercial fishery organizations.

3. Administrative support should be merged with the Department of Fish and Game's (DFG) Division of Administrative Services. The CFEC director position should serve as liaison between the agency and DFG. After duties are transferred, two administrative positions can be removed from CFEC's budget.

4. The licensing system upgrade should be prioritized and moved forward. Upon implementation, it is anticipated three information technology (IT) staff and one licensing staff can be removed from CFEC's budget.

5. The archiving project should be completed, and once completed, it is anticipated three staff positions can be removed from CFEC's budget.

Appendix C includes two organization charts that show CFEC's FY 16 budgeted positions, and the anticipated organization chart once projects and restructuring are completed.

⁵The estimated savings assume final adjudication decisions are rendered on the remaining 28 limited entry permit application cases before the commissioners move to part time positions.

**Recommendation 2:
CFEC’s commission chair
should prioritize the
licensing system upgrade
to ensure it is completed in
a timely manner.**

The licensing system application was written in a programming language which is no longer taught in IT curricula. IT staff proficient in the legacy languages are not readily available in the event CFEC’s current IT staff leave employment. Furthermore, the system creates workflow inefficiencies due to system limitations including, but not limited to: credit card transactions are manual; data entry errors require programmer assistance to correct; and letters and certificates are not systematically generated.

CFEC has been working towards upgrading the licensing system for several years. System hardware has been purchased, and some of the needed software has been added and developed. However, the project has not been prioritized and completed, in general, because leadership has not recognized the work flow efficiencies and cost savings the new system would provide.

Alaska Statute 16.43.100 identifies CFEC’s duties and responsibilities. CFEC operations are dependent on the licensing system. Once the upgrade is complete, three IT positions and one licensing position may be removed from the budget. Total savings resulting from the system upgrade are estimated at \$456,700 annually.

We recommend CFEC’s commission chair prioritize the system upgrade and ensure it is completed in a timely manner. We further recommend CFEC IT staff work with DFG IT staff to expedite project completion. DFG IT staff recently upgraded DFG’s licensing system and could provide needed expertise.

**Recommendation 3:
CFEC’s commission chair
should ensure the archiving
project meets agency
needs and proceeds in a
cost effective manner.**

Five CFEC positions are part of an effort to archive agency documents. The audit identified the project was not well coordinated, and no specific position was responsible for managing the project. Furthermore, there was no written plan regarding what documentation should be retained, how documentation should be indexed for future reference, and a timeline for completion.

In carrying out its duties as outlined in AS 16.43.100, CFEC has generated a large amount of documentation. The archiving

project is needed to ensure important information is available for future reference, thereby, facilitating consistent decisions and efficient operations. Prudent project management dictates that organizational goals be accomplished in an effective and efficient manner.

Failure to coordinate efforts is due, in part, to a lack of day-to-day management by commissioners. Archiving efforts have been left to section lead staff without central guidance as to what should be archived and in what manner. By not having a central plan, archived documentation may be difficult to locate due to inconsistent indexing; may fail to include critical documentation, may include duplicate documentation, or may contain unimportant documentation. Additionally, given the number of staff working on the project, it may be less costly to contract with a vendor.

We recommend commissioners take action to ensure the archiving project meets agency needs and proceeds in a cost effective manner. This should include an analysis of whether it is more cost effective to contract with a vendor to complete the project.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of the Department of Fish and Game (DFG), Commercial Fisheries Entry Commission (CFEC or commission).

Objectives

The audit objectives were to:

- Identify CFEC's efforts in limiting fisheries, processing appeals, conducting research activities, and monitoring transfers of permits from CY 05 through CY 14. Compare those duties to staffing levels, and analyze how each has fluctuated during the 10-year period.
- Research state law and legislative intent in creating CFEC to determine whether CFEC's purpose and ascribed functions could be performed by another state agency. Analyze whether cost savings could be achieved through merging CFEC's functions with other state agencies.
- Determine whether DFG has sufficient capabilities to support CFEC's information technology (IT) requirements.
- 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, compare personal service costs, by job title, to budgeted positions and identify differences between actual and budgeted personnel services.
- Determine whether the adjudications function performed by CFEC could be performed by the Office of Administrative Hearings (OAH) within the Department of Administration (DOA), in a timely and appropriate manner. Additionally, determine whether the increased case load in OAH would require additional staffing.
- Identify and report CFEC fees collected, and the uses of fees from FY 10 through FY 14.

Scope

The audit analyzed CFEC operations for the 10-year period January 1, 2005, through December 31, 2014. Permit fees collected, uses of fees, and excess receipt carry forward were analyzed for the period July 1, 2004, through June 30, 2014.

Methodology

During the course of the audit, the following were reviewed and evaluated:

- CFEC, DFG, and OAH statutes and regulations to gain an understanding of required duties and processes related to conducting research, conducting hearings and reviewing decisions, issuing licenses and permits, and the administrative and information technology support functions.
- Legislation⁶ establishing CFEC, including committee minutes, and the Governor's Study Group on Limited Entry report⁷ to gain an understanding of the original intent in creating CFEC.
- CFEC annual reports and the Office of Management and Budget performance measures to identify CFEC's mission and staff work effort activities.
- The websites for DFG's Commercial Fisheries Division and OAH to gain an understanding of their mission and services provided.
- DFG and OAH fiscal notes associated with HB112 (2015) titled: REPEAL CFEC; TRANSFER FUNCTIONS TO ADFG to gain an understanding of DFG and OAH's estimated costs and resources necessary to absorb CFEC functions.
- ALDER reports from the State's accounting system to identify CFEC revenues, expenditures, and carry forward of excess program receipts.
- Session Laws appropriating excess CFEC program receipts to identify purpose of appropriations and related amounts.
- CFEC's lease agreement to identify terms and conditions associated with reduction of space or termination of lease.
- ALDER reports from the State's payroll system to calculate the differences in budgeted to actual costs, and to determine where vacancies in positions occurred.

⁶CH 79 SLA 1973.

⁷"A Limited Entry Program for Alaska's Fisheries": Governor study group on Limited Entry, Governor Egan: February, 1973.

-
- CFEC position descriptions to identify duties and qualifications necessary for positions.
 - FY 16 governor amended and approved CFEC detail budget to identify changes to positions.
 - Résumés of all IT staff to understand previous work experience, training received, and professional certifications.
 - Various CFEC IT documentation over the CFEC licensing system application controls, policies, and security to gain an understanding of the system and assurance over system controls.
 - Desk manuals for all licensing staff positions to understand the process for issuing and transferring licenses and permits, including the specific timeframes for limited entry permit transfers.
 - Various CFEC licensing system reports to identify the types and amounts of activity, compared to staffing levels, for adjudications, licensing, and commissioner actions.
 - Multiple listings of research performed and reported to understand and identify the different types of research, amount of effort to complete, and dates the research reports were issued. Inspected data files supporting reports to gain a further understanding of the research function.

During the course of the audit, the following samples were selected:

- Haphazard samples of research reports were selected for the period January 2005 through December 2014 to evaluate whether the reports were supported by requests for information and completeness of the report listings provided. When determining sample size, the applicable controls were considered significant and the inherent risk was considered low. The results were projected to the population.

The following samples were selected in April 2015:

- o Eight of 28 limited entry studies were haphazardly selected

from confidential agency documentation.

- o Seven of 49 “paid for research” reports were haphazardly selected from agency documentation.
- o Ten of 211 “unpublished” reports were haphazardly selected, one from each calendar year for the period January 2005 through December 2014, from agency documentation.
- o Seven of 36 “published” reports were haphazardly selected.

A survey was conducted of the United Fishermen of Alaska (UFA) board members during April of 2015, to gain an understanding of stakeholders’ views of CFEC operations and potential shifting of functions to other agencies. Of the 85 survey requests issued, 47 responded for a response rate of 55 percent.

Interviews were conducted with various agency staff to address the audit objectives including:

- All CFEC staff⁸ to gain an understanding of agency management, daily operations and processes, specific duties performed, changes in work loads over the 10-year period, and how the licensing system affects workflow.
- CFEC’s adjudication staff and commissioners to gain an understanding of the adjudication process workflow.
- DFG’s Division of Administration staff and DOA’s OAH management regarding licensing, information technology, and adjudication processes to understand operational capabilities for absorbing CFEC functions.
- DOA’s Division of Personnel and Labor Relations to gain an understanding of the process of moving exempt agency staff into classified service.
- UFA executive director to gain an understanding of commercial fishermen’s interaction with CFEC.

⁸There were a total of 30 interviews, including both full-time and part-time staff.

Additional audit procedures necessary to address the audit objectives include:

- Observing licensing staff to gain an understanding of the work efforts required to process different types of permits and licenses including newly issued, renewed, and transferred.
- Observing licensing system staff extract activity reports to verify report parameters were appropriate and complete for the period January 2005 through June 2014.
- Conducting a walkthrough of both DFG's and CFEC's physical IT system locations and holding discussions with the data processing managers to gain an understanding of system capabilities and capacity.
- Compiling information on CFEC activities and comparing information to staffing levels; discussing results with commissioners and Research, Licensing, and Adjudication section leads for reasonableness of amounts, and to gain an understanding of drops or spikes in the data.
- Administering an IT internal control questionnaire completed by CFEC's IT section lead to gain assurance over licensing system controls. Performed follow up inquiry and observations to verify controls were in place and functioning.
- Reviewing audit work conducted as part of the financial audit of the State's Comprehensive Annual Financial Report to gain assurance regarding internal controls over the State's accounting, payroll, and financial reporting systems.

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APPENDICES SUMMARY

Appendix A — Analysis of activities performed compared to staffing levels for licensing, adjudications, and research sections for calendar years 2005 through 2014. Analysis includes explanations for spikes in work activity.

