

02/24/15

Overview:

**Commercial
Fisheries**

Entry

**Commission
(CFEC)**

<TARGET><BILL></BILL><SUBJECT>02-24-15 Overview Commercial
Fisheries Entry Commission
(CFEC)</SUBJECT><COMM>HFSH29</COMM></TARGET>

Commercial Fisheries Entry Commission Overview

House Fisheries Committee



Bruce Twomley, Chairman
Benjamin Brown, Commissioner
Verne Rupright, Commissioner

February 24, 2015

In the Beginning: 1972 - 1980

- 1972 Amendment to Article VIII, § 15
Alaska Constitution
- 1973 Limited Entry Act
AS 16.43
- 1975 - 1980: Initial Implementation of Limited Entry
- *Isakson v. Rickey* (1976)

1980's: Effect of Judicial Decisions

- *Ostrosky* Case (1983)
- From 1983 – 1985, Alaska Supreme Court issued 28 limited entry decisions
- Cases requiring many additional CFEC adjudications
 - *Forquer* (1984)
 - *Byayuk* (1984)
 - *Cashen* (1984)
 - *Deubelbeiss* (1984)
 - *Roehl* (1984)
 - *Wickersham* (1984)
 - *Chocknok* (1984)

1980's: Effect of Judicial Decisions (continued)

- The continuing threat of *Byayuk & Cashen*
- *Wassilie* settlement (1988)
- Since 1984, CFEC met its affirmative duty to limit 35 more fisheries

1990's: Fisheries Under Pressure

Triage

Pressured

- Prince William Sound Fisheries
(1988 Exxon Valdez Oil Spill)
- Cook Inlet Salmon Drift & Set
(Action by Board of Fisheries)
- Southeast Salmon Seine & Troll
(US - Canada Treaty)

Contrast

- Chignik Petition
- Bristol Bay Salmon Drift
(*Kelly* case)
- 1990 - Nearly 900 cases before Hearing Officers and Commissioners

CFEC Priorities

- Cases where immediate right to fish at stake (*Wassilie* & transfer cases): absolute top priority
- Applications for Permanent Entry Permits (first, most pressured PWS, Cook Inlet, SE)
- 1997 - Salmon market collapse (farmed salmon)
- CFEC addressed Bristol Bay cases first as the state's largest salmon fishery

1980s Through 2005: Other Obstacles

- *Carle* decision (1996)
- Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries (CFEC 1998)
- *Carlson* class action
- 1980's and early 1990 budget cuts
 - ❖ Exempt: Eliminate executive director, salary freezes, leave without pay
 - ❖ FT positions: 41 (1986) → 28 today (30% decrease)
(remaining staff members must absorb functions)

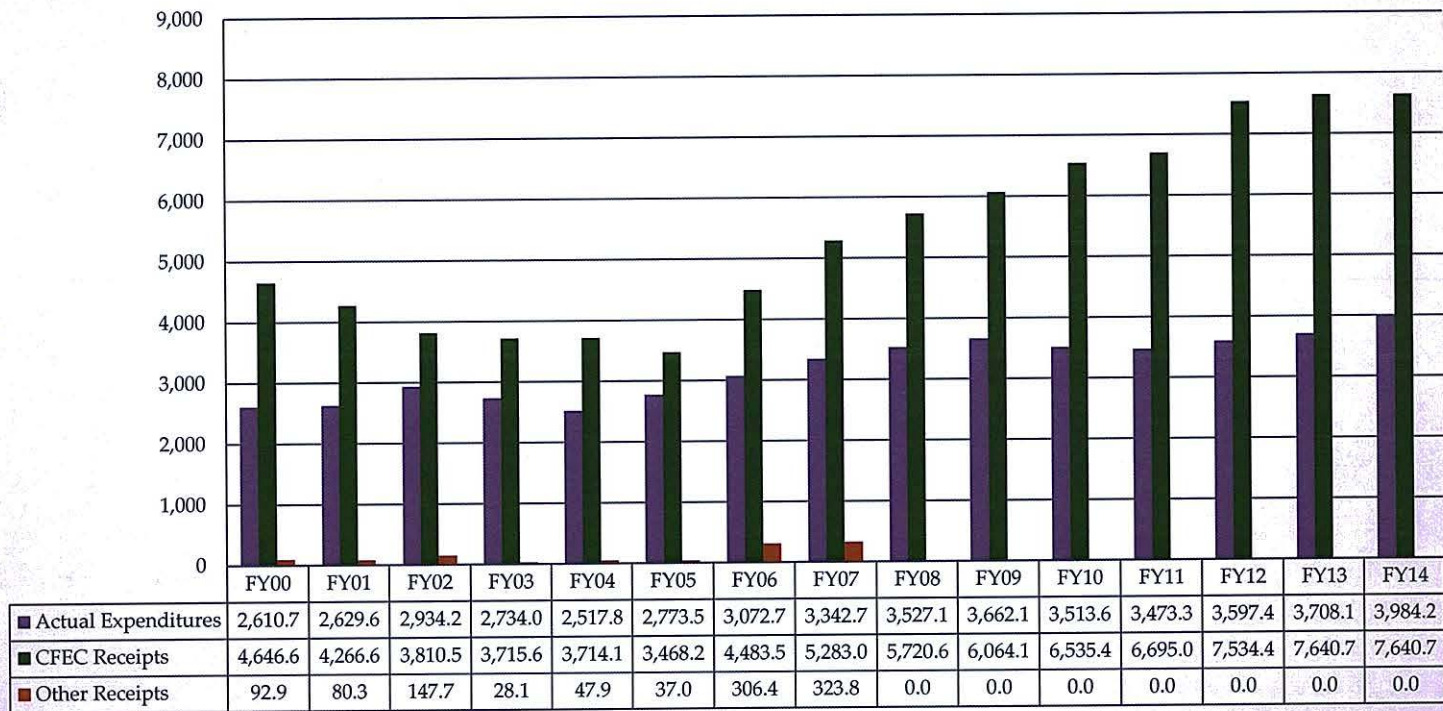
Today: A Rational Caseload

- 28 cases before Hearing Officers & Commissioners
- CFEC's goal is to complete cases by the end of 2016 (barring interruption)
- Transfer cases remain top priority – *Williams*

CFEC Raises Revenue For The State

Commercial Fisheries Entry Commission Actual Revenue and Expenditures

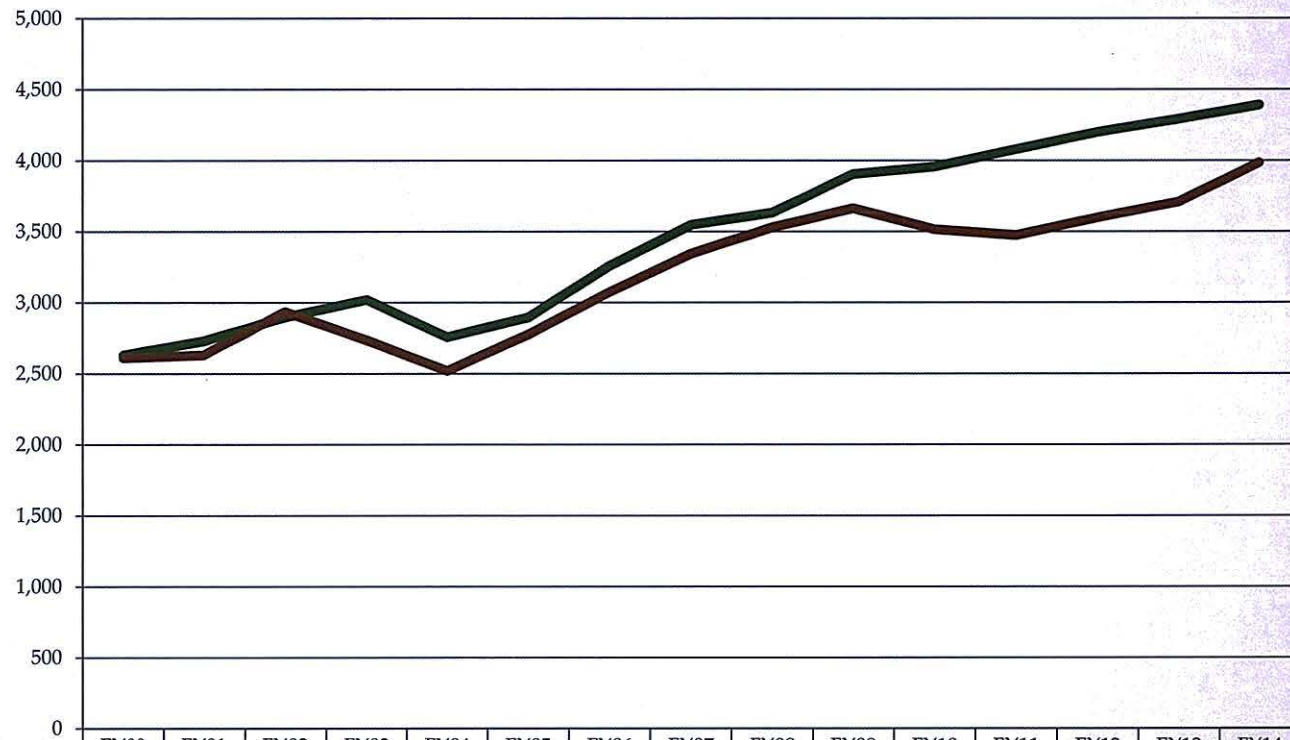
(Thousands)



Note: "Other Receipts" are comprised of Federal, General (UGF), InterAgency, and Investment Loss Trust Funds

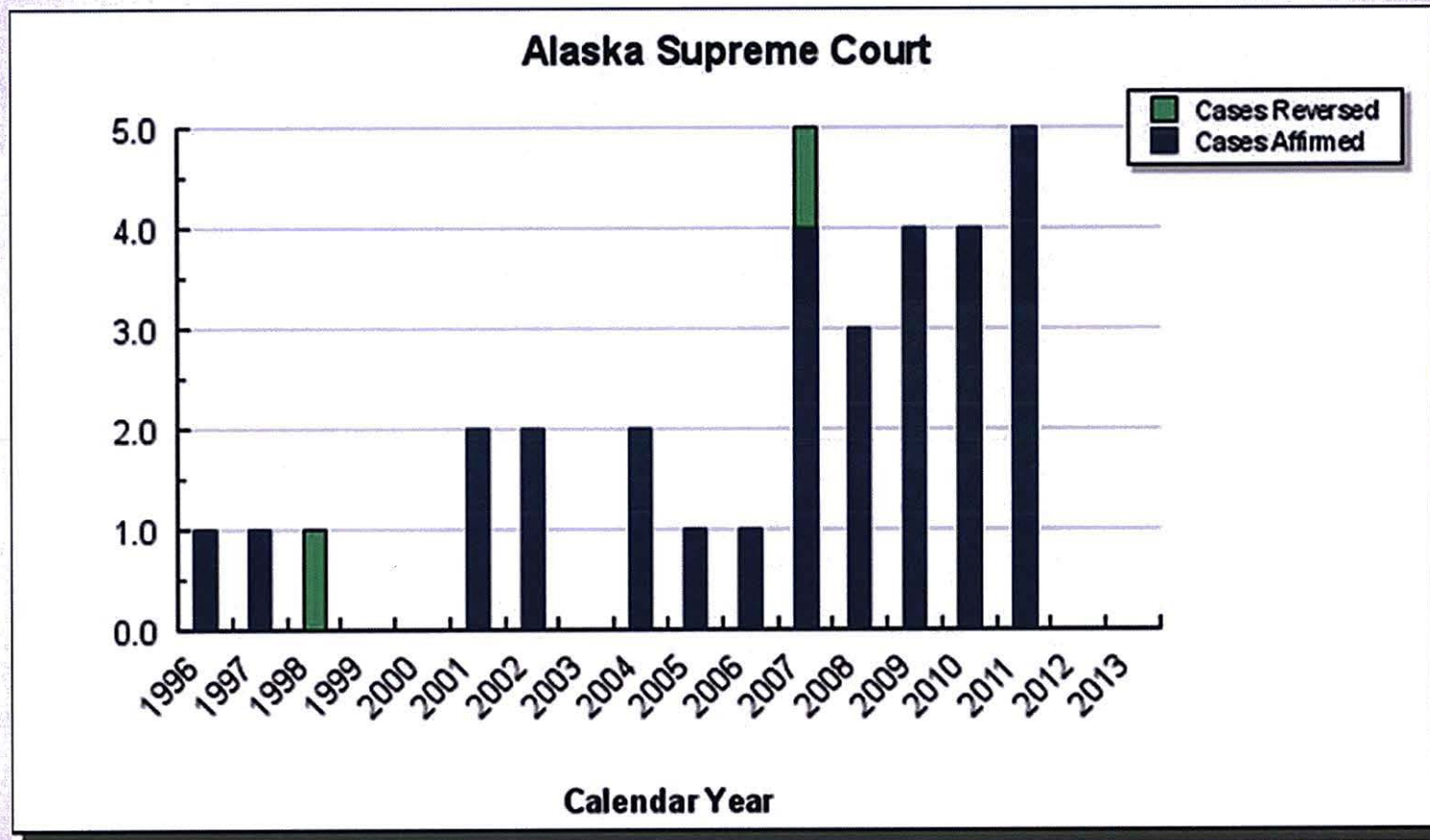
Commercial Fisheries Entry Commission Actual Revenue and Expenditures

(Thousands)



	FY00	FY01	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14
Management Plan	2,629.6	2,728.1	2,896.7	3,018.5	2,755.5	2,894.3	3,257.3	3,545.3	3,630.7	3,902.6	3,954.7	4,077.3	4,198.5	4,291.3	4,389.2
Actual Expenditures	2,610.7	2,629.6	2,934.2	2,734.0	2,517.8	2,773.5	3,072.7	3,342.7	3,527.1	3,662.1	3,513.6	3,473.3	3,597.4	3,708.1	3,984.2