Appendix B — United Fishermen of Alaska board member responses to a survey conducted in April 2015, which list the questions and responses in chart format. Questions rated satisfaction with current CFEC operations, importance of independence of the limited entry program, and perceived level of service if some or all CFEC functions were moved to the Department of Fish and Game and the Department of Administration's Office of Administrative Hearings. The survey was issued to 85 board members and 47 responses were received, resulting in a 55 percent response rate.

Appendix C — Two organization charts are presented which show CFEC's FY 16 budgeted positions, and the anticipated organization chart once the projects and restructuring are completed.

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APPENDIX A

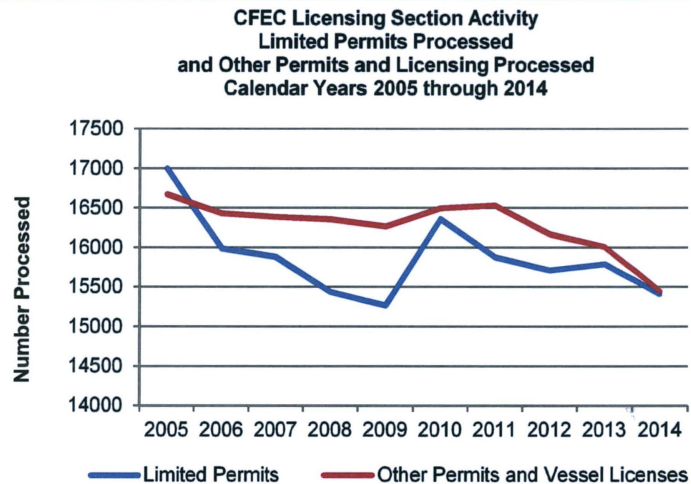
CFEC Work Efforts by Core Functions

The audit identified work efforts by CFEC core functions. The following analyses present work efforts for licensing, adjudication, and research sections. Commissioner work efforts were excluded from this summary as the information was already included in the report.

Licensing:

Exhibit 1A presents CFEC licensing work efforts for the 10-year period 2005 through 2014. All new and renewal applications were combined for all types of licenses and permits received by CFEC for each calendar year. Whether the applications were approved or denied was not a factor since the purpose was to identify total work efforts performed by licensing staff.

Exhibit 1A

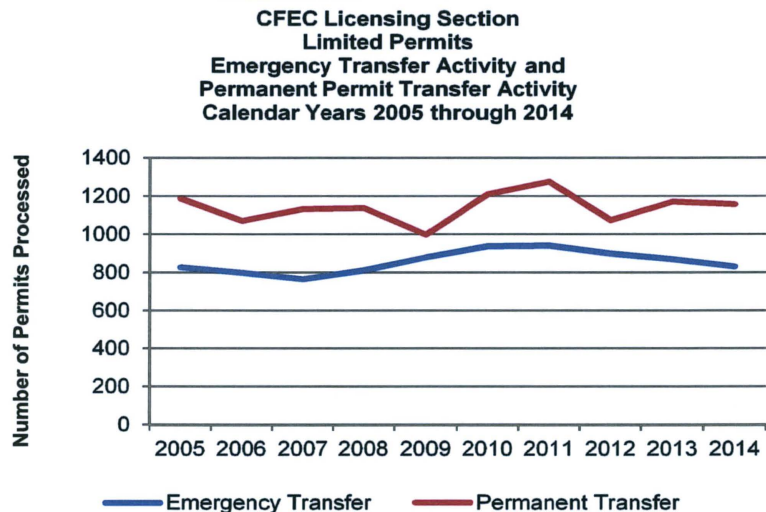


Generally, limited permit renewals and transfers require more staff time than other permits and licenses. Limited permit activity steadily decreased from 2005 to 2008 due, in part, to a decline in the market value of fisheries and the recession in 2008. Activity began to increase in 2009 due to lowering fuel prices and increased transfers of permits as a result of increasing permit values. By 2011, this trend reversed itself and counts have decreased each year.

The 2009 increase in permits and vessel license activity is primarily due to the recession, with out-of-state fishermen coming to Alaska to commercial fish in open fisheries. At that time, the State's fishing industry was experiencing an increase in economic returns due to increases in the value of fish and lower fuel prices. Also, during that time vessel license issuance increased because fishermen were expanding their fleet by purchasing newer boats with improved technology. Technological improvements allowed boats to keep fish fresh until delivered to processors. Given the newer technology, fish processors have increased their freshness requirements for fish storage prior to delivery. Following the spike in 2010, the licenses and permits have declined. The reduction relates, in part, to those fishermen who could not compete with newer technology.

Exhibit 2A shows the number of emergency limited entry permit transfers and permanent limited entry transfers over the same 10-year time period. Emergency transfers have remained fairly even over the 10-year period. As discussed above, factors affecting permanent transfers include; the 2008 recession and out of state fishermen coming to Alaska attempting to earn a living; reduction in fuel prices; increases in the value of fish, especially salmon, resulting in increased permit values; and, older fishermen wanting to sell their permits.

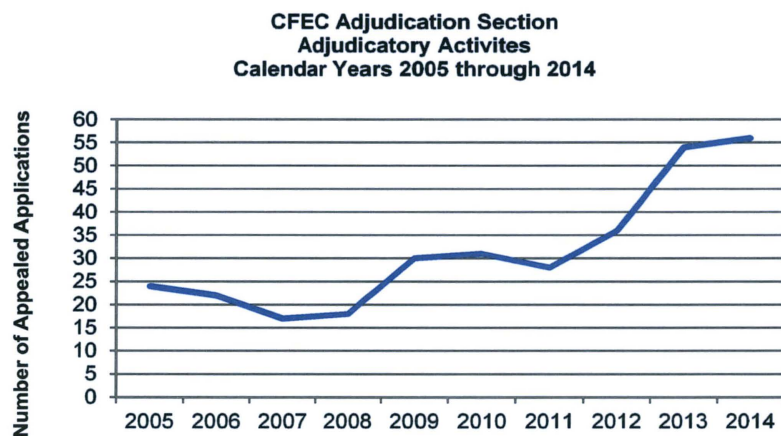
Exhibit 2A



Adjudications:

The adjudication section generally processes appeals of emergency and permanent permit transfer decisions. The appeal process can range from a few days to a few months in order to reach a final decision. Exhibit 3A reports the quantity of cases processed each year measured when each appeal was received.

Exhibit 3A



Similar to licensing, the increase in activity relates to the increase in permit transfer requests following the beginning of the 2008 recession. Since then, there has been a steady increase in the number of appeals, which is a result of a significant increase in emergency transfer appeals and, in 2014, a large increase in permanent transfer appeals.

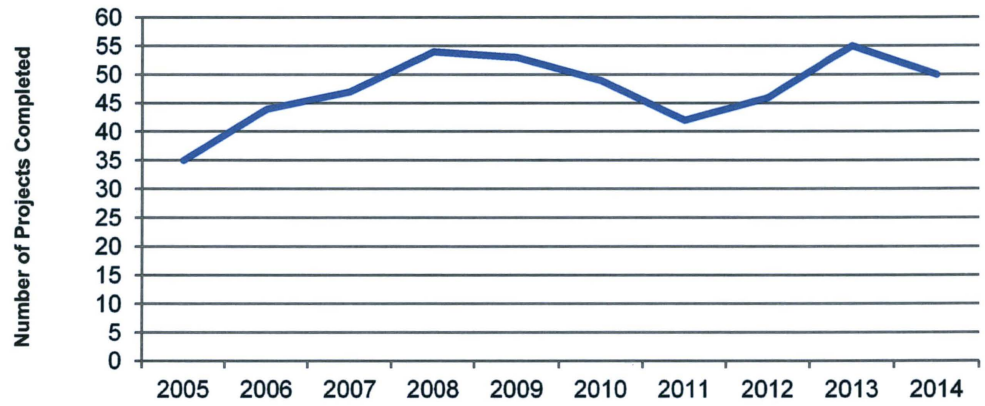
Research:

Exhibit 4A shows CFEC research projects completed each year over the 10-year time period. It should be noted that each project completed was counted as one project, even though resources and time to complete each differed.

The number of completed reports declined in 2011 at which time the research staff was reduced from five to four positions. CFEC conducts routine research which results in annual and monthly reports as well as special research that results in one-time reports. Fluctuation of research is driven by special requests.

Exhibit 4A

**CFEC Research Section
Completed Research Projects
Calendar Year 2005 through 2014**



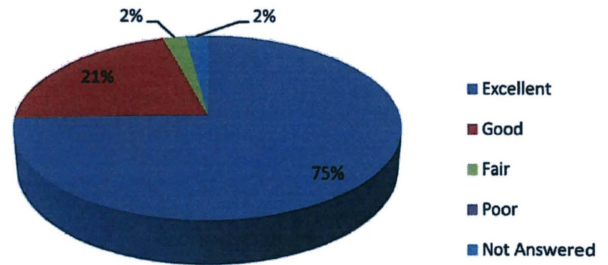
APPENDIX B

Commercial Fisheries Entry Commission Survey Results

1. How do you rate CFEC's Performance over the past five years in the following categories?

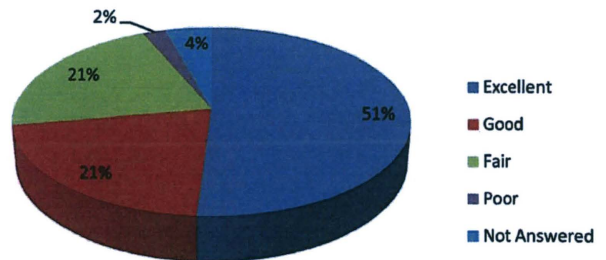
A. Processing Annual Limited Entry Permit Renewals

Rating	Number of Reponses	Percentage of Responses
Excellent	35	75%
Good	10	21%
Fair	1	2%
Poor	0	0%
Not Answered	1	2%
Total Responses	47	100%



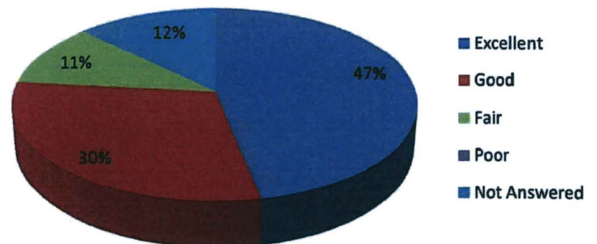
B. Calculating Annual Permit Fee Rates

Rating	Number of Reponses	Percentage of Responses
Excellent	24	51%
Good	10	21%
Fair	10	21%
Poor	1	2%
Not Answered	2	4%
Total Responses	47	100%



C. Issuing Interim-Use Permits

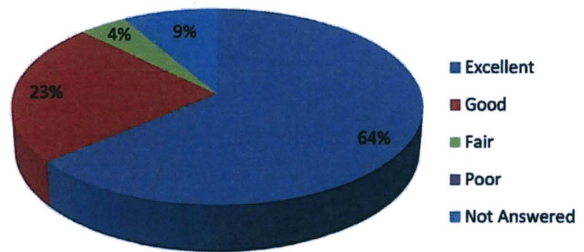
Rating	Number of Reponses	Percentage of Responses
Excellent	22	47%
Good	14	30%
Fair	5	11%
Poor	0	0%
Not Answered	6	12%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

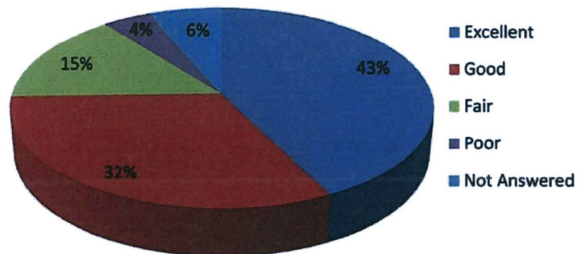
D. Issuing Commercial Fishing Vessel Licenses

Rating	Number of Responses	Percentage of Responses
Excellent	30	64%
Good	11	23%
Fair	2	4%
Poor	0	0%
Not Answered	4	9%
Total Responses	47	100%



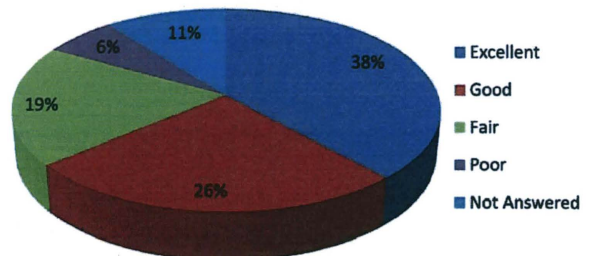
E. Publishing Data and Research Reports

Rating	Number of Responses	Percentage of Responses
Excellent	20	43%
Good	15	32%
Fair	7	15%
Poor	2	4%
Not Answered	3	6%
Total Responses	47	100%



F. Conducting Research

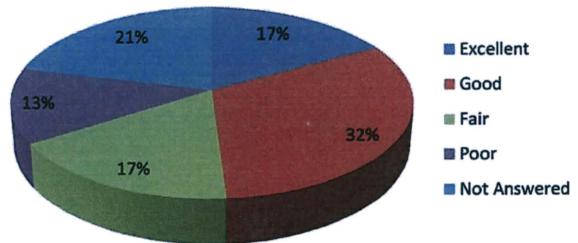
Rating	Number of Responses	Percentage of Responses
Excellent	18	38%
Good	12	26%
Fair	9	19%
Poor	3	6%
Not Answered	5	11%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

G. Processing Appeals

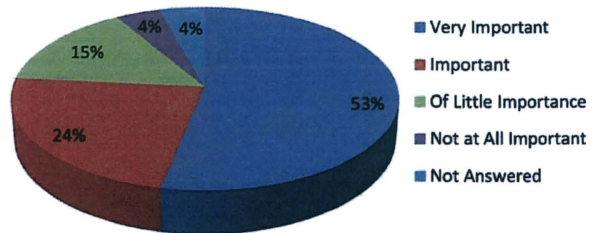
Rating	Number of Reponses	Percentage of Responses
Excellent	8	17%
Good	15	32%
Fair	8	17%
Poor	6	13%
Not Answered	10	21%
Total Responses	47	100%



2. How important is maintaining independence when carrying out the following CFEC functions?

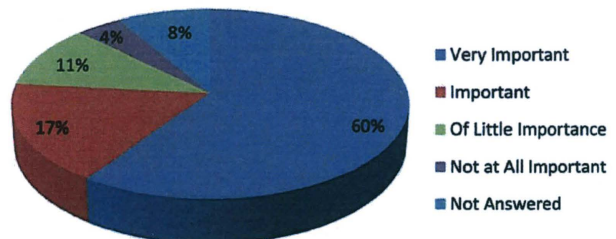
A. Issuing and Renewing Annual Limited Entry Permits

Rating	Number of Reponses	Percentage of Responses
Very Important	25	53%
Important	11	24%
Of Little Importance	7	15%
Not at All Important	2	4%
Not Answered	2	4%
Total Responses	47	100%



B. Issuing and Renewing Annual Interim-Use Permits

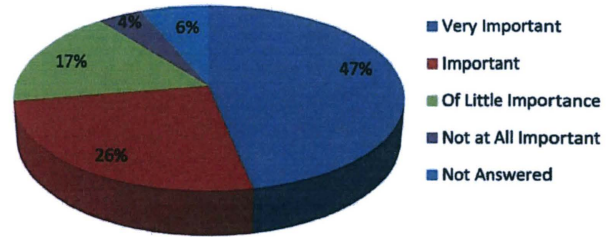
Rating	Number of Reponses	Percentage of Responses
Very Important	28	60%
Important	8	17%
Of Little Importance	5	11%
Not at All Important	2	4%
Not Answered	4	8%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

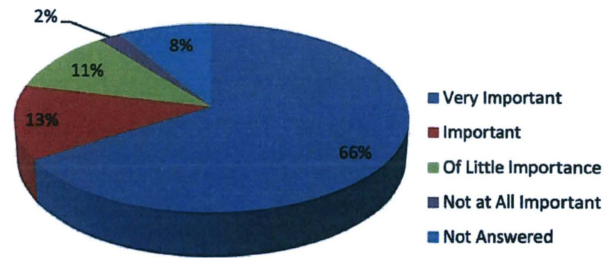
C. Issuing and Renewing Annual Commercial Fishing Vessel Licenses

<u>Rating</u>	<u>Number of Reponses</u>	<u>Percentage of Responses</u>
Very Important	22	47%
Important	12	26%
Of Little Importance	8	17%
Not at All Important	2	4%
Not Answered	3	6%
Total Responses	47	100%



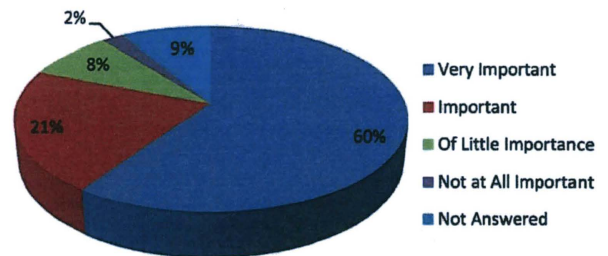
D. Transferring Emergency Limited Entry Permits

<u>Rating</u>	<u>Number of Reponses</u>	<u>Percentage of Responses</u>
Very Important	31	66%
Important	6	13%
Of Little Importance	5	11%
Not at All Important	1	2%
Not Answered	4	8%
Total Responses	47	100%



E. Transferring Permanent Limited Entry Permits

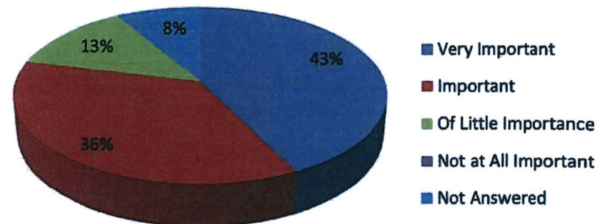
<u>Rating</u>	<u>Number of Reponses</u>	<u>Percentage of Responses</u>
Very Important	28	60%
Important	10	21%
Of Little Importance	4	9%
Not at All Important	1	2%
Not Answered	4	8%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

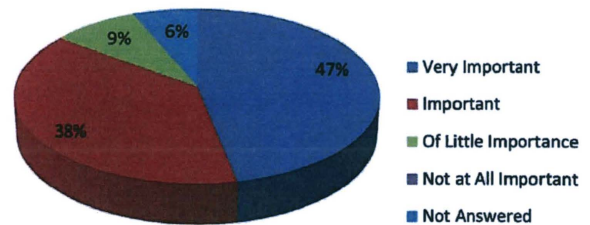
F. Calculating Annual Permit Fee Rates

Rating	Number of Responses	Percentage of Responses
Very Important	20	43%
Important	17	36%
Of Little Importance	6	13%
Not at All Important	0	0%
Not Answered	4	8%
Total Responses	47	100%



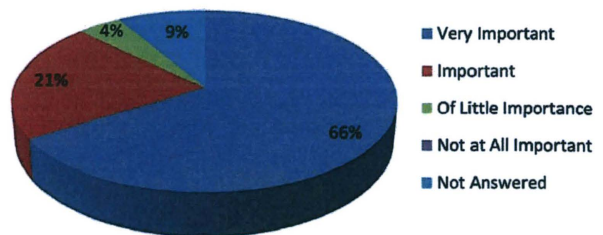
G. Responding to General Research Requests