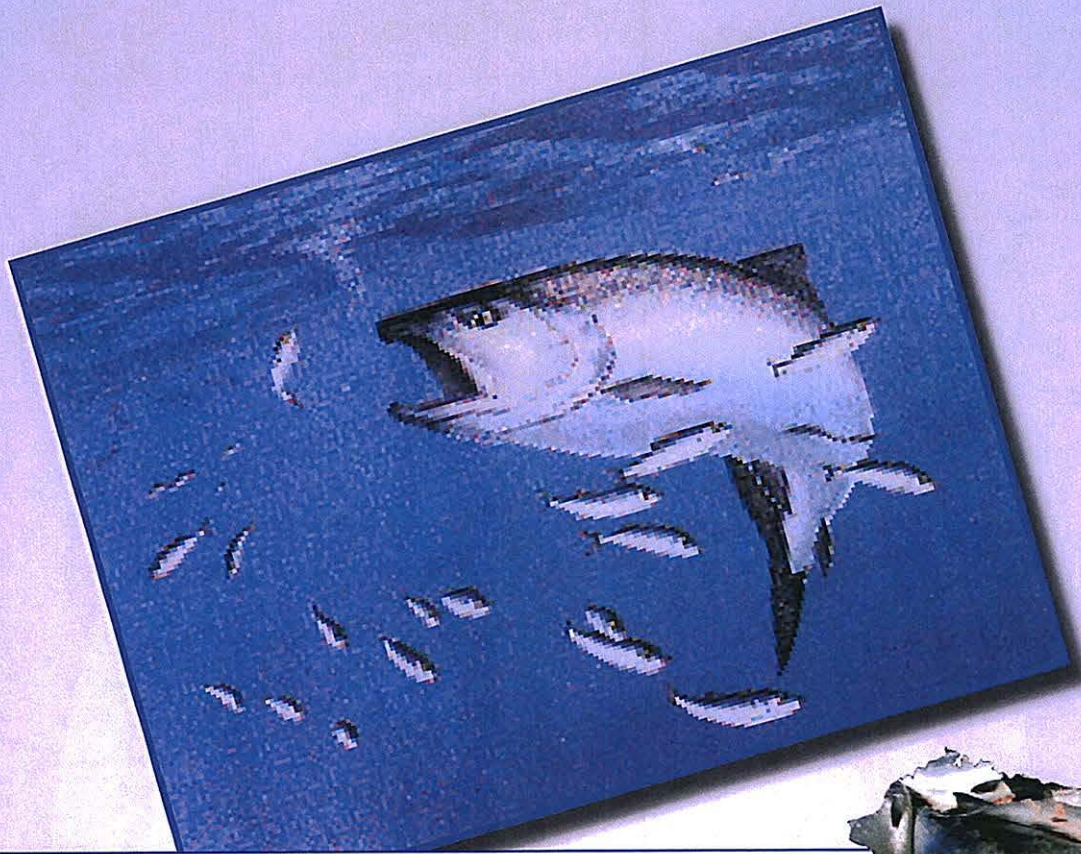
1996 to Present: Winning Cases Saves the State \$



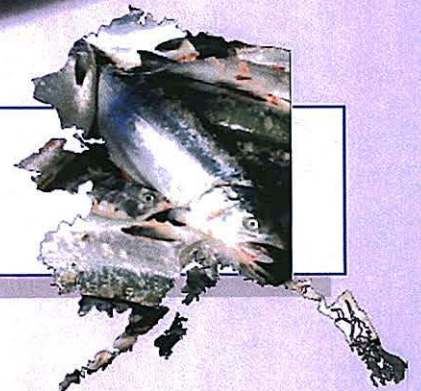
Winning 21 out of 23 cases yields a success rate of better than 90%

Deciding Cases & Closing Out Fisheries

- *Kuzmin* cases (September 2013)
- The continuing threat of *Byayuk & Cashen*
- We would ask that our current organizational structure with three commissioners be maintained until our current adjudications are final

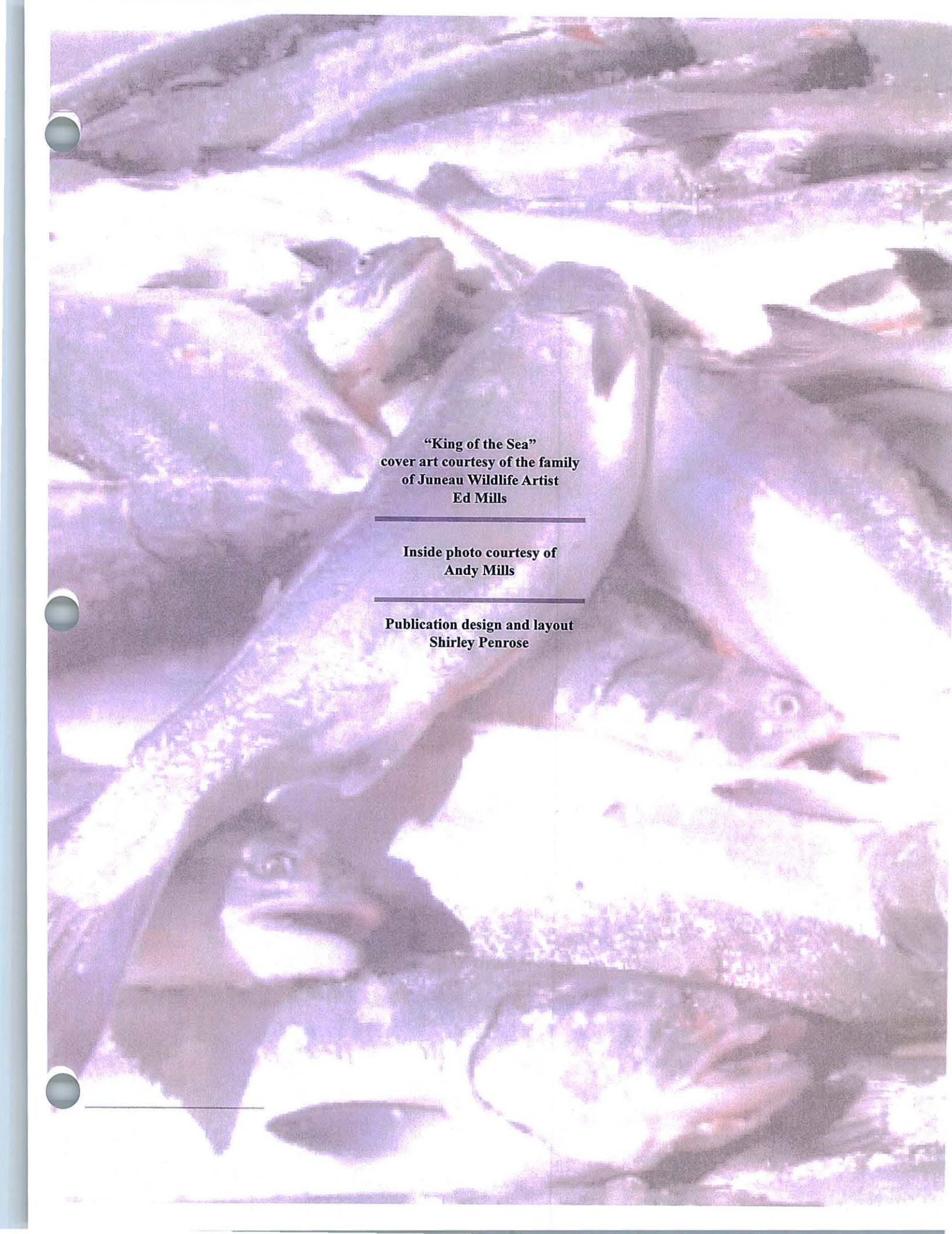


C F E C



**Commercial Fisheries
Entry Commission
2013-2014 Annual Report**

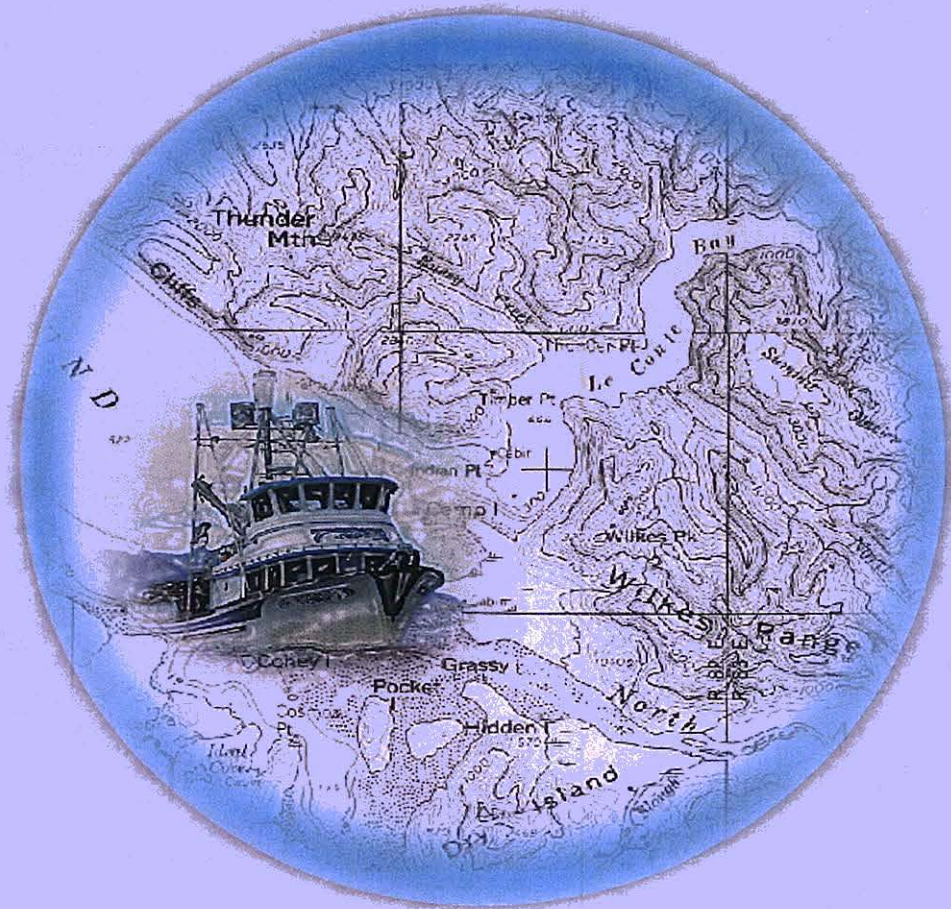




**“King of the Sea”
cover art courtesy of the family
of Juneau Wildlife Artist
Ed Mills**

**Inside photo courtesy of
Andy Mills**

**Publication design and layout
Shirley Penrose**



*The Commercial Fisheries Entry Commission Annual Report
is published in accordance with AS 16.43.980*



State of Alaska Commercial Fisheries Entry Commission 2013-2014 Annual Report

Dear Governor, Lieutenant Governor, Legislators, and Fellow Alaskans:

In accordance with AS 16.43.980, we hereby submit an annual report for the operations of the Alaska Commercial Fisheries Entry Commission (CFEC or Commission) in 2013 and 2014.

The Commission is a self-supporting agency that is completely funded from annual permit and vessel license fees. Any revenue that exceeds CFEC's budget authorization has been allocated by the Alaska Legislature to fund projects which support the Alaska commercial fisheries industry or transferred to the Alaska Fishermen's Fund. In the past two fiscal years, transfers to the Fishermen's Fund have exceeded \$700,000. These contributions by fishermen help pay the cost of medical claims for fishermen injured in the course of their work.

Alaskans are aware that our fisheries were severely mismanaged to a point of crisis by Outside interests prior to statehood. Once a state, Alaska endured many more years of failed efforts to manage access to our fishery resources in a manner that would ensure long-term sustained yield. When the people of Alaska amended the State Constitution in 1972 by a three-quarters majority to authorize the limitation of entry to commercial fisheries, they created a sustainable and solid means of managing aggregate demand to participate in Alaska commercial fishing that has well stood the test of time. In 1973, the Alaska Legislature passed the Limited Entry Act and created a logical and transparent system for limiting the numbers of fishermen in Alaska's commercial fisheries. In 1974, the Commercial Fisheries Entry Commission (CFEC or Commission) began to implement this program and our work continues to this day. By the end of 2014, CFEC had limited entry in 68 fisheries, considered nearly 23,000 discrete applications, and issued approximately 1.5 million cumulative annual permits and licenses.

In 2013 and 2014 the Commission continued to facilitate and support the Alaska commercial fisheries industry through the issuance of annual fishing permits and vessel licenses as well as by reducing the number of pending adjudication decisions before the Commission.

In 2013, the Commission issued 27,755 fishing permits and vessel licenses, reviewed 869 emergency transfer requests and 1,169 permanent transfer requests, and issued 59 adjudications. In 2014, the Commission issued 27,311 fishing permits and vessel licenses, reviewed 830 requests for emergency transfers and 1,157 requests for permanent transfer, and issued 143 adjudications. In a two-year period, the Commission issued 202 adjudications of all types.

The Commission has made substantial progress in reducing the number of pending permit application cases, which represent only a portion of the Commission's adjudication caseload. At the end of 2014, there were 28 cases pending before hearing officers and the commissioners, down from a high of nearly 900 in 1990.



Working with the State Legislature, the Administration, and the fishing industry in 2013 and 2014, the Commission continued to provide fisheries data, as well as information concerning options, statutory tools, and protections needed to meet the challenges facing Alaska's evolving fisheries. The Commission also continued to work closely with individual fishermen, fishing organizations, local communities, and State and federal agencies including the Alaska Board of Fisheries and the North Pacific Fishery Management Council, on issues of vital importance to Alaska's commercial fishing industry. We remain firmly dedicated to our role in promoting conservation and sustained-yield management of Alaska's unique fishery resources and supporting economic stability among fishermen and those dependent upon them for a livelihood. We are proud to be part of an internationally-renowned fishery management system that produces food for the world and supports the economic health of a vibrant industry.

Sincerely,

ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

Frank Homan, Commissioner (retired 1/23/2015)

Verne Rupright (appointed 1/23/2015)

Benjamin Brown, Commissioner

Bruce Twomley, Chairman



OEO/ADA Compliance Statement

The Commission is administratively attached to the Alaska Department of Fish & Game (ADF&G).

ADF&G administers all programs and activities free from discrimination based on race, color, national origin, age, sex, religion, marital status, pregnancy, parenthood, or disability. ADF&G also administers all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972.

If you believe you have been discriminated against in any program, activity, or facility please write:

- ADF&G ADA Coordinator, PO Box 115526, Juneau, AK 99811-5526
- U.S. Fish & Wildlife Service, Office for Diversity & Civil Rights Programs
4040 North Fairfax Drive, Room 300, Webb Building, Arlington, VA 22203
- Office of Equal Opportunity, U.S. Department of the Interior, 1849 'C' Street, NW, MS 5230,
Washington, DC 20240

ADF&G's ADA Coordinator can also be reached by telephone at the following numbers:

- VOICE 907-465-6077
- Statewide Telecommunication Device for the Deaf (TDD) 1-800-478-3648
- Juneau TDD 907-465-3646
- FACSIMILE 907-465-6078

For information on alternative formats and questions on this publication, please contact the Commercial Fisheries Entry Commission at (907) 789-6160, or email dfg.cfec.questions@alaska.gov.

Photo Courtesy of the Alaska
Seafood Marketing Institute (ASMI)





**State of Alaska
Governor**

Sean Parnell, 2013-2014
Bill Walker, 2014

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Bruce Twomley, Chairman

Benjamin Brown, Commissioner

Frank Homan, Commissioner
(retired 1/23/2015)

Verne Rupright, Commissioner
(appointed 1/23/2015)

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Introduction

Commercial fishing is a crucial and amazing part of Alaska's history, economy, and way of life. The fishing industry is a fundamental element of the economic health of Alaska's coastal communities and employs vast numbers of Alaskans from all parts of the Great Land. The Alaska Commercial Fisheries Entry Commission (CFEC or Commission) has for over four decades played a pivotal role developing, nurturing, and sustaining Alaska's billion-dollar fishing industry.