Rating	Number of Responses	Percentage of Responses
Very Important	22	47%
Important	18	38%
Of Little Importance	4	9%
Not at All Important	0	0%
Not Answered	3	6%
Total Responses	47	100%



H. Determining the Optimum Number of Permits for Administrative Area

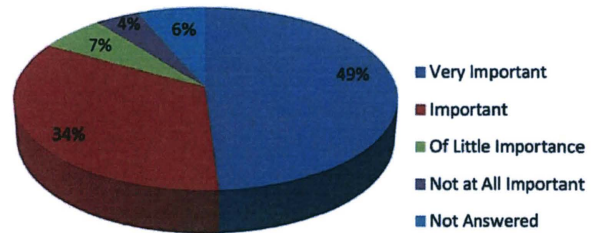
Rating	Number of Responses	Percentage of Responses
Very Important	31	66%
Important	10	21%
Of Little Importance	2	4%
Not at All Important	0	0%
Not Answered	4	9%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

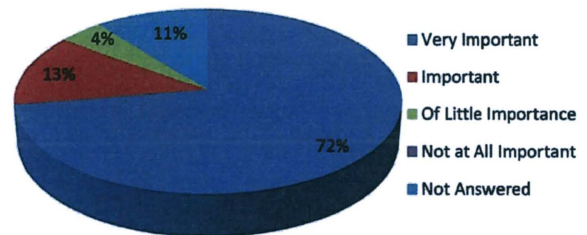
I. Responding to Limited Entry Research Requests

Rating	Number of Responses	Percentage of Responses
Very Important	23	49%
Important	16	34%
Of Little Importance	3	6%
Not at All Important	2	4%
Not Answered	3	7%
Total Responses	47	100%



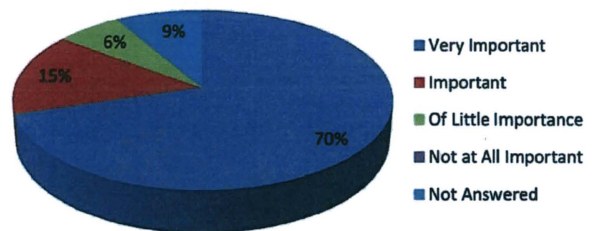
J. Determining New Limited Entry Fisheries

Rating	Number of Responses	Percentage of Responses
Very Important	34	72%
Important	6	13%
Of Little Importance	2	4%
Not at All Important	0	0%
Not Answered	5	11%
Total Responses	47	100%



K. Adjudicating Limited Entry Emergency Permit Transfers

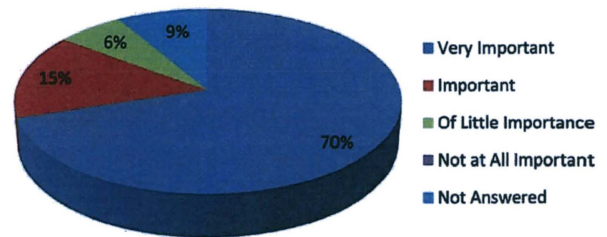
Rating	Number of Responses	Percentage of Responses
Very Important	33	70%
Important	7	15%
Of Little Importance	3	6%
Not at All Important	0	0%
Not Answered	4	9%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

L. Adjudicating Limited Entry Permanent Permit Transfers

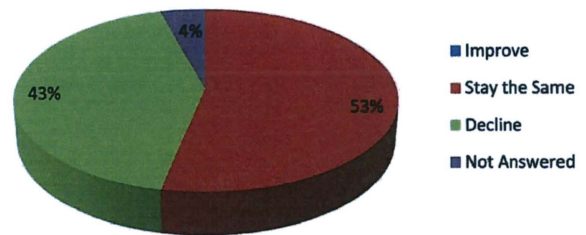
Rating	Number of Responses	Percentage of Responses
Very Important	33	70%
Important	7	15%
Of Little Importance	3	6%
Not at All Important	0	0%
Not Answered	4	9%
Total Responses	47	100%



3. How do you expect performance to change if the following CFEC functions are transferred to the Department of Fish and Game?

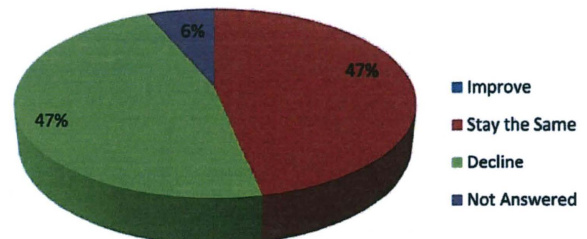
A. Adjudicating Limited Entry Permanent Transfers

Rating	Number of Responses	Percentage of Responses
Improve	0	0%
Stay the Same	25	53%
Decline	20	43%
Not Answered	2	4%
Total Responses	47	100%



B. Issuance and Annual Renewal of Interim-Use Permits

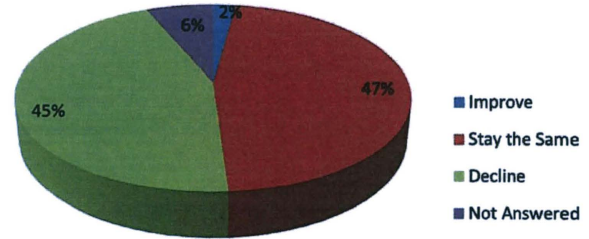
Rating	Number of Responses	Percentage of Responses
Improve	0	0%
Stay the Same	22	47%
Decline	22	47%
Not Answered	3	6%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

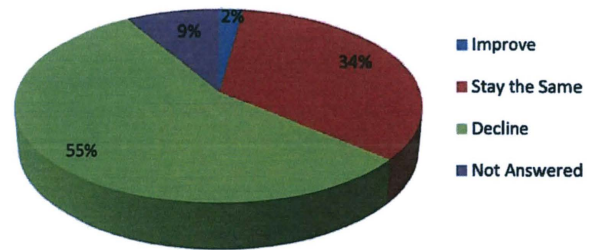
C. Issuance and Annual Renewal of Commercial Fishing Vessel Licenses

<u>Rating</u>	<u>Number of Responses</u>	<u>Percentage of Responses</u>
Improve	1	2%
Stay the Same	22	47%
Decline	21	45%
Not Answered	3	6%
Total Responses	47	100%



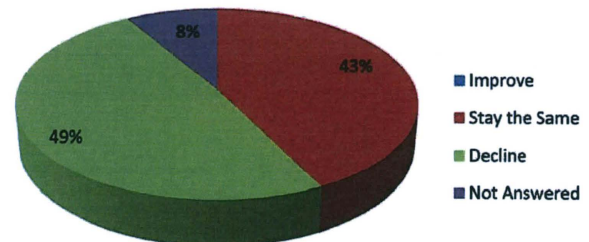
D. Limited Entry Permit Emergency Transfers

<u>Rating</u>	<u>Number of Responses</u>	<u>Percentage of Responses</u>
Improve	1	2%
Stay the Same	16	34%
Decline	26	55%
Not Answered	4	9%
Total Responses	47	100%



E. Limited Entry Permit Permanent Transfers

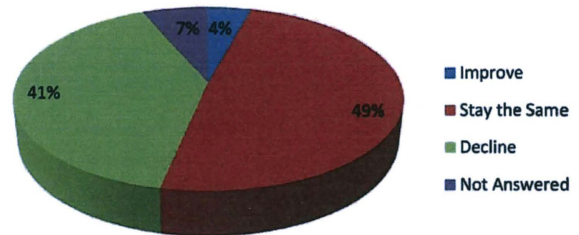
<u>Rating</u>	<u>Number of Responses</u>	<u>Percentage of Responses</u>
Improve	0	0%
Stay the Same	20	43%
Decline	23	49%
Not Answered	4	8%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

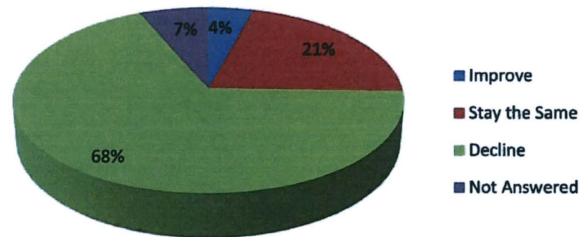
F. Annual Calculation of Permit Fee Rates

Rating	Number of Responses	Percentage of Responses
Improve	2	4%
Stay the Same	23	49%
Decline	19	40%
Not Answered	3	7%
Total Responses	47	100%



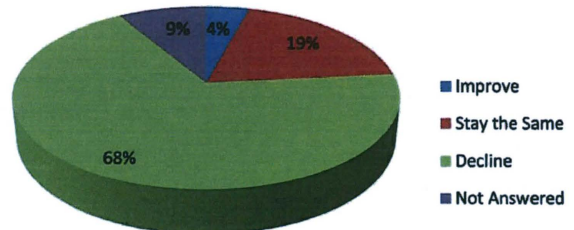
G. Response to Research Requests

Rating	Number of Responses	Percentage of Responses
Improve	2	4%
Stay the Same	10	21%
Decline	32	68%
Not Answered	3	7%
Total Responses	47	100%



H. Identification of the Optimum Number of Permits for an Administrative Area

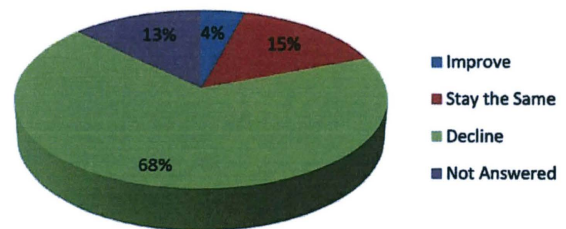
Rating	Number of Responses	Percentage of Responses
Improve	2	4%
Stay the Same	9	19%
Decline	32	68%
Not Answered	4	9%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

I. Limited Entry Determinations

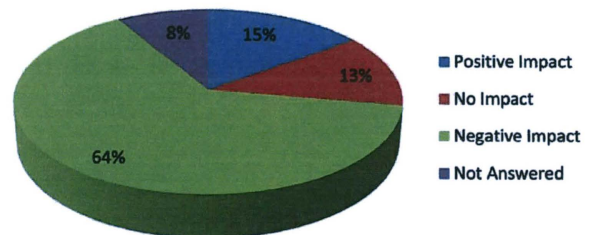
Rating	Number of Responses	Percentage of Responses
Improve	2	4%
Stay the Same	7	15%
Decline	32	68%
Not Answered	6	13%
Total Responses	47	100%



4. If adjudication services related to limited entry are transferred from CFEC to the Office of Administrative Hearings, how do you expect this change to impact the following categories?

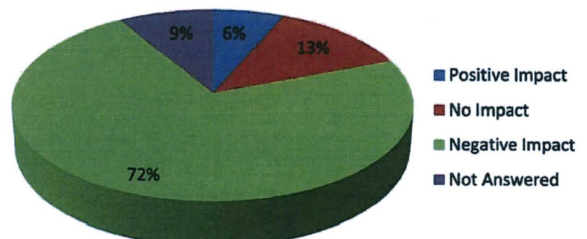
A. Timeliness of Hearing Decisions

Rating	Number of Responses	Percentage of Responses
Positive Impact	7	15%
No Impact	6	13%
Negative Impact	30	64%
Not Answered	4	8%
Total Responses	47	100%



B. Consistency of Hearing Decisions

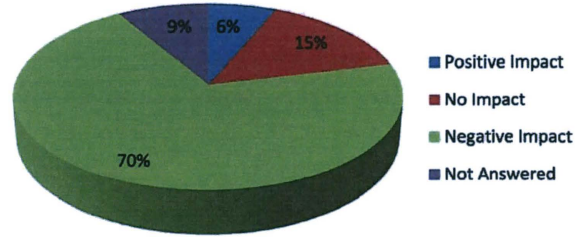
Rating	Number of Responses	Percentage of Responses
Positive Impact	3	6%
No Impact	6	13%
Negative Impact	34	72%
Not Answered	4	9%
Total Responses	47	100%



**Commercial Fisheries Entry Commission
Survey Results
(continued)**

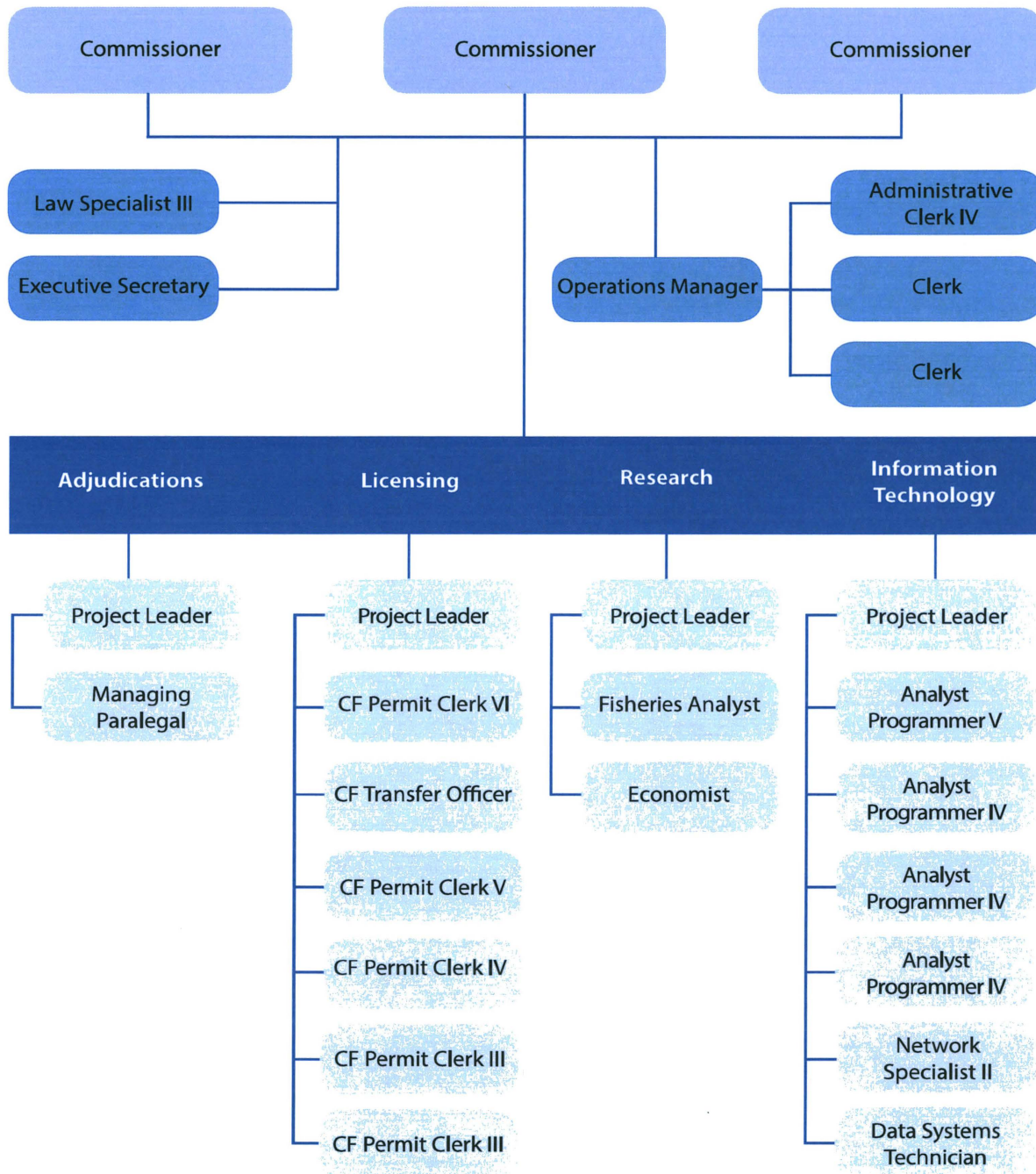
C. Accuracy of Hearing Decisions

Rating	Number of Responses	Percentage of Responses
Positive Impact	3	6%
No Impact	7	15%
Negative Impact	33	70%
Not Answered	4	9%
Total Responses	47	100%

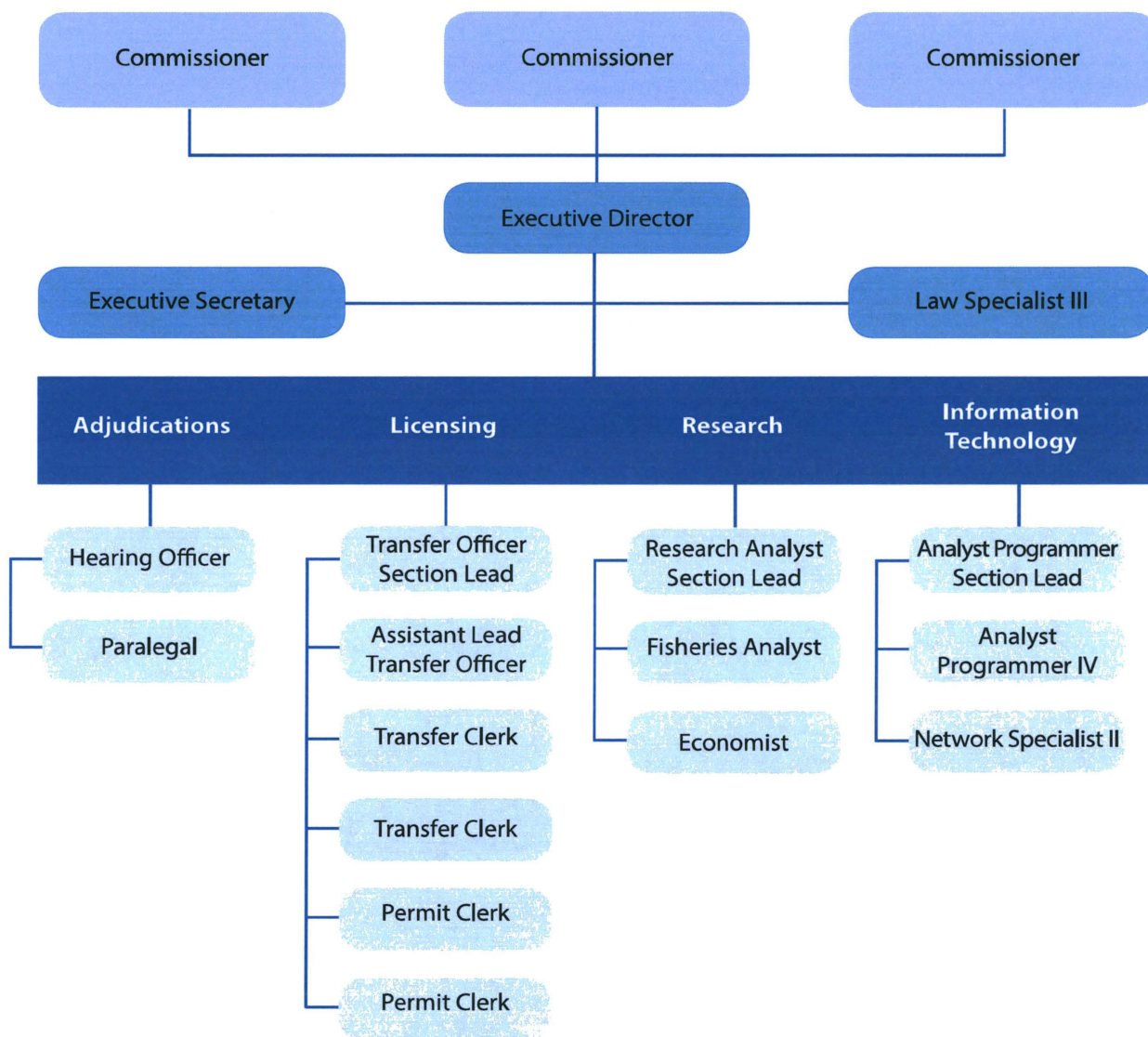


APPENDIX C

CFEC Organizational Chart FY 16 Budget



Anticipated CFEC Organizational Chart after Three Years of Reorganization



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Agency Response from the Department of Fish and Game