The Alaska Limited Entry Act directs the Commission to promote the conservation and sustained yield management of Alaska's fishery resources, and to promote the economic health and stability of the fishing industry, by regulating entry into Alaskan commercial fisheries. To fulfill these responsibilities, the Commission is organized into four sections: Adjudications, Research & Planning, Licensing, and Information Technology (IT) (see chart on page 9). CFEC works with other State and federal management agencies to develop, analyze, and coordinate fisheries policies.

The Commission engages in statutorily mandated activities according to the terms of the Limited Entry Act (AS 16.43.010 et seq.), including the following:

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

The Commission has limited entry into 68 of Alaska's fisheries and continues to receive expressions of interest from the public regarding the potential limitation of additional fisheries. CFEC works with fishermen and ADF&G to analyze these requests and monitor the status of these fisheries of interest.

The percentage of limited entry permits held by Alaska residents continues to remain relatively stable. After 40 years, Alaskans hold nearly 77% of all limited entry permits. At the end of 2013, Alaskans held nearly 11,000 permanent limited entry permits, with rural Alaskans holding more than half of that number.

For calendar year 2014, the Commission issued 27,311 permanent permits, interim-use permits, and vessel licenses, and reviewed 1,987 permit transfer requests. In fiscal year 2013 (July 1, 2012 to June 30, 2013), the Commission collected approximately \$7.6 million in revenue for the State. In fiscal year 2014 (July 1, 2013 to June 30, 2014), CFEC collected a comparable amount in revenue. The challenges the Alaska salmon industry faces continue to spur interest and discussion about implementing efficiencies in the fisheries, including fleet-size reduction measures. The Commission has in the past played a direct role in fleet reduction programs, and continues to participate in ongoing discussions with the public and policy makers, and provides data to assist and inform the exploration of ideas for further fleet reduction plans (see Decisions and Activities section for more information, page 12).

By working with other State and federal agencies throughout 2013 and 2014, the Commission continued to help Alaska fishermen protect their fishing privileges. In addition to working with policy makers, agencies, fisheries organizations, and individual fishermen on the many pressing issues facing the fishing industry, the Commission continues to perform its primary functions of limiting fisheries, licensing fishermen and vessels, adjudicating claims, performing critical research, and providing data to governmental agencies, private organizations and the general public.

Major decisions and activities of the Commission in 2013-2014 are outlined in this report. Prior years' activities, events, and decisions that affected the Commission's operations are highlighted in the appendices.

Alaska's fishing industry is vital to the state's economy and provides an important food source to the world. Alaskans must continue to ensure that our fisheries are developed wisely and sustained through sound management. We at the Commission are committed to fulfill our statutory role to achieve this goal.



Photo Courtesy of the Alaska
Department of Fish and Game

Organization By Function

Commercial Fisheries Entry Commission

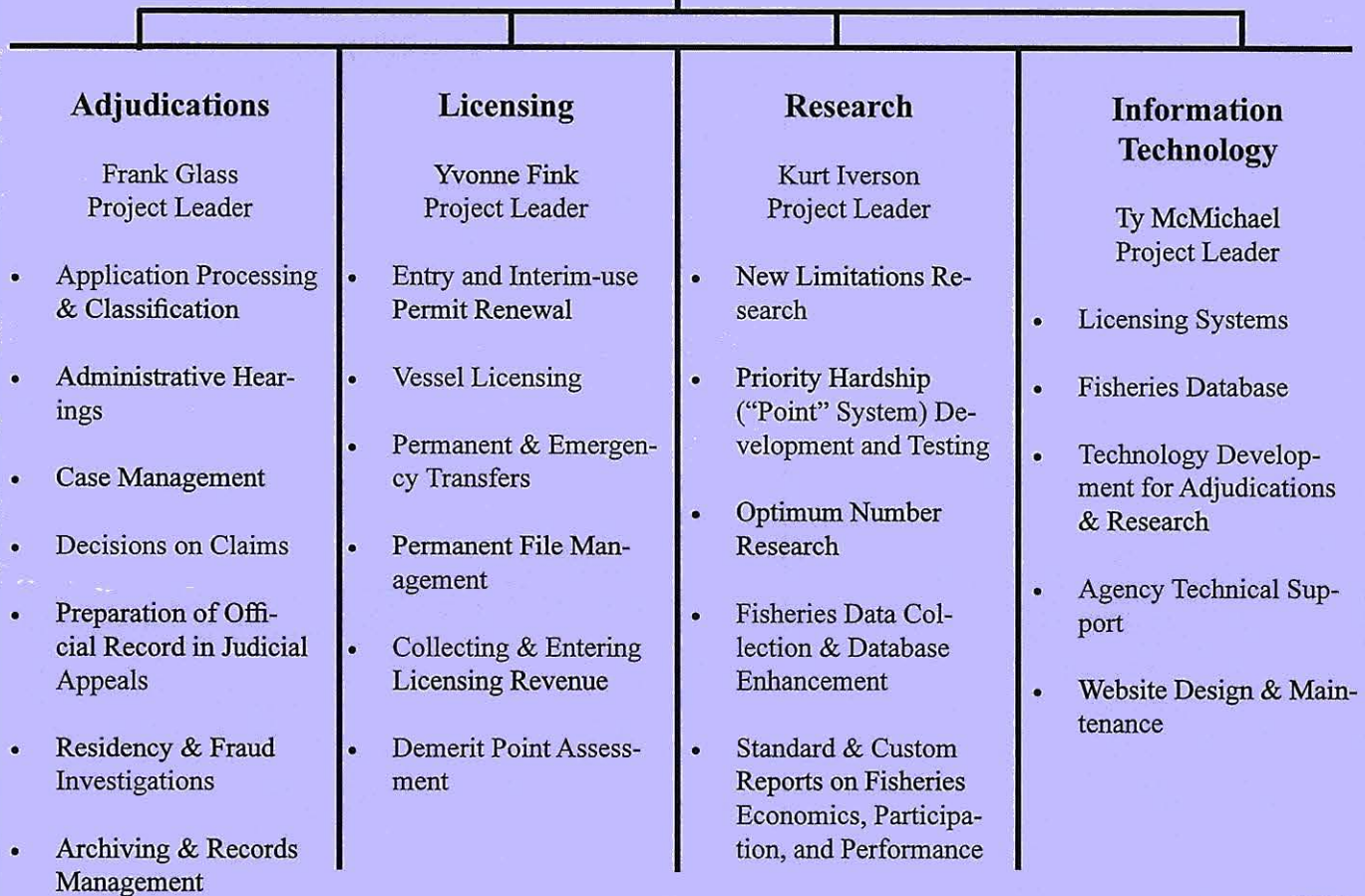
Commissioners

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 Benjamin Brown, Commissioner
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 Verne Rupright, Commissioner (appointed 1/23/2015)

Administration

Shirley Penrose
 Operations Manager

Personnel, Payroll, Travel, Accounting,
 Purchasing, Document Archiving,
 Facilities/Property/Supply Management,
 and Budget Development



Decisions and Activities

The *Carlson* Class Action

In the lengthy *Carlson v. State* class action lawsuit, the superior court in 2010 issued an \$82 million judgment (including \$12 million for overpayment of nonresident fees and \$62 million in pre-judgment interest) in favor of the class of nonresident fishermen who successfully claimed that Alaska's longtime fee structure for nonresident commercial fishing license and permits was unconstitutional. The Alaska Attorney General successfully appealed the award of excessive pre-judgment interest, and the Alaska Supreme Court in *Carlson V* (January 2012) reduced the interest award which resulted in the return of almost \$49 million to the State of Alaska. The superior court ultimately set December 31, 2013, as the deadline for the submission of refund applications to the *Carlson* claims administrator.

During the refund application and payment process, CFEC assisted the claims administrator by supplying all relevant data available on the claimants, and fielded many inquiries from fishermen seeking information about their claims, including whether they were eligible for a refund and how their individual license and permit purchase histories were used to make refund determinations. CFEC also heard appeals from a number of claimants who argued they were wrongfully omitted from the list of those due a refund or that their refund amounts had been miscalculated. CFEC decided against the claimants in all but one of these appeals, and none of the adverse decisions were appealed to the superior court.

After the initial payment of the *Carlson* refunds, the claims administrator determined in early 2014 that approximately \$2 million remained unclaimed from the *Carlson* fund. Following briefing from both the *Carlson* Class and the State of Alaska, the superior court in June 2014 issued a decision granting the Class's request that the claims administrator refund the nonresident differential paid by any nonresident purchaser of a commercial license or permit - starting with those purchased for calendar year 2013 - until the \$2 million remainder of the fund was exhausted. (The State had unsuccessfully argued that the unclaimed refunds should be treated as unclaimed property and held in trust by the Alaska Department of Revenue). In compliance with the court's decision, CFEC in August 2014 supplied to the claims administrator all the relevant permit purchase data on file for 2013-2014.

During 2012, at the request of CFEC, the Office of Management & Budget (OMB) recalculated the nonresident fee differential under the methodology approved by the Alaska Supreme Court in *Carlson III*. The resulting non-resident fee differential of \$190 will be applied to nonresident permit holders who renew permits for the following three years (2013, 2014 & 2015). In 2015, OMB will once again recalculate the proper fee differential and the new figure will be administered and collected by Licensing from 2016 through 2018.

Other Court Actions

After an unsuccessful applicant for permits in both the Northern and Southern Southeast Inside sablefish fisheries lost his appeal at the Alaska Supreme Court, the Commission notified the applicant that his interim-use permits for the fisheries were no longer valid. The applicant sued to enjoin this action by the Commission. In January 2013, the suit was dismissed by the Juneau Superior Court.

The estate of an applicant for a Southern Southeast Inside sablefish longline permit appealed an adverse Commission decision to the Ketchikan Superior Court. Although the Commission's denial of a request to supplement the record was upheld, the court on November 6, 2013, remanded the case to the Commission for reconsideration of the applicant's extraordinary circumstances claim. The Commission invited supplemental briefing on the issue from the estate, which was filed in May 2014. The matter is pending before the Commission.



In another case involving an extraordinary circumstances claim, this time in an application for a Northern Southeast Inside sablefish longline permit, the Juneau Superior Court remanded the case to the Commission, which in turn remanded it to a hearing officer for an additional hearing which was held in October 2014. A hearing officer decision on that case was pending as of December 31, 2014.

Other Activities

Ongoing Status of Alaska Limited Entry Permits

In late 2011, CFEC helped Alaska Legal Services win a case before Social Security Administrative (SSA) Law Judge Paul T. Hebda, in Anchorage, for the benefit of a former limited entry permit holder from Togiak and other similar permit holders. The woman had received her setnet permit by gift from her grandmother, but later became disabled and transferred the permit by gift to her younger sister. Because she did not sell the permit for value, SSA disqualified her from eligibility for disability payments. CFEC provided research and expert testimony before the Administrative Law Judge who ruled entirely in the woman's favor. CFEC will continue to advocate in the hope this decision will help similar Alaska limited entry permit holders in the future.

Federal Legislation

As the result of CFEC's advocacy over the past decade, Alaska's congressional delegation introduced federal legislation to ensure that a maritime lien cannot be imposed on a license issued under federal or state law that authorizes a person or a vessel to fish. The legislation is intended to ensure that maritime liens would not be imposed upon Alaska limited entry permits and federal individual fishing quota to deprive fishermen of their means of earning a living, nor to deprive the two state-authorized loan programs of security for their loans. In 2013, political opposition blocked passage of the bill. Commissioner Peter Froehlich retired from the commission on November 1, 2012. His position remained vacant until former Commissioner Frank Homan was reappointed on November 13, 2014.

Optimum Numbers

The Alaska Supreme Court in the *Johns* case ordered the commission to make an optimum number determination for each limited fishery. According to the Court, an optimum number is the only way to determine whether a limited fishery had become too exclusive by exceeding its Alaska constitutional purposes in Article VIII, Section 15: namely, to serve conservation and to prevent economic distress among fishermen and those dependent upon them. The Court also stated that limited entry must encroach on open access as little as possible, thereby creating a constitutional tightrope for CFEC to walk.

Normally an optimum number requires a complex and intrusive economic study looking at individual fishermen's tax returns to determine their net earnings and develop economic models based on these data. Given its limited resources to date, the Commission has formally determined three optimum numbers (Southeast roe herring purse seine, Northern Southeast Inside sablefish longline, and Bristol Bay salmon drift gillnet). The Commission remains keenly aware of its statutory duties to conduct optimum number studies, and has instructed the Research Section accordingly. Given the fact that resources remain limited, CFEC will have to meet this duty in as practical and efficient a manner as possible, by addressing first those fisheries most likely to be viewed as being potentially too exclusive.

Other Recent Activities

By invitation, Chairman Twomley, Commissioner Brown, and Research Project Leader Iverson appeared before a convening of fishermen sponsored by the Aleutians East Borough at the Pacific Marine Exposition ("Fish Expo") in Seattle, Washington, in November 2014. These CFEC representatives fielded a variety of questions about Alaska's limited entry program and invited a continuing dialogue with the group. Alaska State Senator Lyman Hoffman, State Representative Bryce Edgmon, and United Fishermen of Alaska Executive Director Julianne Curry also addressed the gathering.

Also in November of 2014, by invitation of the organizers of the Pacific Marine Expo, Chairman Twomley participated in a panel discussion addressing the topic *Permit Buy Back: Right Choice for Bristol Bay Drift Fleet?* The panel included: Jeff Regnart, ADF&G Commercial Fisheries Division Director; Mike Sturtevant, Program Manager for the National Marine Fisheries Service (NMFS) Fishing Capacity Reduction Program (Buyback); and Jonathan King, principal author of the Northern Economics report prepared for the Bristol Bay Regional Seafood Development Association (BBRSDA): *Possible Design and Economic Outcomes of a Permit Buyback Program in the Bristol Bay Salmon Drift Gillnet Fishery*. BBRSDA board member Matt Luck chaired the panel. Shortly after the panel discussion, on November 25, in the *Undercurrent News* under the headline *Controversial Bristol Bay salmon permit buyback program support falters at PME*, Jeanine Stuart reported in part as follows:

Fishermen and regulators criticized the potential program's cost, whether it is even necessary and the uncertainty of its ability to improve the fishery.

"I think we should look into other ways [of reducing the Fleet size]," one drift gillnet fishermen at the Pacific Marine Expo told *Undercurrent*, echoing sentiments expressed in a show of hands at the meeting, when roughly 2/3 of attendees supported fleet consolidation while only 1/3 supported the buyback.

Regulation Changes

In a public meeting held on April 17, 2013, the Commission adopted a number of minor revisions to its regulations. These revisions include: the creation of a separate gear code ("80") to identify fish sold as part of a fishing derby authorized by Alaska Statute 16.05.662; an amendment to make clear that gillnet permits for Area T (Bristol Bay) may be used in another area if such use is authorized by Board of Fisheries regulation; and an amendment to allow the use of electronic imaging (e.g., e-mail attachments) when submitting permit and license renewal forms and landing history requests.

In addition, the Commission adopted a new regulation relating to the circumstances under which a permit may be reinstated. Under existing statute, if renewal fees are unpaid for two consecutive years, a permit will be forfeited "except as waived by the commission for good cause" (AS 16.43.150(d)). The new regulation (20 AAC 05.565) clarifies what does and does not constitute "good cause" for the Commission to reverse forfeiture and reinstate a permit.