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Fish and Game

OFFICE OF THE COMMISSIONER
Headquarters Office

1255 West 8th Street
P.O. Box 115526
Juneau, Alaska 99811-5526
Main: 907.465.4100
Fax: 907.465.2332

October 1, 2015

Alaska State Legislature
Division of Legislative Audit
Attn: Kris Curtis, Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED
OCT 01 2015
LEGISLATIVE AUDIT

RE: Confidential Preliminary Report, Audit 11-30081-15, Commercial Fisheries Entry Commission

Dear Ms. Curtis:

Thank you for the opportunity to comment on the recommendations contained in the preliminary report related to your review of the Commercial Fisheries Limited Entry Commission (CFEC), Audit Control Number 11-30081-15. As you are aware, CFEC is an independent agency with no reporting relationship to me as commissioner of the Department of Fish and Game (DFG). I am supportive of changes you have outlined in your audit report and will make appropriate resources of DFG available to help facilitate improvements at CFEC.

Recommendation 1: CFEC commissioners should hire a director to facilitate an agency-wide restructure to improve operational efficiency.

DFG agrees with this recommendation. We also support the strategy to restructure CFEC to improve operational efficiency. This would be accomplished by moving the commissioners to part-time status working less than 15 hours per week, and merging administrative support with DFG. These changes will create adequate savings to cover the additional cost of a director position, as well as cost savings identified in your report.

Recommendation 2: CFEC's commission chair should prioritize the licensing system upgrade to insure it is completed in a timely manner.

DFG agrees with this recommendation. We also support the strategy of DFG and CFEC staff working closely together on this project since DFG already successfully operates an online store and administers a system that issues nearly 700,000 pieces of stock for sport fishing, hunting, and trapping, as well as 25,000 commercial crewmember fishing licenses.

Kris Curtis, Legislative Auditor

- 2 -

October 1, 2015

Recommendation 3: CFEC's commission chair should ensure the archiving project meets agency needs and proceeds in a cost effective manner.

DFG agrees with this recommendation. The archiving project is needed to ensure important information is available for future reference. Careful planning and oversight for this project will ensure that appropriate documentation is archived. As noted in the audit report, it may be less costly to contract with a vendor to complete this effort.

Once again, thank you for the opportunity to comment on the audit report. I appreciate the efforts of you and your staff and the thorough nature of your work. If you have any questions about my response or require additional information, please contact me.

Sincerely,



Sam Cotten
Commissioner

Agency Response from the Commercial Fisheries Entry Commission



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302
Main: 907.789.6160
Licensing: 907.789.6150
Fax: 907.789.6170

To: Kris Curtis, Legislative Auditor
Legislative Audit Division

Date: October 1, 2015

CC: Dawn Borjesson, CPM Senior Auditor II
Legislative Audit Division

From: Bruce Twomley, Chair *BT*
Benjamin Brown, Commissioner *BB*
Commercial Fisheries Entry Commission

RE: September 10, 2015 Confidential
Preliminary Audit Report

A handwritten signature in black ink, appearing to be "BT" or similar initials.

We have reviewed your September 10, 2015 Confidential Preliminary Audit Report (the Report). We are grateful for your thoughtful consideration of the questions posed by the Legislative Budget & Audit Committee, and the thorough examination of the Alaska Commercial Fisheries Entry Commission (CFEC or commission) you have undertaken in preparing the Report. In this memorandum, we attempted to proceed sequentially by page and paragraph, identifying and underlining specific statements from the Report, and providing our responses.

We generally concur in the synopsis of CFEC's organization and functions and the organizational chart for the agency. We further generally accept the background information as presented, including the history of the commission's establishment, the basic process for limiting fisheries, the description of permits issued by CFEC, and the adjudications process. Our specific comments and suggestions follow.

RECEIVED
OCT 01 2015
LEGISLATIVE AUDIT

As of May 2015, there were 28 limited entry applications awaiting final decisions. Five of the 28 have not received first level hearings. (p. 8, last paragraph)

In May 2015, there were 4 (not 5) cases where the applicants had not had hearings. In each of these cases, the hearing officer offered or scheduled hearings for the applicant, but the applicant did not respond or appear for the hearing. Since May, the hearing officer has found two of these applicants to be in default and has issued a decision on each application.

REPORT CONCLUSIONS (pp. 11-23)

We fully concur with the Report's primary conclusion (p. 12) that CFEC should continue to operate as an independent, regulatory quasi-judicial agency. We believe the reasons stated for this conclusion are sound and convincing.

Additionally, the Report reinforces this conclusion (p. 13) with the following observation:

CFEC has not limited a fishery since 2004; however, it may be necessary in the future. Maintaining CFEC's organizational structure allows the agency to expand as necessary without changing the statutes or regulations.

CFEC has an affirmative statutory duty under the Limited Entry Act to limit a fishery when doing so will serve the terms of the Limited Entry Act and the Alaska Constitution, Article VIII, §15. Having been approached by commercial fishermen, CFEC is scoping the possible need for limitation of more than one fishery at this time. Structural changes implementing the Report's recommendation should happen in a manner that reflects the fact that additional limitations are likely and will create significant workloads.

The Report includes the results of a thorough and well-crafted survey of the members of the United Fishermen of Alaska Board of Directors, which support and provide context for the Report.

Current commissioner workloads do not support the need for full-time commissioner positions.
(p. 14)

We concur in the overall conclusion that current commissioner workloads do not support the need for full-time commissioner positions once the agency is in a position to transition to a new part-time commissioner model. The accelerated timeline the Report suggests for transition from full-time to part-time may not reflect a complete understanding of the nature and complexity of current commissioner workloads, and may also be insufficient to ensure a successful transition from the current full-time model to a future part-time model with the need to transfer operational knowledge to the new director.

The commissioners are currently working on final decisions on the remaining cases from the originally limited 68 fisheries, and before the audit we committed our best efforts to completing them by the end of 2016. To achieve this goal we recommend that the commissioner positions remain full-time through the end of the 2016 calendar year. Having the commissioners working full-time for at least this period of time will allow a fair chance for the commissioners to reach their goal while allowing for a successful transition and for the director to begin to become acquainted with the agency before pursuing reconfiguration under the leadership of the commissioners.

The Report supports this conclusion in part by the following statement (p. 14):

Once case law was established, appeals and litigations [sic] subsided which resulted in a significant reduction in the commissioners' adjudicative workload.

CFEC's history does not support this proposition. The significant reduction in workload resulted from the commission's final determination of a voluminous number of cases. While case law favorably resolved some issues, it has also created additional work for the commission.

For example, the Alaska Supreme Court’s *Byayuk* decision advanced the principle that all applicants should be treated alike, thus requiring the commission to apply a Supreme Court reversal retroactively to reopen previously closed applications. Subsequently, the *Cashen* case applied the same principle to require the commission to accept new applications for the first time long after original deadlines. These retroactive legal mandates 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 fishermen rely for their livelihood. As the commissioners finalize the adjudication of the remaining individual cases, the greatest care must continue to be taken to ensure the permanency and reliability of the outcomes.

The complex *Kuzmin* cases illustrate the current critical stage of CFEC’s adjudication process when few easy cases are left before the commission. As we near the end of the process, cases like *Kuzmin* can have much more impact than the denial of two applicants. The commission had previously completed the cases of 13 other applicants for the same fishery who remained pending at the same 6-point level. Whether they would be issued permits depended on the outcome of other cases like *Kuzmin*. Denial of the *Kuzmin* applications allowed the commission to lower the issuance level to 6 points, but 13 exceeded the maximum number of permits for the fishery, which normally would have required the commission to conduct a lottery creating winners and losers among the group. However, the Legislature was foresighted and assigned to the commission a statutory duty to issue all 13 permits when doing so would not exceed the maximum number by more than 5% or 10 permits—whichever is greater. All 13 have received their entry permits and CFEC has closed out the entire fishery.

The *Kuzmin* decisions required circulation of drafts over a period of 8 months and several face-to-face meetings with 3 attorneys from the Department of Law for editing.

From the standpoint of the commissioners, the “significant reduction” has meant that the commission has survived a period from the 1980s through at least the first decade of our current century, where the commission had to select the cases to be adjudicated by *triage*. Today the process is rational. We are preparing final decisions on the remaining cases from the originally limited 68 fisheries and making our best efforts to complete them by the end of 2016. Achieving that goal is much more likely with full-time commissioners at least through calendar year 2016.

The commissioners' capacity to meet our 2016 goals will hinge on the additional work involved in implementation of the numerous worthwhile suggestions made in the Report, particularly the process of creating a position description for, recruiting, and hiring an executive director. Following these actions, the commissioners and executive director will need a reasonable amount of time to transition to the new structure. At the same time, additional work will require the commissioners' attention, such as the legislation to abolish the commission pending before the Legislature, any other bills involving the commission, and the annual budget process. Additionally, the commissioners will have their ongoing workload of permanent and emergency transfer cases, scoping the need for limitation of new fisheries, and requests for assistance in fleet-reduction measures such as permit buybacks.

The commissioners have found that they must be available to allocate a significant amount of their attention and daily work to the Legislature during legislative sessions. Last year saw a number of attempts to undermine the independence and autonomy of the commission in the budgetary process, resulting in the unfortunate elimination of CFEC's discrete allocation in the operating budget and the placement of our appropriation under DFG's Division of Commercial Fisheries. This is unnecessary and undesirable, and is an example of a matter that will require the commissioners' attention in the coming legislative session. HB 112 seeks to accomplish the diametric opposite of the Report's findings, in abolishing CFEC and transferring its functions to DFG and the Office of Administrative Hearings.

Exhibit 4 and related discussion (pp.14-15)

The Report and Exhibit 4 make a distinction between Commission Actions (red line) and Administrative Review (blue line) that, in terms of commission resources, is not meaningful. We understand that Commission Actions include individuals' appeals to the commissioners and issues where the commissioners take jurisdiction of a case on their own initiative. We further understand that Administrative Review is intended to include all cases not appealed that the commissioners review in due course. In practice, when an applicant does not appeal a decision, the commissioners' review of the case in due course involves no less scrutiny or consideration than an appeal that has been affirmatively requested.

Emergency transfers not appealed come under the Administrative Review category. But emergency transfers can be as complex and require as much research and analysis as designated Commission Actions. An example would be cases where an applicant did not get adequate notice of their opportunities under the law, regulations, and prior decisions. Our review and analysis in such a case would go well beyond simply, “reviews of decisions already issued by the adjudication section for consistency and reasonableness.” (p. 14) We cannot leave a decision on the books that could influence future decision makers to the prejudice of an applicant. While some transfer cases raise fewer issues and present shorter records than an application for a limited entry permit, the legal issues can be equally complex. We have a series of decisions in 2014 where we found the notice to the applicant was inadequate and failed to properly inform of the applicant of their opportunities under commission law and precedent. The commission has a substantial body of past decisions that must be researched and analyzed to reach such a decision. *See, for example, Aliotti*, CFEC 13-018-E (2014); *Carlson*, CFEC 13-020-E (2014); *Taylor*, CFEC 13-016-E (2014); *Hansen*, CFEC 13-021-E (2014); *Salisbury*, CFEC 14-010-E (2014); and *Skonburg*, CFEC 13-014-E (2014).

As a current example, last summer a denied applicant for an emergency transfer contacted the Governor’s Office, which in turn contacted the commissioners. We reported the status of the case back to the Governor’s Office, and we urged the Governor’s Office to encourage the applicant to appeal the decision. We saw a potential error in the decision, and we did some initial research in anticipation of an appeal that, in the end, we did not receive. (Absent an appeal, we believe our priority must be applications for limited entry permits.) Nonetheless, the case raises important issues of law and public policy that we will have to address, and it may call for a reversal of last summer’s decision. Whatever the outcome, our research, analysis, and deliberation will be just as demanding as if the case had come to us by appeal. If we did not give the case that level of attention, we would risk creating a bad precedent to influence future decision makers. In short, the resources we commit to that case will be of the same magnitude as those we would commit to a case on appeal. (Conversely, some appeals show a lack of merit on their face and can be summarily dismissed.)

Some have said that transfer cases are easier than applications for limited entry permits. The *Williams* case is a striking example to the contrary. The complexity is aggravated by the speed required to avoid the unnecessary loss of fishing time. Before a member of the public called this case to the commissioners' attention, mistakes by staff had already cost the proposed transferee an entire fishing season. We intervened to achieve a timely result that, at least, allowed participation in the following fishing season by the transferee.

Cases under administrative review can demand as much attention by the commissioners as cases appealed to the commissioners. The commissioners have exactly the same goals under either category: to ensure that citizens obtain what they are entitled to under the Limited Entry Act. This is not an easy task. At least one sitting Supreme Court Justice has characterized limited entry law as "arcane." This area of law is a specialty in which only a few private attorneys have expertise. However, those attorneys who appear on the other side of CFEC's cases are very sophisticated and forceful.

The Report (p.4, Exhibit 4) notes a substantial spike in the number of transfer cases subject to the commissioners' review. During 2013, there was a spike of some 50 cases followed by a greater spike of some 59 cases during 2014. These cases are over and above applications for permanent entry permits in the originally limited 68 fisheries. When the immediate right to fish is at stake, transfer cases become our top priority and push aside cases on applications for permanent entry permits. Commission decisions are the principal means by which the commissioners supervise adjudication staff.

Additionally, a new pitfall from a recent Supreme Court case has been evidenced by a remand from a Superior Court judge who requested the commissioners to address the issue. The commissioners' efforts to avoid such pitfalls can be seen in the *Kuzmin* cases. We can attest that the easy cases are not last in line.

Two key projects, the licensing system upgrade and the archival of documents, should be completed to allow for significant cost savings. (p. 15)

CFEC concurs with this recommendation.

CHANGES PROPOSED FOR FY 17 (p. 17)

One proposed change for FY 17 is that the commissioner positions be reduced to 35% (less than 15 hours a week) as of October 1. If the commissioners are to have a realistic opportunity to complete Final Commission Decisions in the remaining cases from the 68 originally limited fisheries, analyze requests for limitation, as well as keep up with the ongoing caseload including permanent and emergency transfers of entry permits, we believe the commissioners ought to remain full-time at least through calendar year 2016.

In the near future, a more informed assessment can be made of the hours necessary for the commissioners to meet their statutory duties. We note, however, that, even if the commissioners are successful in achieving final decisions in the remaining cases from the 68 originally limited fisheries by the end of 2016, there will be requests for reconsideration that the commissioners must adjudicate, court appeals in which commissioners must be extensively involved, and (from recent experience in response to more recent Alaska Supreme Court decisions) remands of cases to the commission for further proceedings. Additionally, there are extended periods during the two major licensing seasons when commissioners need to be continuously on hand to take critical appeals of denied transfers (permanent and emergency) as well as complaints from the public in order to avoid unnecessary lost fishing time. Again, the *Williams* case provides a perfect example of this need.

Also as of October 1, 2016, the commissioner positions could be reduced to 35 percent (less than 15 hours a week) with no benefits, at which point the Executive Director could facilitate commissioners' work sessions as needed. (p. 17)

The commissioners have always needed administrative support, but this brief and ambiguous statement of the Director's role in work sessions may imply that the Executive Director would be part of the commissioners' adjudications and choose the order of the cases for the commissioners to decide. If that is contemplated, it would undermine an important function of the commissioners.

Choosing the order of decisions to be issued requires legal analysis and awareness of the needs of particular fisheries throughout the state. The commissioners cannot delegate this function. The order in which cases are decided helps to address issues the commissioners have identified as critical, and, in turn, determines the order in which cases will be appealed to the court. The commissioners' ability to select the cases to be decided has been an important factor in the commission's more than 90 percent success rate before the Alaska Supreme Court from 1996 to date, and it has been a critical factor in the commission's several victories before the court that have benefited the limited entry system as a whole.

CFEC support activities could be carried out by other state agencies; however, core functions should remain. (p. 18)

Generally CFEC concurs with these observations, with questions about the viability of the following sub-recommendation:

Administration: DFG Division of Administrative Services could absorb CFEC administrative functions such as purchasing and processing payments without additional resources. This would allow the elimination of two CFEC administrative positions. Under this arrangement, the proposed CFEC director position would serve as liaison between CFEC and DFG's Division of Administrative Services. (p. 18)

We concur with this general finding, but are not certain that all of the organizational changes suggested in the Report will yield savings as automatically as perhaps envisioned. The recommendation that, "... the new CFEC director should work with DFG's Division of Administrative Services to move CFEC's administrative functions to DFG," may be less likely to yield actual savings than the Report contemplates for a number of reasons. Each division at DFG currently has a discrete staff person to handle administrative duties and responsibilities; it may make sense to allow the same level of staffing for CFEC given our separate physical location which might make transferring administrative duties inherently inefficient. Numerous functions will still need to be performed at CFEC's offices, including the following:

- supply inventory and requests for purchases to be made

- identification of surplus equipment and transfer to the State warehouse
- coding and submission of invoices to DFG for payment
- processing of payments for all non-Licensing transactions (fish ticket data requests, other IT data runs, Research requests)
- daily cash & check deposits
- HR & payroll submissions

Without a clear plan to have these functions performed by a CFEC staff person, the tasks may go unperformed or have to be done personally by the new executive director.

CFEC has consistently generated more revenues than required to fund operations. (pp. 20-21)

The bulk of CFEC revenues are paid by commercial fishermen for their various permits and vessel licenses.

The Report quoted (p. 20) AS 37.05.144, which provides (with emphasis added) as follows:

The annual estimated balance in each account maintained under AS 37.05.142 may be used by the legislature to make appropriations to state agencies to administer the programs generating the program receipts, **to implement the laws related to the functions generating the program receipts**, or to cover costs associated with the collection of the program receipts. (§ 1ch 36 SLA 1990)

CFEC believes that the expenditure of program receipts generated by limited entry permit and vessel license renewal fees fits within all three allowable purposes for legislative appropriations under AS 37.05.144. At a minimum, the second allowable purpose (to implement the laws related to the functions generating the program receipts) clearly and unambiguously comprises the operations of the DFG's Division of Commercial Fisheries in managing the fishery stocks which are fished by limited entry permit holders. There could not be the latter

without the former, and the commissioners believe there is no reason to consider CFEC revenues as anything other than restricted revenues or Designated General Funds (DGF). The budgetary practice for many years prior to the current fiscal year underscores this statutory interpretation, and militates in favor of restoring CFEC's own allocation in the operating budget. The excess revenues from our program receipts can be appropriated by the Legislature to defray commercial fishery management costs in full compliance with AS 37.05.144.