The above changes in regulation became effective June 1, 2013.



In a public meeting held on October 11, 2013, the Commission adopted changes to its regulations concerning scallop administrative areas, the maximum number of Norton Sound herring gillnet permits, reduced permit fees, and the emergency transfers of nontransferable dive fishery permits:

1. Scallop Administrative Areas – Because the Alaska Legislature did not renew the authority of the Commission to create and maintain a vessel-based statewide weathervane scallop fishery, it reverted to open-access status beginning with the 2014 season. The Commission chose to create two administrative areas (State waters and federal waters) and two separate fee schedules for the reversion of this fishery to open-access.
2. Norton Sound Herring – During the adjudicative process for the Norton Sound herring gillnet fishery limitation, three permit applicants proved that they had each participated as interim-use permit holders and had made landings from licensed vessels, although the landings had been reported on another individual's fish tickets. Because these three should have been included when calculating the maximum number of permits for the fishery, the maximum number regulation was amended from 301 to 304.
3. Reduced Permit Fees – A low-income applicant may pay reduced fees for permits and licenses if they meet the criteria contained in federal regulations for the food stamp program. Because these federal regulations change each year, the Commission annually amends its regulations to reference current federal law.
4. Dive Fishery Permit Emergency Transfers – Under the existing regulation, a temporary emergency transfer of a nontransferable permit could be allowed to continue the operation of a permit holder's "fishing gear". (20 AAC 05.1740(b)). Because the "gear" in the dive fisheries is the diver himself or herself, the Commission recognized in a number of transfer decisions an implied exception to the strict language of the regulation when the transfer concerned dive fisheries. The adopted amendment made the implied exception explicit by adding a specific reference to the temporary continuation of a "transferor's dive fishery operation".

The above changes in regulation became effective December 25, 2013.

In a public meeting held on August 20, 2014, the Commission updated its regulations that reference federal guidelines used to determine eligibility for reduced permit fees, and also adopted the following:

1. Redesignation of Salmon Net Permit Areas – Salmon net fishermen must designate a single area in which they intend to use their vessel under Board of Fisheries regulations and permit under CFEC regulations during a calendar year. Under the CFEC regulations, if a fisherman later decided to fish a different area for that year, he or she had to designate the new area prior to the opening of the fishery in the first designated area; but under the Board regulations, he or she could redesignate the new vessel area at any time before the vessel had actually been used in the first designated area that year. The Commission found that the Board's approach made more sense, and amended the CFEC regulation to allow a salmon net fisherman to redesignate the permit area, as long as the redesignation were made prior to the permit being used in the salmon fishery first designated, rather than prior to the time the fishery opens.
2. Western Alaska CDQ Halibut Fishermen – Many fishermen from Western Alaska fish halibut only as part of the federal Western Alaska Community Development Quota (CDQ) Program. Because their individual catch under the program is relatively small, they qualify for a reduced permit fee, but issuing their permits each year involved an unnecessary amount of paperwork and correspondence with the CDQ community organizations. The Commission adopted a new regulation that allows these small-catch fisherman to submit a single reduced-fee permit application each year, as long as they designate on the application which CDQ community they will be fishing for, and certify they will be harvesting halibut only under the CDQ program.
3. Statewide Weathervane Scallop Vessel Permits – Because the statewide weathervane scallop fishery reverted to open-access status in 2014, the Commission repealed all regulations relating to the Statewide Weathervane Scallop Vessel limited entry fishery.

The above changes to regulations became effective November 13, 2014.

Adjudications

Overview

The Adjudications Section evaluates, classifies, and adjudicates applications for limited entry permits. Permit applications are classified and ranked against each other under point systems that measure each applicant's past participation and economic dependence on a fishery. Entry permits are issued first to applicants shown by their point levels to be most dependent on a fishery, and then to applicants at successively lower classification levels until the maximum number of permits for the fishery have been issued.

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

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

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

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

Administrative Proceedings & Decisions

During calendar year 2013, Adjudications staff issued 42 decisions: 1 entry permit application, 33 emergency transfers, 2 permanent transfers and 6 miscellaneous actions. The miscellaneous cases included requests for refunds, demerit points, and qualifications under the *Carlson* class action.

The commissioners adjudicated 17 cases in 2013: 3 entry permit applications, 13 emergency transfers and 1 permanent transfer.

During calendar year 2014, Adjudications staff issued 52 decisions: 39 emergency transfers, 5 permanent transfers and 8 miscellaneous matters.

The commissioners adjudicated 91 cases in 2014: 2 entry permit applications, 69 emergency transfers, 6 permanent transfers and 14 miscellaneous cases.

By the end of 2014, commissioners and hearing officers had made substantial progress reducing the commission's adjudication caseload from the 68 originally limited fisheries. Looking back to 1990, as the result of the *Wassillie* settlement (authorizing hundreds of new applications in the salmon fisheries) and a series of Alaska Supreme Court cases during the 1980s, the Commission's caseload had risen to nearly 900 cases. (These decisions on entry permit applications represent only a portion of the Commission's caseload.) As of the end of 2014, from the 68 originally limited fisheries, 7 permit application cases remained pending before the hearing officers and 21 permit application cases remained pending before the commissioners.



Additionally, since 1990, the Commission has been required by statute to limit 26 additional fisheries generating thousands of new applications for entry permits. From 1990 through 2014, the Commission issued 2,386 final decisions, thereby deciding cases at a rate faster than applicants filed new appeals and reducing its overall caseload to 28.

Commission decisions implementing the Limited Entry Act and their review by the Alaska Courts have generated a unique body of law characterized by one Alaska Supreme Court Justice as “arcane.”

Closing Out & Limiting Fisheries

The commission’s goal is to issue final decisions in all cases from the originally limited 68 fisheries by the end of 2016. Of course, court appeals, remands and reversals of commission decisions could follow and prolong the process.

On September 19, 2013, the commission decided the *Kuzmin* cases, denying two applicants who did not appeal to the courts. These complex cases illustrate where the commission is in the adjudication process and the fact that few easy cases are left before the commission at this point.

Because we are nearing the end of the process, cases like *Kuzmin* can have much more impact than the denial of two applicants. The commission had long 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 issue permits at 6 points, but 13 exceeded the maximum number for the fishery, which normally would have propelled the commission to conduct a lottery creating winners and losers among the group. Mercifully, the legislature had the foresight to assign 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 became winners, and CFEC closed out the adjudication of the entire fishery. CFEC cannot always reach a conclusion that leaves applicants content, and a potential for adverse consequences often will persist pertaining to all remaining adjudications.

Based on the principle that all applicants should be treated alike, the *Byayuk* case required 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. The *Byayuk* retroactive principle required more adjudication and left the commission without a margin for error in its decisions. A reversible error by the commission could undo the limitation of a fishery upon which Alaskan fishermen rely for their livelihood. Therefore, in adjudicating individual cases, the commission could never afford to pursue quantity at the expense of quality.

The risk of retroactive application has been present since 1984, but the potential for far-reaching adverse outcomes has increased with the approaching completion of cases from the 68 originally limited fisheries.

In addition to the possibility of reversals and remands from the courts, CFEC continues to monitor fisheries that may require limited entry. When the record of a fishery shows that its limitation would serve conservation and prevent economic distress among fishermen, CFEC has an affirmative statutory duty to limit entry. Once limited, cases requiring adjudication all arise at nearly the same time thereby creating an instant new caseload.

Information Technology

The Information Technology Section (IT) is responsible for all technology infrastructure at CFEC. IT maintains a small and responsive staff that must be flexible and proficient in several disciplines. This includes the installation and maintenance of all network hardware such as switches, routers, servers, printers, cabling and storage area networks. The IT Section is also responsible for the installation and maintenance for all desktop hardware including personal computers, printers, embossers and other desktop equipment. IT maintains all technical support for local staff and customers, both hardware and software. IT staff is responsible for data integrity, all application development and maintenance of a wide array of software centered on CFEC's core mission, and the reliable and timely distribution of data to other agencies and the general public. IT maintains several local resources such as web services, network operating system, network topology, file services, digital security, database services, IP telephony, and all other IT related tasks. IT solutions at the Commission are organic and are provided internally by IT staff.

CFEC's IT staff has spent considerable time over the last several years in an effort to modernize and standardize infrastructure and services while continuing to support an environment with some unique IT resources and functions. Those efforts have continued in 2013 and 2014 with projects such as increased server virtualization, an updated network topology, new IP phones, enhanced personally identifiable information (PII) security, updated backup and recovery processes, database and other middle tier software upgrades, updated desktop computers and software, new application development, and digital conversion of audio tapes and paper documents.

Server Virtualization

The majority of CFEC's server farm now exists as virtual machines running collectively within a clustered group of physical hosts. The physical hosts are capable of live migration and resource expansion for the pool of virtual machines, which allows for a high level of availability and fault tolerance. Having multiple machines running in a single computer helps reduce power consumption, rack space, and total cost of ownership while providing important failsafe features.

Virtual hardware can be provisioned quickly and easily. This allows for the isolation of applications and provision of continuing support for custom software developed for this unique program.

Updated Network Backbone

IT staff has significantly upgraded cabling infrastructure with multiple strands of new Category 5e cable running from offices and cubicles to the network communication rack. The network path is further segmented by isolating our workload into multiple areas and offloading that traffic to closet or border switches. Network segmentation has provided CFEC more efficiency, quick expansion, enhanced security and straightforward troubleshooting.

New IP Telephony

IT staff configured and deployed a new telephone PBX switch using existing hardware and utilizing an upgraded network backbone. New IP phones have been installed on all desktops at CFEC. This is a wholesale replacement of a telephone switch that was becoming difficult to maintain and increasingly unreliable. The updated PBX system is scalable, easy to maintain, secure, and offers advanced functionality for call queuing and routing.



Updated Backup and Recovery Process

IT staff has replaced tape media with faster and more reliable network storage for purposes of our data backups. IT is now utilizing a disk-to-disk methodology for data backups and recovery. Backup times and file restoration have significantly decreased while becoming more reliable and secure. CFEC continues to store critical files securely and in a cost-effective manner by partnering in off-site storage with another State agency.

Updated Desktop Computer Hardware & Software

IT staff configured and deployed new desktop computers for CFEC employees in 2012, including a new operating system and upgraded software, which continued to benefit all CFEC operations in 2013 and 2014.

Digital Conversion of Hearing Tapes

IT staff is converting aging audio tapes of recorded hearings into a digital format. To date, over 2,600 tapes have been converted and are now accessible through a simple search engine.

Application Development

IT staff is putting the final touches on a new desktop application that will provide quick access to all material relating to Commission decisions and judicial appeals. The application will quickly search through all years for any piece of information related to case decisions. Materials included in the search are database records, PDF content and audio files.

CFEC's web-based permit and vessel license renewal system continues to evolve with additional updates and modifications. The application is very stable, secure and available to anyone with an Internet connection. IT also continues to play an active role in the development of the Bristol Bay District Management and Registration web application. Regulatory updates and application enhancements provided CFEC an opportunity to continue to partner with ADF&G to maintain and deploy this application, which is unique to Bristol Bay. Originally developed by CFEC's IT staff, the application provides real-time information processing between fishery managers, processors, agents, and participating permit holders.

Web-Based Database

CFEC's web-based permit and vessel license database continues to be a very popular application for public, state, and federal use. The application offers a general public interface as well as a secure interface for partnering agencies who have a need to query for confidential information. Permit, vessel, and intent-to-transfer information can be easily accessed based on a wide array of criteria. Results can be downloaded or simply viewed online. All years of data are available to search. Providing reliable and easy access to CFEC data has always been a very important goal and will continue to be so.

Support Contacts FAQ Requirements 2015 CFEC Online Management Application Comments CFEC Permit & Vessel lookup

Permit/Vessel Owner Status, Fee Totals and Navigation Fishing Permits: \$0 Differential: \$0 Vessels: \$0 Shipping: \$0 Total: \$0

CFEC Dummy Record
Your renewably applications:
Permits - 6
Vessels - 1

Screen Instructions
Direct Application
Please indicate what permit(s) you wish to renew AND if you intend to fish that permit. To modify an ADFG number:
1) Select 'renew' for the appropriate permit.
2) Double click on the existing ADFG number.
3) Enter the new 5 digit ADFG number (only valid numbers are accepted)
Note: The ADFG number cannot be altered after their permit is renewed.
To pay lower fees for halibut or sablefish permits, see the Notes column. If you landed less than the pounds indicated, you may check the Lower Fee? box. If you do not intend to fish a permit, the card will NOT be issued to you.

Alaska Resident -- Last OPTIONS ADDRESS VESSELS PERMITS PAYMENT CONFIRM Next >>

Permit renewal and intent selection

Your Permits - Select Permits to renew and/or intend to fish

CLICK HERE to add a new permit

Renew?	I intend to fish the 2015 season	Fishery	Serial #	Year	ADFG #	Fee	Lower Fee?	Notes
<input type="checkbox"/>	<input type="checkbox"/>	B 418	1004	2015	0000	1050	<input type="checkbox"/>	If you landed less than 8000 lbs of halibut in 2014 OR you are a member of one of the Western AK COO halibut groups INSEDC, YOFCA, CVHR, CESFA, APICCA, EBLDC, select lower fee option
<input type="checkbox"/>	<input type="checkbox"/>	C 418	1003	2015	0000	900	<input type="checkbox"/>	If you landed less than 1000 lbs of sablefish in 2014, select lower fee option
<input type="checkbox"/>	<input type="checkbox"/>	M 918	1008	2015	0001	975	<input checked="" type="checkbox"/>	No Notes Available
<input type="checkbox"/>	<input type="checkbox"/>	S 010	1005	2015	0001	375	<input checked="" type="checkbox"/>	No Notes Available
<input type="checkbox"/>	<input type="checkbox"/>	S 011	1006	2015	0000	375	<input checked="" type="checkbox"/>	No Notes Available
<input type="checkbox"/>	<input type="checkbox"/>	S 150	1007	2015	0000	150	<input checked="" type="checkbox"/>	No Notes Available

Please note: The vessel you select for each permit MUST be licensed before we actually mail your card
Please note: You will NOT receive a permit card unless you intend to fish the permit

CFEC Online Renewal Permit Selection Section

(CFEC Online Management Application)

Gross Earnings

Gross Earnings refers to a database and reporting system created, maintained, and operated by staff at CFEC. The Gross Earnings Database is built by combining ADF&G and International Pacific Halibut Commission (IPHC) fishery harvest data with data from the CFEC Licensing System. The data is also enhanced with CFEC estimates of ex-vessel fish and shellfish prices. The result is a database that can be queried using a wide range of qualifiers. The database is maintained for all fishing years from 1975 to the year immediately previous to the current calendar year. The Gross Earnings Database is an important file used by CFEC for both internal and external needs. It is also shared and used by other state and federal entities for a wide range of fishery-related topics. One important feature of the database is the Gross Earnings Reporting System, which generates a large number of web pages, PDF reports, and downloadable data on the CFEC Public Web Site (see "Fishery Participation and Earnings").

CFEC Website

IT also maintains CFEC's website. The site, located at <http://www.cfec.state.ak.us>, provides many useful links for both fishermen and the general public to commercial fisheries information. The data CFEC collects are available in various non-confidential formats and combinations, located under easy-to-understand headers. Along with the data, CFEC also makes available all of its forms in easy-to-download formats, including links to current pertinent public informational statements, proposed regulations, judicial appeals of Commission decisions and CFEC annual reports. CFEC's website is regularly updated and reviewed for accuracy, and reflects the Commission's dedication and commitment to being available and responsive to the public.

CFEC Public Lookup Database

This search engine allows you to search for Permit, Vessel and Intent records using any combination of valid criteria as set forth below. Results are limited to 5000 records, if you require more please navigate to the CSV tab for complete-year downloads. Select an option, then click FIND to view results. [Click here](#) for a complete description of the CFEC permit card. Please note that information for guided sport vessels is available through ADFG. Clicking the + and - icons to the left of each record will toggle expanded record details.

Serial: Contains ▾ ADFG: Contains ▾ Fishery: Starts With ▾
 CFEC ID: Contains ▾ Zip Code: Contains ▾ Area(s): Select Area(s)
 First Name: Contains ▾ Last Name: Contains ▾ Year(s): Less Than ▾

Page 1 of 1 Displaying 1 - 4 of 4

Permit				Permit Holder			
Year	Permit	Record #	Dates Valid	Status	Name and Address	Residency	ADFG
Fishery	Permit Type	YR/Seq/Alpha				CFECID	Number
2010	10676 H	01	2010-05-27	Permit holder	ADFG ANCHORAGE 333 RASPBERRY RD ANCHORAGE, AK 99518	U	914932
S03T	Test Fishing	1001E	2010-12-31				
2007	10676 H	01	2007-02-20	Permit holder	ADFG ANCHORAGE 333 RASPBERRY RD ANCHORAGE, AK 99518	U	914932
S03T	Test Fishing	0701P	2007-12-31				
Permit Number: 10676							
Lien(s): None		Demerit Points against Individual: 0		Notes: Unavailable			
Intent to Transfer: No		Intent Filed Date: N/A		Intent Effective Date: N/A		Intent End Date: N/A	
Date	Actions		ID	Name	Residency		
2007-02-20	003 - Embossed Juneau		01 - 01P	ADFG ANCHORAGE	U		
2007-02-16	002 - Fees Not Required		01	ADFG ANCHORAGE	U		
2007-02-16	001 - New Issue		01	ADFG ANCHORAGE	U		
1992	10676 X	01	1992-01-21	Permit holder	ADFG JUNEAU BOX 20 DOUGLAS, AK 99824	R	99999
S03A	Test Fishing	9201M	1992-12-31				
1988	10676 B	01	1988-01-28	Permit holder	FISH & WILDLIFE PROT... BOX 6188 ANNEX ANCHORAGE, AK 99507	U	99999
S03H	Test Fishing	8801P	1988-12-31				

(CFEC Public Lookup Database)



Photo Courtesy of the Alaska Department of Fish and Game

Licensing

Overview

The Licensing Section is responsible for collecting fees and issuing limited entry, interim-entry and interim-use permits, as well as issuing vessel licenses required for participation in Alaska's commercial fisheries. Licensing staff attempt to expedite the issuance of licenses to ensure that fishermen do not lose fishing time during the season, a paramount goal of the Commission. Licensing employs procedures that specifically address the circumstances relating to immediate fishing, including specific forms for the issuance of duplicate licenses, changes to vessel information, and processing both permanent and emergency transfers. Licensing is also responsible for tracking salmon net area vessel registrations and assessing demerit points which may result in suspensions.

Licensing staff are committed to assisting Alaska's commercial fishing industry. Licensing staff interact on a daily basis via telephone as a direct source of information for commercial fishermen, fielding questions about permitting and regulations affecting the fishing industry. Besides keeping current with licensing requirements and the actions of the Commission, Licensing staff maintains a close working relationship with ADF&G, the Alaska Department of Commerce, Community & Economic Development (DCCED), the National Marine Fisheries Service (NMFS), and other agencies to track changes in the fishing industry and relevant laws and regulations. Some of these changes include actions by the Commission and the legislature to bring fisheries under entry limitation or moratoria, to implement new types of licensing mechanisms, to accommodate regulatory changes by the Board of Fisheries, and federal agency actions relating to restricted access programs, such as License Limitation (LLP), Individual Fishing Quota (IFQ), and Community Development Quota (CDQ).

Licensing is continually streamlining procedures, automating processing wherever possible, and looking for innovative ways to efficiently meet ever-increasing informational demands.

Recent Changes

In 2014, the Licensing staff benefitted greatly from a new telephone system put in place by CFEC's IT section. The enhanced system allows a higher level of functionality and increased efficiency for the staff, which is crucial during the busiest times of the year. The system can also be used to track CFEC's licensing production. In June 2014 (historically, the Licensing section's busiest month), five Licensing staff members fielded some 5,000 telephone calls; nearly all were from CFEC permit holders, vessel owners, and ADF&G offices, seeking information or needing Licensing services. Large numbers of e-mails, faxes, and in-person visits to the CFEC customer counter also add to the Licensing staff's contact with the public.

Demerit Points for 2013 & 2014

In 1998, the Alaska Legislature enacted legislation which established a demerit point system for suspending commercial fishing privileges based on convictions for fishing violations in the salmon fisheries. Under this law, the Commission must suspend a salmon permit holder's commercial fishing privileges for a period of one to three years if certain threshold levels of demerit points are accumulated in a three-year period.

From 1998 through 2014, the Commission issued demerit points to 2,371 fishermen. The total number of suspended fishermen from 1998 through 2014 is 19. A total of 310 permit holders were assessed demerit points in 2013 and a total of 255 permit holders were assessed demerit points in 2014, as illustrated below:



Demerit Points & Suspensions for 2013 & 2014

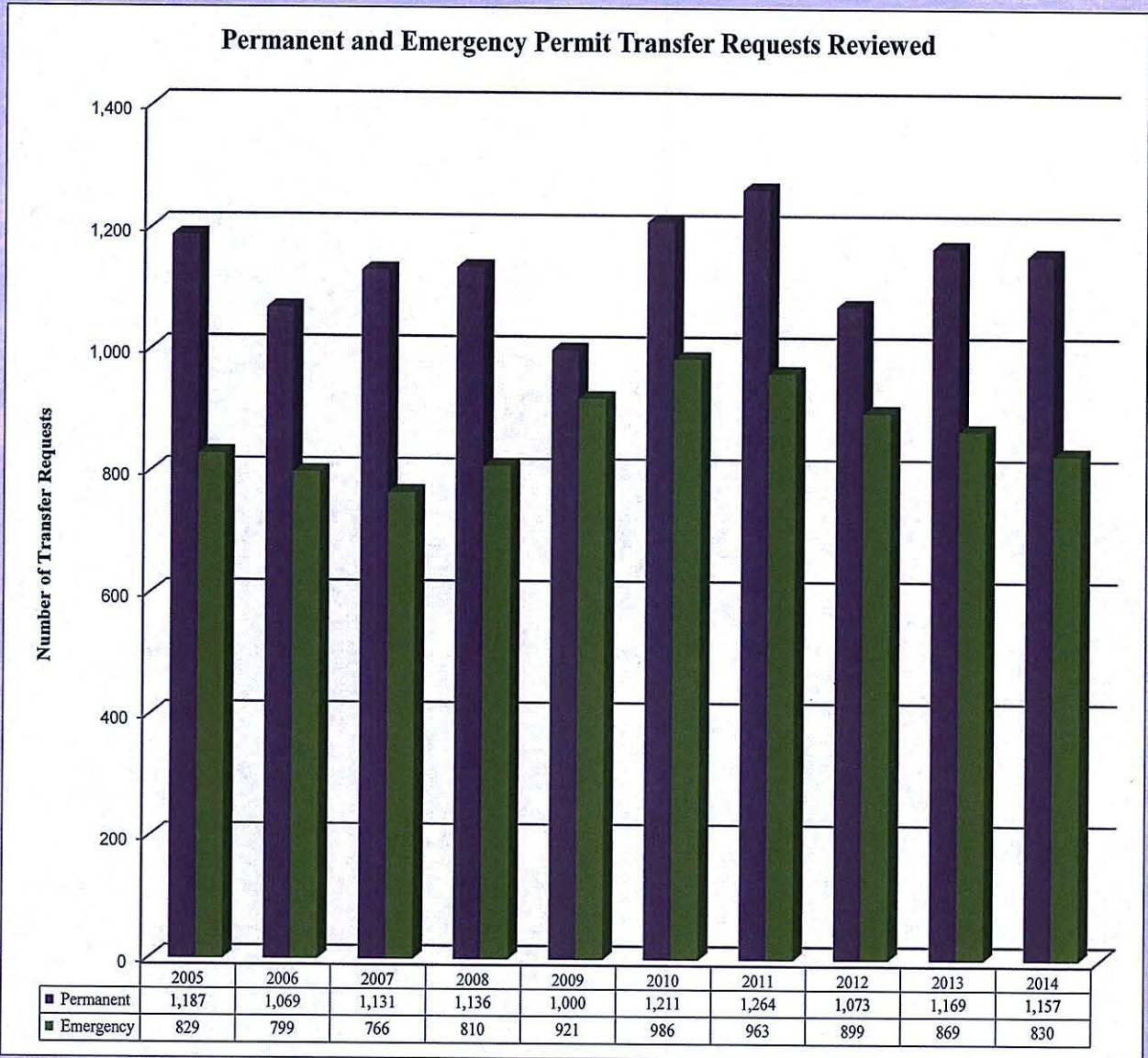
Fishery Area	Number of Permit Holders assessed points in 2013	Number of Permit Holders assessed points in 2014	Suspensions 1998 through 2014
Alaska Peninsula, Aleutian Islands	5	0	0
Bristol Bay	158	151	7
Cape Romanzof	2	0	0
Chignik	2	4	0
Cook Inlet	26	29	0
Prince William Sound	53	31	5
Kodiak	2	6	0
Kotzebue	0	5	0
Kuskokwim	7	5	2
Norton Sound	0	2	0
Southeast	31	10	5
Statewide	24	8	0
Yakutat	0	4	0
TOTALS	310	255	19



Photo Courtesy of the Alaska Department of Fish and Game

Permit Transfer Requests for 2013 & 2014

During 2013, Licensing staff reviewed 2,038 requests for permanent and emergency transfers of permits. These included 869 emergency transfer requests and 1,169 permanent transfer requests. During 2014, Licensing staff reviewed 1,987 requests for permanent and emergency transfers of permits. These included 830 emergency transfer requests and 1,157 permanent transfer requests. A breakdown of transfer requests over the last ten years by type of transfer is shown in the following graph.



(From CFEC reports B1425P- C and E)



Permanent Transfer Requests

	<u>2013</u>	<u>2014</u>
Standard transfers approved.....	1,093	1,054
Survivorship transfers to spouse approved.....	12	33
Foreclosure transfers by loan agencies approved.....	1	0
Administrative transfers approved.....	2	0
Total permanent transfers approved.....	1,108	1,087
Transfers denied.....	36	48
Withdrawn transfer requests.....	25	22
Total permanent transfer requests reviewed.....	1,169	1,157

Emergency Transfer Requests

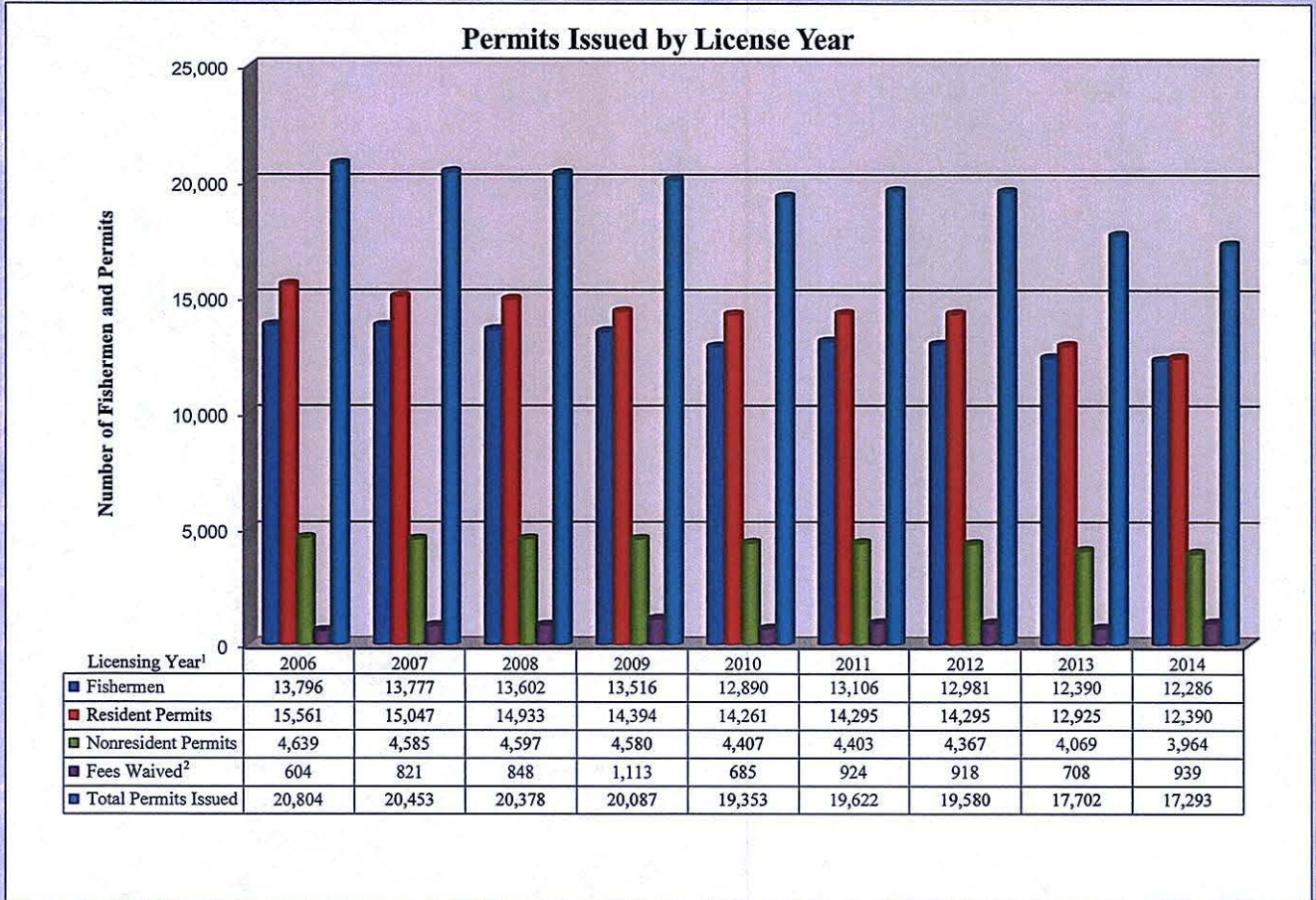
Transfer requests approved.....	791	745
Transfer requests denied.....	77	82
Transfer requests withdrawn.....	1	3
Total emergency transfer requests reviewed.....	869	830
Total Transfer Requests Reviewed.....	2,038	1,987



Photos Courtesy of the Alaska
Department of Fish and Game

Permits and Licenses Issued

The following graphs provide data on the number of fishermen issued permits in a year, and permits and vessel licenses by year and by month:



(From CFEC report B1440P-C. Includes Interim-Use, Interim-Entry³, Entry and Vessel Entry Permits)

The figures in this table are current as of the publication date and may increase slightly due to late renewals of entry permits. The number of permits is higher than the number of fishermen, as some individuals hold permits in more than one fishery. Annual renewal fees for entry permits must be paid unless waived by the Commission. Failure to renew an entry permit for a period of two consecutive years can result in forfeiture of the entry permit.