Additionally, noting that CFEC has had no control and no influence over the Legislature's application of revenues greater than CFEC's operating costs, the fact that individuals depending on Alaska fisheries pay the full cost of operating CFEC would seem to weigh in favor of maintaining CFEC revenues as restricted revenues or Designated General Funds (DGF).

The Report correctly notes that the commission has consistently spent less than its budget. We are grateful to part-time staff who have contributed to this result by their willingness to work as needed. At the same time, CFEC needs a cushion in the form of carryover of unexpended funds. CFEC's revenues are derived from fish prices, which are volatile. Bristol Bay is one of the largest factors in determining CFEC revenues, and salmon prices there are down substantially from last year. We have always feared a diminution of revenue needed for CFEC to survive its fiscal year.

FINDINGS AND RECOMMENDATIONS (pp. 25-28)

Recommendation 1 (p. 25)

CFEC Commissioners should hire a director to facilitate an agency-wide restructure to improve operational efficiency. (p. 25)

CFEC concurs with this recommendation. We believe that more time will be helpful to ensure the success of the transition from management by full-time commissioners to a full-time executive director overseen by three part-time commissioners. To justify the investment of scarce resources in a new full-time executive director, care must be taken to ensure that this

position is adequately staffed, and that the proposed transfer of administrative duties and responsibilities to DFG staff is realistic and likely to succeed.

During the 1980's and early 1990's, a series of budget cuts required the commission to eliminate its executive director and other positions. Since 1986, budget cuts reduced the commission's full-time positions from 41 to 28 – a loss of more than 30%. As recently as 2004, the commission's general fund budget was essentially at the level of its 1983 general fund budget in nominal dollars without an adjustment for inflation. (The difference was less than \$100,000 with no adjustment for inflation.)

But, as a wholly exempt agency, the commission has been able to be more creative in absorbing budget cuts than simply eliminating positions. More often than not, the commission required staff to forgo merit increases and, at times, requested staff to take leave without pay. For one period, the commission reduced the hours and salary of all staff to absorb a mid-year budget reduction. The reduction in hours and compensation was progressive with commissioners and other higher paid staff members absorbing the largest cuts and lower paid staff members absorbing the least.

CFEC's flexibility may mean that there are alternative models not yet fully explored.

Commissioners' salaries were initially tied to those of Alaska District Court Judges. Over the years, the Legislature advanced District Court Judges' salaries but not those of the commissioners. As a result, Chair Twomley (who has always been grateful for his salary) went 25 years without a merit increase until the Legislature took action in 2008.

This history of budget cuts and reductions in staff has meant that the commissioners and remaining staff members have consistently had to absorb additional responsibilities, and that CFEC has been lean for some time. As the Report points out, commission staffing is largely consistent with its statutory duties.

CFEC functioned well without an Executive Director for a lengthy period of time during which the 3 commissioner positions were filled, the commissioners delegated administrative tasks among themselves, and personnel issues were minimal.

More recently, we recognized a conflict between 2 commissioners' ability to produce our day-to-day work product of adjudicatory decisions and to attend to day-to-day administrative responsibilities. The 2 remaining commissioners need blocks of time to write critical commission decisions. This is especially true at a time when we are closing out fisheries. This would be the worst of all possible times to face a *Byayuk* challenge creating the risk of having to reopen closed cases or a *Cashen* challenge creating the risk of having to accept new applications for permits in limited fisheries.

We fully agree that hiring a Director is a sound idea. Nonetheless, we do want to comment on some of the Report's stated premises for making this recommendation.

[C]ommissioners' ineffective management of day-to-day operations (p. 25)

The commissioners acknowledge the inherent conflict between their adjudicatory and administrative responsibilities and do not claim perfection in their management. However, the condemnation is too broad, because the commissioners have made effective management decisions. We will provide a few (the list could be expanded) counter-examples to illustrate that the commissioners have performed needed day-to-day management. However, please be aware that recipients of day-to-day management are not always grateful.

In 2014, when we found that some members of Licensing Section were misinterpreting and misapplying our new regulation for reinstatement of cancelled entry permits, we called for a face-to-face meeting with staff in order to work through some cases together and to provide instructions on understanding and applying the regulation.

Also in 2014, when the chair learned that members of the Licensing staff were requiring a fisherman to go through extra bureaucratic hoops not required by CFEC regulations, he promptly intervened to spare both the fisherman and Licensing staff unnecessary work.

Additionally, not long ago the commissioners intervened when a supervisor failed to afford an employee consideration to which the employee was entitled under the Americans with Disabilities Act. We reassigned supervision of the employee.

Finally, the commissioners identified an inappropriate salary increase suggesting favoritism and intervened to deny the request.

In short, we can document our day-to-day management that has been necessary and effective (if not always popular).

Agency priorities and goals not communicated to staff. (p. 25)

The commissioners do not hesitate to give direction when needed, but we note the agency is the size of a medium classroom. Commonly, individuals who genuinely want information and guidance get it by walking across an aisle and asking. And the Legislature has been helpful in providing defined duties under the Limited Entry Act. Additionally, court cases, our regulations, and commission decisions provide specific direction to the agency. The agency does not undertake discretionary tasks unrelated to statutory responsibilities. CFEC can be apprehended at a glance, and CFEC has ample sources of information and guidance.

The Licensing System has not been upgraded although sufficient resources are available. (p. 25)

“Licensing system upgrade” is a misnomer (although it is a convenient short-hand reference we have used ourselves). A more accurate term would be “IT system upgrade”, and the Report fails to acknowledge substantial completed work. The project the commissioners assigned to IT was a total IT upgrade including a move from a Btrieve database with COBOL programming to a modern relational database (ORACLE) and programming in a current computer language (JAVA). The bulk of this project was to establish the hardware, transfer data to the new database, and program for data management. Our former IT manager wanted to perform a massive scanning project instead. We directed him to put off scanning and move as soon as

practicable on the new IT system. He retired, and another IT staff member left the agency. Both were quoted as declaring that the task was impossible and could not be completed.

We hired a new IT manager, a well-regarded programmer from DFG who had formerly been the key IT person for the Permanent Fund. But, when he examined the CFEC server room, he ran away from the job in fear. The chair followed him to ask his advice, which was, “do you have a paper alternative?”

Subsequently, CFEC recruited our current IT manager from a private IT corporation, and he undertook the task previously declared impossible. Today, the task is largely completed with ORACLE and JAVA fully employed. One of the remaining elements to be completed is improved screen tools for Licensing Staff. Additionally, the online license renewal program was originally programmed to include direct data entry, but, for reasons unknown to the current Chair, the IT Project Leader was directed to reprogram for manual data entry. (Commissioner Twomley was not a party to this decision and not aware of it at the time, and Commissioner Brown was not yet serving the agency). We anticipate new licensing screen tools will be developed in 2016 and thereafter tested by running dual systems. In any event, the IT upgrade was the task we hired our IT manager to perform and has been a priority since well before the audit, as reflected in personnel evaluations.

Conflicts between agency staff and between competing priorities have not been actively resolved by commissioners. (p. 25) When conflicts have come to the commissioners’ attention, the commissioners have addressed them, as reflected in personnel files.

Recommendation 2 (p. 27)

CFEC’s commission chair should prioritize the licensing system upgrade to ensure it is completed in a timely manner.

We agree on the importance of the IT system upgrade which includes improved screen tools for the Licensing Section and direct online data entry. This upgrade priority predates the

audit, and we will be happy to reinforce it. Following adequate testing, we anticipate the full IT upgrade including new screen tools for licensing will be completely live in 2017.

We believe the Report overstates the inefficiencies of the current licensing system. For example, credit card transactions are automatic, and, generally, data entry errors can be corrected by staff except for those normally reserved for security reasons like revenue transactions. Additionally, the new system would not likely increase the speed of individual transactions. Individual transactions under the current system are about as fast as can be achieved. The purpose of the new system is to employ current technology and to improve screen tools, which will ease recruiting and training of new employees.

Additionally, the Report does not acknowledge that the legal rules governing limited entry permits are profoundly more complex than those governing issuance of crew licenses by DFG. Crew licenses are sold over the counter by clerks in convenience stores. Therefore, the CFEC licensing system requires a higher order of programming. Nonetheless, we are happy to collaborate with DFG IT staff. CFEC's IT leader was recently invited to a DFG IT meeting because of his experience installing, operating and maintaining an ORACLE database.

Recommendation 3 (pp. 27-28)

CFEC's commission chair should ensure the archiving project meets agency needs and proceeds in a cost effective manner. (p. 27)

CFEC fully concurs with this recommendation. For clarity we would note that CFEC has been archiving agency documents for years. The projects we are talking about incorporate scanning into the process. The recommendation is well taken.

In summary, we wish to thank you and your staff for your conscientious, dedicated and diligent work in preparing the Report. Again, we strongly concur in the primary recommendation that CFEC remain an autonomous, independent agency.

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE
LEGISLATIVE BUDGET AND AUDIT COMMITTEE
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October 13, 2015

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Commercial Fisheries Entry Commission's (CFEC) response to this audit report. Except for CFEC's comments regarding page eight of the report that addresses the adjudication backlog, nothing contained in the response causes us to revise the report. Regarding the background information section of the report that addresses adjudication backlog, CFEC does not agree with the sentence that states, "*Five of the 28 have not received first level hearings.*"

We agree with CFEC that the number of cases in backlog that had not received first level hearings is misleading; however we do not agree that four of the 28 in backlog had not had hearings. Audit documentation indicates the sentence should have been written as follows: "*Five of the 28 were still in the first level hearing process; two had yet to be heard and three awaited a hearing officer decision.*"

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

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