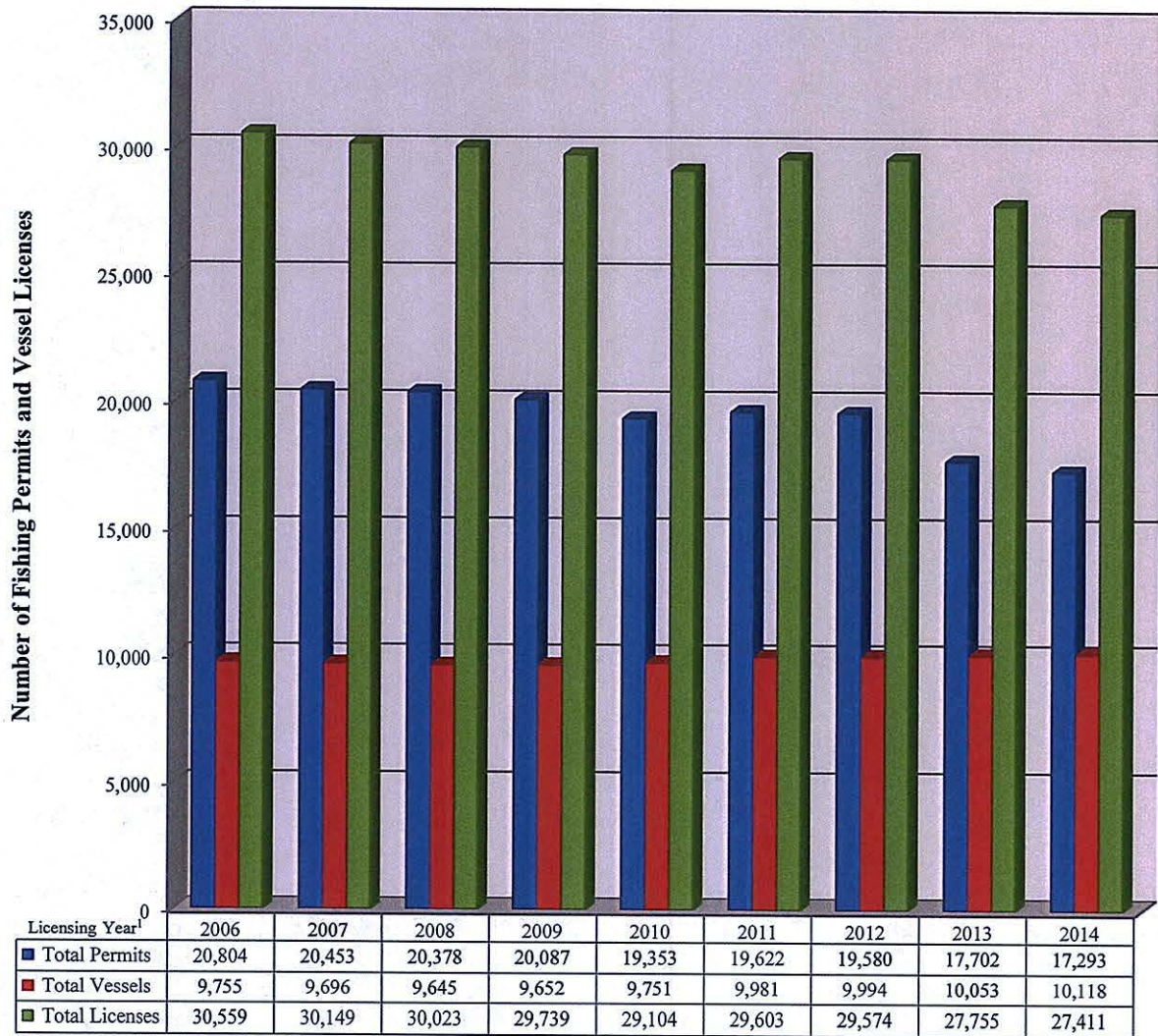
¹ License year refers to the fishing year for which the license or permit is issued, regardless of when the fees were paid. Resident/nonresident status is determined by the type of permit fees that were paid by the permit holder.

² Data include permits issued in both open-access fisheries and limited fisheries where fees were paid or waived as of the publication date.

³ "Interim-Entry" permit refers to an interim-use permit issued to an applicant for a permanent limited entry permit in a limited fishery.



Fishing Permits and Vessel Licenses Issued by License Year



(From CFEC report B1440P-C. Includes Interim-Use, Interim-Entry², Entry and Vessel Entry Permits)

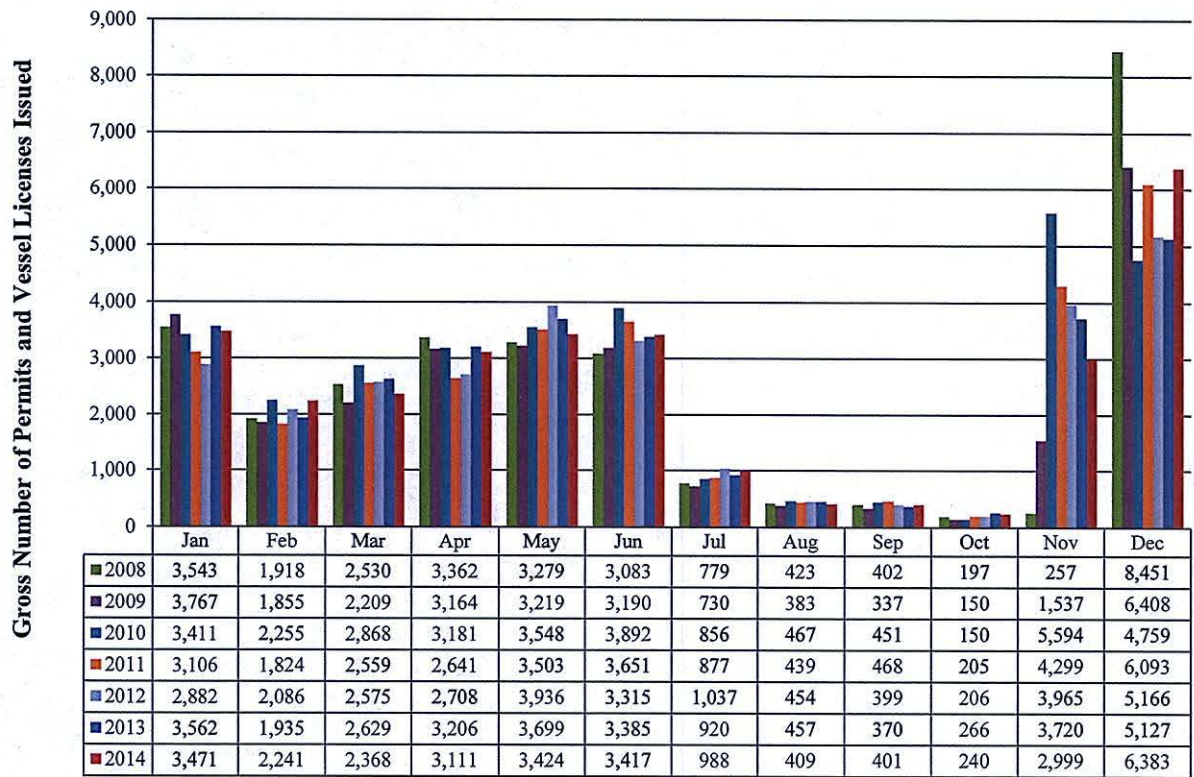
The figures in this table are current as of the publication date and may increase slightly due to late renewals of entry permits. The number of permits is higher than the number of fishermen, as some individuals hold permits in more than one fishery. Annual renewal fees for entry permits must be paid unless waived by the Commission. Failure to renew an entry permit for a period of two consecutive years can result in forfeiture of the entry permit.

¹ License year refers to the fishing year for which the license or permit is issued, regardless of when the fees were paid. Resident/nonresident status is determined by the type of permit fees that were paid by the permit holder.

Data include permits issued in both open-access fisheries and limited fisheries where fees were paid or waived as of the publication date.

² "Interim-Entry" permit refers to an interim-use permit issued to an applicant for a permanent limited entry permit in a limited fishery.

Permit and Vessel Licenses Issued by Month



■ 2008 ■ 2009 ■ 2010 ■ 2011 ■ 2012 ■ 2013 ■ 2014

(From CFEC reports B1430P-A and B2430P-A)



Photo Courtesy of the Alaska Department of Fish and Game

Summary of Permitting Activity

	<u>2013</u>	<u>2014</u>
Limited Entry Permits Renewed.....	12,659	12,454
Limited Entry Permits Not Renewed.....	851	801
Limited Entry Permits with Fees Waived ¹	695	926
Limited Entry Permits Forfeited or Lapsed	78	114
Interim-Use Permits Issued in Limited Fisheries ²	44	35
Interim-Use Permits Issued in Open-access Fisheries	4,262	3,865
Special Harvest Area (Hatchery) Permits Issued.....	22	22
Educational Entry Permits Issued.....	1	1
Mariculture Permits Issued	3	2
Vessel Entry Permits Renewed	3	0
Vessel Entry Permits Not Renewed	4	0
Vessel Entry Permits with Fees Waived ³	13	13

(From CFEC reports B1440P-A and B)

¹ Fees for limited entry permits may be waived in the event of season-long closures.

² Sometimes referred to as Interim-Entry Permits; these permits are available to applicants awaiting final point classification and to applicants who have been finally classified but who may or may not receive a permanent permit when the Commission ultimately determines a final issuance level for their fisheries.

³ Fees for vessel entry permits may be waived in the event of season-long closures.

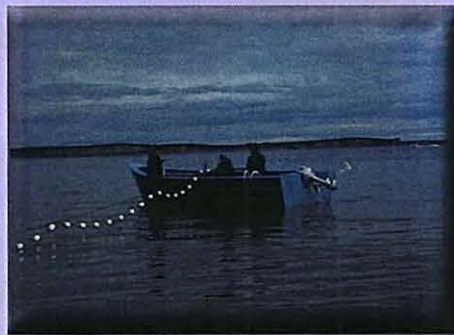


Photo Courtesy of the Alaska
Seafood Marketing Institute (ASMI)

Vessel Statistics

Fee Category Based on Overall Length of Vessel	Licensing Fee	Number of Vessels Licensed for 2013	Number of Vessels Licensed for 2014
Vessels to 25'	\$24.00	3,243	3,187
Over 25' to 50'	\$60.00	5,475	5,575
Over 50' to 75'	\$120.00	822	824
Over 75' to 100'	\$225.00	206	220
Over 100' to 125'	\$300.00	157	157
Over 125' to 150'	\$375.00	55	62
Over 150' to 175'	\$450.00	34	34
Over 175' to 200'	\$525.00	22	21
Over 200' to 225'	\$600.00	6	6
Over 225' to 250'	\$675.00	4	4
Over 250' to 275'	\$750.00	11	11
Over 275' to 300'	\$825.00	4	4
Over 300'	\$900.00	14	13
Totals		10,053	10,118

Data is current as of publication date



Photos Courtesy of the Alaska Seafood Marketing Institute (ASMI)

Research

Overview

The Research & Planning Section provides the fishery limitation studies, fishery economic analyses, CFEC permit reports, and much of the program support needed by the Commission. In addition to serving the Commission's needs, the Research Section issues many standard and specialized reports and analyses and helps maintain the integrity of data bases that are used by outside users to address a wide range of issues related to commercial fishing.

Among the tasks routinely accomplished by Research staff to support the day-to-day functions of CFEC are monthly reports of estimated permit values, ex-vessel prices and gross earnings estimates of statewide fish and shellfish harvests, permit transfer reports, and analyses used to determine fees levied for the annual renewal of limited entry permits. Working with the IT Section, CFEC researchers also issue many standard reports, nearly all of which are available on the CFEC web site. The information typically includes basic economic data on Alaska's fisheries, patterns of permit holdings, permit transfer statistics, and basic characteristics of Alaska's fishing fleets and permit holders, including data on residency.

The foundation for much of the work produced by CFEC analysts resides in several large electronic databases built and maintained cooperatively by the CFEC Research and IT sections. Much of the data is in turn shared with ADF&G, NMFS and the North Pacific Fishery Management Council through the Alaska Fisheries Information Network. These data allow CFEC staff and others to service requests from local, State and federal government agencies, the Alaska Legislature, researchers, consultants, user groups, and other entities.

In 2013 and 2014, the Alaska Board of Fisheries (Board) took up several statutory and regulatory issues that had implications for Alaska's limited entry program. Analysts from the Research Section prepared reports, slide presentations, memos, and other fisheries information for the Board at the 2013 March (Anchorage) and October (Girdwood) meetings, and the 2014 January (Kodiak) and February (Anchorage) meetings.

Many of the Board proposals involved considerations for fleet consolidation and/or restructuring, and grew out of changes made to state law (2002) where individuals were granted the option to hold two limited entry permits in a salmon fishery, and where the Board was subsequently granted the authority to allow additional fishing privileges for the use of the second permit (2006).

In several instances over 2013 and 2014, the Alaska Legislature made special requests for information which CFEC's Research Section provided. In addition to the large number of standard reports available on CFEC's web site, CFEC analysts provided legislators and their staff with specific *ad hoc* information on a wide range of topics, such as patterns of permit holdings, the number of vessels home-ported in various communities, permit fees and revenues from permit renewals, and estimates of ex-vessel earnings.

In 2013, the CFEC Research Section worked with ADF&G and DCCED to process federal grant payments to Alaska salmon troll fishermen in a program that was designed to help mitigate the effects of reduced quotas of Chinook salmon under the Pacific Salmon Treaty. In calendar year 2013, there were two separate programs: the first program began in February with payments to CFEC permit-holders based upon their participation in the 2010 and 2011 summer troll seasons. The second program began in September 2013, with payments based upon fishing that occurred in 2012. For each program, CFEC analysts helped review pertinent regulations, build databases, and design application forms. Staff supervised the mail-out of some 2,600 applications and had direct contact with dozens of applicants in follow-up telephone calls. The response rate by fishermen was exceptionally high, and CFEC received many expressions of thanks from fishermen for their efforts.

Also in 2013 and 2014, CFEC Research staff assisted analysts at NMFS with the federal government's efforts to restructure the Gulf of Alaska and Bering Sea/Aleutian Islands fisheries observer programs.



As currently proposed, fees levied to pay for the new program will be based upon CFEC ex-vessel price estimates for groundfish. CFEC reviewed the program output generated by their colleagues at NMFS and provided input on maintaining the integrity of the estimates.

In 2014, the Alaska Salmon Disaster Federal Relief Program relied upon the data and expertise of CFEC analysts to help distribute grants to affected fishermen from the Yukon and Kuskokwim Rivers and Cook Inlet. Research staff constructed the underlying databases and consulted with decision-makers to help determine program rules, and the Research Project Leader served on the review panel for individuals who asked that their grant applications be scrutinized for special circumstances and/or potential errors.

Along with the normal tasks of supporting the statutory and daily activities of the Commission, and combined with the special projects mentioned above, Research staff also issued many published reports in 2013 and 2014, most of which are listed below. In addition to the enumerated reports, CFEC analysts also generated some 44 other, specialized ad hoc reports requested by fishermen's groups, legislators, municipalities, non-governmental agencies, private research firms, and scholars in 2013-2014. Some of the reports issued contain confidential earnings and fishing participation data, and are therefore not available to the public.

CFEC Permit Holdings and Estimates of Gross Earnings in the Prince William Sound Salmon Fisheries, 1975-2013. Rpt 14-7N by Marcus Gho.

Dual-permit Fishing Operations in the Cook Inlet Salmon Drift Gillnet Fishery. Rpt 14-6N by Craig Farrington, K. Iverson, and M. Gho.

Emergency Transfers of Alaska's Commercial Fisheries Limited Entry Permits, 1975 – 2013. Rpt 14-5N by Kurt Iverson, M. Gho, and Y. Fink.

CFEC Salmon Set Gillnet Permits and DNR Shore Fishery Leases in Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, and Bristol Bay, 1975-2013. Rpt 14-4N by Marcus Gho.

Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975 – 2013. Rpt 14-2N and Executive Summary 14-2N-EXEC by Jennifer Shriver, M. Gho, K. Iverson, and C. Farrington.

Overview of Permit Holdings, Harvests, and Estimates of Gross Earnings in the Cook Inlet Salmon Drift Gillnet Fishery, 1975-2012. Rpt 14-1N by Marcus Gho, K. Iverson, and C. Farrington

Kodiak Salmon Set Gillnet Permit Stacking. Rpt 13-4N by Marcus Gho and K. Iverson

CFEC Salmon Set Gillnet Permits and DNR Shore Fishery Leases in Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, and Bristol Bay 1975-2012. Rpt 13-3N by Marcus Gho

Overview of Permit Holdings, Harvests, and Estimates of Gross Earnings in the Cook Inlet Salmon Set Gillnet Fishery, 1975-2012. Rpt 13-2N by Marcus Gho

Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975 – 2012. Rpt 13-1N and Executive Summary 13-1N-EXEC by Jennifer Shriver, M. Gho, K. Iverson, and C. Farrington.

Non-confidential reports are available on CFEC's web site (<http://www.cfec.state.ak.us>) or upon request from the Commercial Fisheries Entry Commission, Research Section, P O Box 110302, Juneau, AK 99811-0302.



Revenue

Overview

Revenue collected by the Commission comes primarily from annual renewal fees paid for commercial fishing permits and vessel licenses. Additional revenues come from research and data processing services and reports requested by the public, fishing organizations, fisheries research groups, and other agencies.

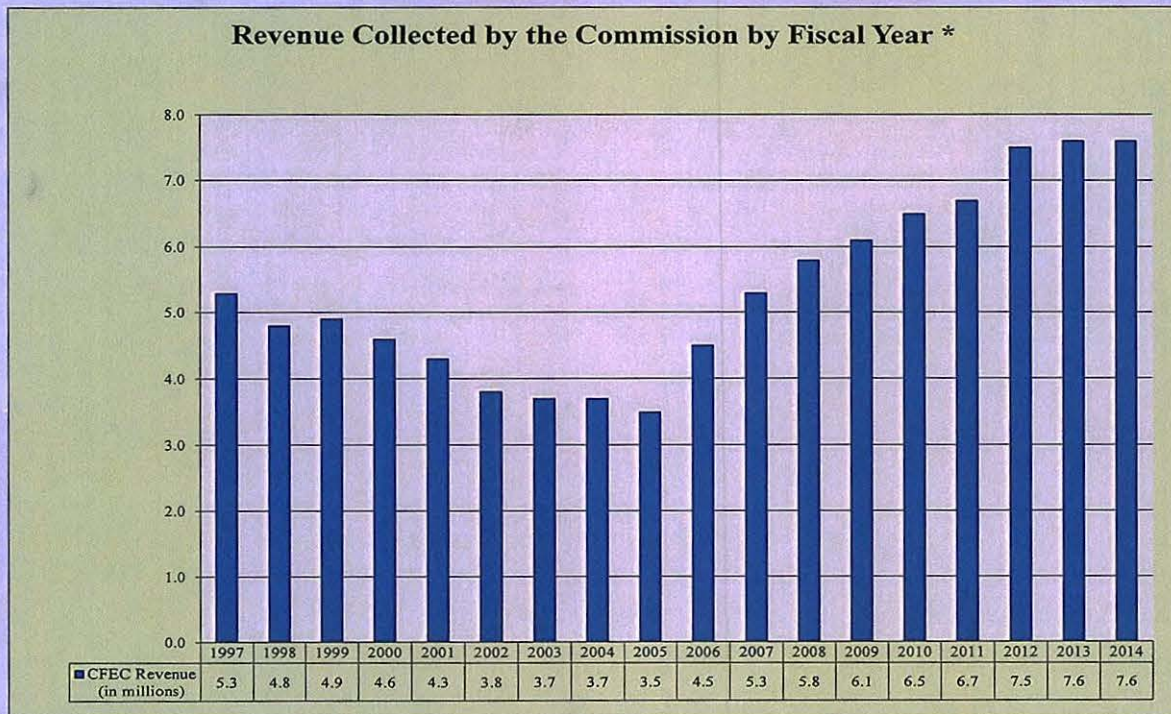
Legislation passed in 2005 made two significant changes that increased CFEC revenues collected for the State, beginning with the 2006 licensing year (calendar year). The first was to raise the cap on annual fishing permit fees from \$300 to \$3,000, thereby partially conforming permit rates with the statute that require fees to reflect the economic returns in a fishery. Raising the permit fee cap mainly affected higher-value fisheries that had benefitted in the past from the lower cap. The second legislative change was a modification to annual commercial fishing vessel license fees. The fee structure was expanded from five to thirteen fee classes, based upon 25-foot vessel length increments.

Under 20 AAC 05.245, permit renewal fees are based on a formula of 0.4% of the estimated market value of the permit for limited fisheries and 0.4% of the estimated average gross earnings for open-access fisheries. Permit renewal fee categories for 2013 & 2014 ranged from \$75 to \$3,000 with the majority being \$375 or less.

Total revenue for fiscal year 2013 (July 1, 2012 – June 30, 2013) was just over \$7.6 million, which more than funded the commission's \$4,176.9 authorized budget as well as CFEC's contribution to the Fishermen's Fund.

Total revenue for fiscal year 2014 (July 1, 2013 – June 30, 2014) was comparable to that in 2013 and was just over \$7.6 million, which fully funded the Commission's \$4,389.2 authorized operating budget as well as paying CFEC's contribution to the Fishermen's Fund.

During both years, the legislature applied the additional CFEC revenues to ADF&G and DCCED programs that support Alaska's commercial fisheries.



Note: These data reflect permit fees, vessel license fees, limited entry application fees, refunds, and miscellaneous revenue.

*Revised from earlier annual reports



Appendices

Commission Employees

COMMISSION	Bruce Twomley	Chairman
	Benjamin Brown	Commissioner
	Frank Homan	Commissioner (retired 1/23/2015)
	Verne Rupright	Commissioner (appointed 1/23/2015)
	Kristen Bomengen	Commission Decision Drafter
	Beccy Charles	Executive Secretary
	Mele Maake	Executive Secretary
	Doug Rickey	Law Specialist
ADJUDICATIONS	Frank Glass	Adjudications Project Leader
	Jill Wood	Managing Paralegal
ADMINISTRATION	Shirley Penrose	Operations Manager
	Randy Lippert	Clerk
	Sheri Paddock	Administrative Clerk
	Bob Reiersen	Clerk
INFORMATION TECHNOLOGY SERVICES	Ty McMichael	Info. Technology Services Leader
	Mykel George	Analyst Programmer
	Fred Harmon	Data Systems Technician
	Don Huntsman	Analyst Programmer
	Joe Kollar	Analyst Programmer
	Brant Oliphant	Analyst Programmer
	David Pearce	Network Specialist
LICENSING	Yvonne Fink	Licensing Project Leader
	Rissa Teske	Assistant Licensing Project Leader
	Kim Andrews	Transfer Officer
	Brandi Billings **	Transfer Officer
	Patricia Boone	Commercial Fish Permit Clerk
	Kayla Loob	Commercial Fish Permit Clerk
	Ronda Stevenson	Commercial Fish Permit Clerk
	Jen Wilson	Commercial Fish Permit Clerk
RESEARCH	Kurt Iverson	Research & Planning Project Leader
	Craig Farrington	Fisheries Analyst
	Marcus Gho	Economist
	Jennifer Shriver **	Research Analyst

** These people are no longer employed at the Commission as of 12/31/2014



Decisions and Activities in Prior Years



Calendar Year 2012

- Supported and assisted the fleet reduction program for the Southeast Alaska salmon purse seine fishery.
- Met with Southeast longliners and reported on the status of the limitation program for the Southeast sablefish fisheries.
- Supported and testified in favor of House Bill 261 to raise the limit on "Section B" loans from the Commercial Fishing and Agriculture bank to \$200,000.
- Offered public comment critical of the proposal by the National Marine Fisheries Service to strip the regional offices (including Alaska) of their administrative appeal functions and to centralize them in Silver Springs, Maryland.



Calendar Year 2011

- Continued to assist the fleet consolidation program for the Southeast Alaska salmon purse seine fleet.
- Participated in meetings of the Alaska Board of Fisheries dealing with statewide finfish issues.
- Assisted the Department of Law in its briefing of issues in the Carlson class action lawsuit before the Alaska Supreme Court.
- Assisted Department of Law in the successful conclusion of three permit application appeals in the Juneau and Ketchikan Superior Court.
- Attended and participated in meeting of the North Pacific Fishery Management Council and the University of Alaska's Sea Grant Symposium.
- Assisted Alaska's congressional delegation in drafting legislation that would make clear federal maritime liens may not be enforced against fishing permits, including entry permits and individual fishing quotas (IFQs).





Calendar Year 2010

- Supported legislation to allow sharing of CFEC information with National Marine Fisheries Service in order to facilitate fleet consolidation in Southeast Alaska salmon purse seine fishery.
- Participated in meetings of the Board of Fisheries dealing with statewide finfish issues.
- Assisted Department of Law in successful conclusion of two permit application appeals in the Alaska Supreme Court and six appeals in various superior courts.
- Participated in meetings with Bristol Bay Development Corporation to work on strategies for keeping more Bristol Bay entry permits in local hands.
- Assisted Department of Law in furthering interests of the state in the *Carlson* class action decision



Calendar Year 2009

- Supported legislation allowing CFEC to freely share non-confidential information with Alaska Regional Development Organizations (ARDORS).
- Renewed 3,485 permits and 1,696 vessel licenses through the Commission's new online licensing system.
- Online licensing renewal kiosk service expanded to ADF&G offices at Cordova, Craig, Ketchikan, and Homer.
- Participated in the Board of Fisheries meeting at Sitka, concentrating on restructuring proposals for Southeast Alaska finfish management.
- Participated in the ComFish Expo in Kodiak and the "Fish Expo" in Seattle, meeting and confering with permit holders at space shared with DCC&ED.
- Participated in the Board of Fisheries meeting at Anchorage, concentrating on several restructuring proposals for finfish management in Bristol Bay.





Calendar Year 2008

- Advocated for extension of the sunset date for limitation of the statewide weathervane scallop and Bering Sea hair crab fisheries to 2013.
- Participated as a member of the ADF&G, Sport Fish Division's Sport Fish Guide Task Force.
- Launched the new online permit and vessel license renewal service, and established online renewal kiosks in Anchorage, Sitka, and Kodiak.
- Presented a report on the status of permit applications at the ADF&G's Northern Southeast Inside sablefish longline fishery industry meeting.
- Met with representatives of Alaska congressional delegation and the State of Alaska office in Washington, D.C., to discuss federal legislation affecting Alaska's commercial fisheries.
- Attended a Board of Fisheries meeting in Anchorage addressing ecotourism issues.
- Participated in the Board of Fisheries Restructuring Committee meeting in Anchorage to address restructuring proposals affecting commercial salmon fisheries.
- Appeared before the Joint Cook Inlet Salmon Task force to report on buyback of limited entry permits under the Limited Entry Act.
- Presented "Commercial Fishing: Overview of the Industry" at the 2008 Southeast Alaska Native Summit in Juneau.

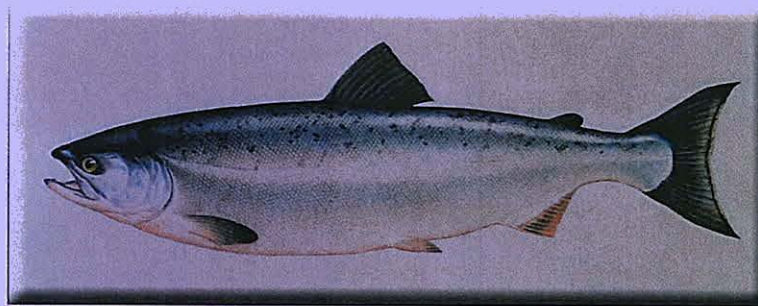


Photo Courtesy of the Alaska
Seafood Marketing Institute (ASMI)



Calendar Year 2007

- Participated in meetings with ADF&G Sport Fish Division's Sport Fish Guide Task Force to discuss issues regarding limited entry and the sport fish guide industry.
- Continued to work with the SRA to structure a fleet consolidation plan for the Southeast Alaska salmon purse seine fishery.
- Presented "State of Alaska Limited Entry System" at the *Alaska's Young Fishermen's Summit: Weaving a Network of Future Fishing Leaders*.
- Adopted regulations implementing the Application for Immediate Fishing.
- Met with representatives of the U.S. Congressional delegation to discuss federal legislation affecting Alaska's commercial fisheries.
- Reported to the Southeast Alaska King and Tanner Crab Task Force on the status of commission adjudications for those fisheries.
- Participated on an advisory panel for a study commissioned by the BBEDC to explore ways to increase the number of limited entry permits held by local Bristol Bay residents.
- Continued to maintain a professional relationship with the Internal Revenue Service (IRS) to help Alaska fishermen protect their fishing privileges.
- With the Alaska Attorney General, CFEC continued to defend the State against elimination of the nonresident fee differential in the *Carlson* case.




CFEC staff photo



Calendar Year 2006

- Launched new web site which includes a searchable permit holder database, information on permit renewals and transfers, and links to standard data tables and Commission reports.
- Presented “30 Years of Limited Entry” at the NOAA National Marine Fisheries Service sponsored conference, *Alaska’s Fishing Communities: Harvesting the Future*, in Anchorage, Alaska.
- Participated in a meeting with the Alaska Department of Fish and Game Sport Fish Division and sport charter guides to discuss issues regarding limited entry and the sport fish guide industry.
- HB 484 (Chapter 91 SLA 2006) authorized the legislature to appropriate revenue from the sale (re-issuance) of entry permits by the state in order to reimburse a qualified Salmon Association for its expenses in retiring permits under a buyback program.
- HB 251 (Chapter 11 SLA 2006) authorized the Board of Fisheries to adopt regulations allowing a person who holds two limited entry permits for a single salmon fishery to obtain greater fishing privileges such as additional gear.
- Continued to maintain a professional relationship with the IRS to help Alaska fishermen protect their fishing privileges.
- With the Alaska Attorney General, continued to defend the state nonresident fee differential in the *Carlson* case.



2005 and prior years

Information on 2005 and prior years can be found in previous annual reports or on the internet at the Commission website: <http://www.cfec.state.ak.us>.



CFEC Commissioners - 1973 to Present

<u>Commissioner</u>	<u>Service</u>
Rickey, Roy	1973 - 1977
Stovall, Charles	1973 - 1977
Jackman, David	1973 - 1974
Carter, Harry	1974 - 1974
Hansen, Harold	???? - 1975
Garner, John	1975 - 1976
Adaisiak, Allan	1977 - 1979
Simon, Robert	1977 - 1982
Garner, John	1977 - 1979
Riley, Burke	1979 - 1982
Williams, John	1979 - 1983
Whitehead, Michael	1982 - 1983
Smith, Philip	1983 - 1991
Listowski, Richard	1983 - 1993
Twomley, Bruce	1982 - Present
Homan, Frank	1991 - 1996
Anderson, Dale	1993 - 1997
Johnson, Marlene	1996 - 2003
McDowell, Mary	1997 - 2005
Homan, Frank	2003 - 2010
Froehlich, Peter	2005 - 2012
Brown, Benjamin	2011 - Present
Homan, Frank	2014 - 2015
Rupright, Verne	2015 - Present

This edition of the CFEC Annual Report was published February 2015



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission

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PO Box 110302
Juneau, Alaska 99811-0302
Main: 907.789.6160
Licensing: 907.789.6150
Fax: 907.789.6170

September 19, 2013

CERTIFIED RETURN RECEIPT
7003 0500 0002 8882 5464

C. Michael Hough, Attorney at Law
3691 Ben Walters Lane, Suite 2
Homer, AK 99603

Re: Fedor Z. Kuzmin, CFEC 98-009-A
Eros F. Kuzmin, CFEC 98-010-A
Applications for individual entry permits for the Prince William
Sound sablefish fixed gear fishery (C61E)

Dear Mr. Hough:

We are sorry to inform you that we have finally denied Fedor Z. Kuzmin and Eros F. Kuzmin's applications for individual entry permits for the Prince William Sound sablefish fixed gear fishery (C61E). Enclosed is a copy of our Final Commission Decisions on Administrative review explaining our reasons for denying these two applications.

Enclosed is a copy of 20 AAC 05.1850, the Commission regulation detailing the applicants' right to request reconsideration for a period of 30 days from the date of this letter. A request for reconsideration must set forth specifically the grounds upon which the decision is believed to be erroneous.

Also enclosed is that part of Appellate Rule 602 outlining the procedure for the applicants to seek judicial review of this decision. Under the appellate rule, the applicants have only 30 days from the date of this letter to file an appeal in Superior Court.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION

A handwritten signature in black ink, appearing to read "Benjamin Brown".

Benjamin Brown, Commissioner
Bruce Twomley, Chairman

Enclosures

cc: Fedor Z. Kuzmin, Box 896, Delta Junction, AK, 99737 (7003 0500 0002 8882 5488)
Eros F. Kuzmin, Box 1737, Homer, AK, 99603 (7003 0500 0002 8882 5471)

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

In Re the Applications of:

FEDOR Z. KUZMIN and

EROS F. KUZMIN

for individual Entry Permits for the Prince William
Sound Sablefish Fixed Gear Fishery (C61E)

CFEC 98-009-A

CFEC 98-010-A

FINAL COMMISSION DECISIONS ON ADMINISTRATIVE REVIEW

COUNSEL

C. Michael Hough, Attorney at Law, 3691 Ben Walters
Lane, Suite 2, Homer, AK 99603, attorney for the applicants.

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I. INTRODUCTION

The applicants, Fedor Z. Kuzmin (the father) and Eros F. Kuzmin (the son) testified that they fished together in separate vessels, and both applied for limited entry permits in the Prince William Sound sablefish fixed gear fishery. In order to be eligible to apply for a permit in this fishery, an applicant must prove participation during any one of the years 1991 through 1994.

Although the applicants claimed to have participated in each of the four years, they failed to prove a single landing in the fishery during any of the four qualifying years. Therefore, the Commercial Fisheries Entry Commission (CFEC) paralegals found them to be ineligible to apply for limited entry permits.

The applicants appealed, and, represented by their two successive attorneys, participated in two evidentiary hearings. Having found (1) that the applicants failed to introduce a single fish ticket documenting a landing in the fishery during any of the four qualifying years and (2) that the applicants failed to prove a landing in the fishery, the hearing officer determined that the applicants failed to prove they were eligible to apply for permits and further failed to prove they were entitled to any points toward a limited entry permit.

The applicants petitioned for administrative review by the commissioners, and this decision follows. To aid our administrative review, we ordered that the audio recording of the hearings be transcribed, and the transcript is enclosed with this decision. In this final commission decision, we disavow some statements by the hearing officer that are unnecessary to support the hearing officer's overall conclusion which we believe is

sound: the applicants have failed to meet their burden of proof. Therefore, we finally deny these two applications.¹

II. FACTUAL SUMMARY

The father testified he began fishing for sablefish in Prince William Sound in 1987, and his son joined him on a separate vessel in 1991.² Prior to 1991, the father had fish tickets that recorded landings of sablefish in Prince William Sound.³ In contrast, the father's fish tickets during the four qualifying years (1991 – 1994) showed landings only in federal waters.

For 1991 and 1992, the applicants made general claims of having participated in the Prince William Sound sablefish fishery but failed to produce a single fish ticket documenting any landing within Prince William Sound, or any other corroborating evidence of their participation.

For 1993, the applicants again made a general claim to have participated in the Prince William Sound sablefish fishery but again failed to produce a single fish ticket documenting a landing within Prince William Sound. Additionally, in 1993, the son failed to prove he registered his vessel with the Alaska Department of Fish & Game (ADF&G) for participation in the Prince William Sound sablefish fishery, or that he obtained the requisite ADF&G permit for the fishery.⁴ The son's failure to register his vessel made any participation he might otherwise have established illegal and, therefore,

¹ Normally we would issue a decision addressing only a single application to avoid creating confusion for the reader and ourselves. We make an exception for these two cases, because their procedural histories are identical, and their facts are nearly coextensive. To be practical, this combined opinion will spare interested parties from having to read nearly the same decision twice.

² The hearing officer decisions addressing these two applications are nearly identical. For simplicity, we will cite only to the decision addressing the son's application. H.O. Dec. at 3.

³ *Id.* at 8 (citing Exhibit 8).

⁴ H.O. Dec. at 5, 11 & 23.

disqualified him from receiving any credit for participating, even if he had proven a landing.⁵

For 1994, the applicants failed to produce a single fish ticket documenting a landing in the Prince William Sound sablefish fishery. The applicants had fish tickets reporting catch in outside waters beyond the boundaries of Prince William Sound. However, the dates of their deliveries were all at times when the Prince William Sound sablefish fishery was closed.⁶

After the last qualifying year in 1994, the applicants had fish tickets reporting sablefish landings within Prince William Sound as well as in outside waters.⁷

During the Prince William Sound qualifying years, the father applied for a federal sablefish Individual Fishing Quota (IFQ) in the federal waters outside of Prince William Sound, but his application was finally denied. The years during which a fisher could establish the individual's eligibility for federal IFQ in the sablefish fishery are 1988, 1989, and 1990.⁸

The applicants failed to produce a single fish ticket reporting a sablefish landing within the boundaries of Prince William Sound over the four qualifying years from 1991 through 1994. During this period, the applicants did have fish tickets reporting landings in federal waters outside of Prince William Sound.

The applicants now claim sablefish catches within Prince William Sound that were not reported as required by law. Any such unreported catch would not have been

⁵ 20 AAC 05.778(a); 20 AAC 05.782; 20 AAC 05.786(3).

⁶ H.O. Dec. at 12 & 14.

⁷ *Id.* at 9, n.18 (citing Exh. 8, pp. 1 & 3).

⁸ Exhibit 18.

counted against the state's guideline harvest range for managing the Prince William Sound fishery and would thereby have contributed to the risk of overfishing.

To help the applicants locate evidence related to their claims in the course of their evidentiary hearings, the hearing officer (1) offered to subpoena employees of processors to whom the applicant and his father sold sablefish, and (2) requested the applicants and their attorney to supply an affidavit to identify which of their fish tickets reporting catch in outside waters might have included the sablefish they claimed to have caught inside of Prince William Sound.⁹ The applicants and their attorney failed to respond to either of these opportunities to clarify and supplement the record.

III. PROCEDURAL HISTORY

The CFEC received applications from the father and his son for their individual entry permits for the Prince William Sound sablefish fishery (C61E) on November 28, 1997. By its letters dated February 20, 1998, the CFEC paralegals notified the applicants that their applications were denied. Father and son both requested and were granted hearings to contest that determination.

On April 27, 1998 (before their first hearing), the hearing officer sent to the applicants and their attorney, copies of the applicants' original fish tickets that the hearing officer had retrieved from State Archives.

With the concurrence of the applicants and their attorney, their first hearing was conducted as a joint proceeding to address both applications for entry permits for the fishery.

⁹ Transcript at 11, 48-52.

The hearing officer conducted the first session of the joint hearing on May 11, 1998, in Anchorage, during which the hearing officer offered to subpoena employees of processors to whom the applicants sold fish. The applicants and their attorney never responded to this offer.

The hearing officer scheduled another session for September 24, 1998, in Anchorage, but only the father appeared. Their attorney, Steven Callison, requested a continuance, which the hearing officer granted. The parties agreed to conduct the second hearing in Homer, Alaska, on November 5, 1998. However, shortly before that date, Mr. Callison contacted the hearing officer to say that he was no longer representing the applicants. The scheduled hearing did not take place.

Subsequently, the hearing officer scheduled a hearing for December 7, 1998, in Juneau, Alaska. Shortly before that date, C. Michael Hough, Attorney at Law in Homer, advised the hearing officer that he had been retained to represent the applicants but would be unable to participate on the scheduled date and requested a continuance.

The hearing officer granted the continuance, and the parties rescheduled the hearing for Homer on January 28, 1999. However, the son was unavailable to attend that scheduled hearing. The hearing officer granted a further request for a continuance by Mr. Hough, and the parties rescheduled the hearing for February 26, 1999, in Homer. The parties agreed the hearing would be a joint proceeding where the applicants appeared together and testified.¹⁰

Near the conclusion of the hearing, the hearing officer requested the applicants and their attorney to produce an affidavit that would specify which fish tickets (among their fish tickets all reporting catch only in federal waters outside of Prince William Sound) that the applicants claimed to have included catch from waters inside of Prince

¹⁰ Transcript at 13.

William Sound. While the attorney agreed to the hearing officer's request, neither the applicants nor their attorney ever responded to the request.¹¹

The record remained open following the hearing, and on November 15, 2000, the hearing officer notified the applicants and their attorney that he proposed to close the record on November 29 but offered the applicants more time if they needed it. Absent a response to his offer, the hearing officer closed the record on November 29, 2000, a year and nine months after the conclusion of the hearing.

On December 29, 2000, the hearing officer issued his decisions respectively denying both applications and finding that the applicants had failed to prove that they had participated in the fishery at any time during the four-year qualifying period (1991 – 1994) and were, therefore, not eligible to apply for the permits, nor were they entitled to any points toward a limited entry permit. The hearing officer found the applicants failed to introduce a single fish ticket documenting a single catch within the fishery, failed to prove any facts that might excuse their failure to properly report their catch, and were not credible witnesses.

Pursuant to an extension of time requested by the applicants' attorney and granted by the commissioners, the applicants (through their attorney) appealed from the hearing officer's decisions by filing their Petitions for Administrative Review (hereinafter the Petition) received by the CFEC on March 29, 2001.¹²

These applications are the last two applications in this fishery before the commissioners.

¹¹ Transcript at 48-52.

¹² The two petitions are virtually identical. For simplicity, we will refer to "the Petition" and cite pages from the petition filed on behalf of the son.

This decision follows our review of the record, including the hearing officer's decisions and the arguments and requests made in the Petition.¹³

IV. DISCUSSION

A. Introduction

As we will discuss in detail below, the overall result reached by the hearing officer is soundly based on evidence the hearing officer painstakingly assembled for the record. We agree with the hearing officer's conclusion that the applicants failed to meet their burden of proving that they made a landing of sablefish in Prince William Sound during any of the 1991 – 1994 qualifying years. We also note that their claimed but unreported catch – if any – within Prince William Sound would not have been counted against the state's guideline harvest range for the Prince William Sound fishery, and, therefore, could contribute to the risk of overfishing.

While the hearing officer did a commendable job of developing and organizing the factual record,¹⁴ the hearing officer made a number of statements that we specifically disavow. Some of these statements include unnecessary affirmative findings.¹⁵ We object to other statements, because they appear to be speculative. For purposes of organizing our discussion, we will proceed chronologically through the hearing officer's

¹³ The hearing officer conducted two evidentiary hearings for the benefit of the applicants, during which, (1) he offered to subpoena witnesses on their behalf, and (2) he requested the applicants and their attorney to supplement the record with an affidavit addressing the fish tickets. In view of the fact that the applicants and their attorney failed to respond, we deny the petition's request for a third evidentiary hearing and request to supplement the record before the commissioners. *Crivello v. State, CFEC*, 59 P.3d 741, 747 (Alaska 2002). We have undertaken administrative review on our own motion to examine issues raised by the hearing officer's decision. The Petition alone would likely have not met requirements for Administrative Review, because it wholly fails to offer "an explanation as to why the new documentary evidence or testimony was not made a part of the record earlier." 20 AAC 05.1845(b)(7). Additionally, this record fails to show us "that the applicant . . . acted with due diligence in making claims and presenting evidence in the administrative hearing before the hearing officer" 20 AAC 05.1845(c).

¹⁴ Acknowledged by the Petition at 3-4.

¹⁵ We limit our conclusions to whether the applicants met their burden of proof, acknowledging Justice Rabinowitz's admonition with respect to substantial evidence, affirmative findings, and burden of proof, in *Kalmakoff v. State, CFEC*, 693 P.2d 844, 849 (Alaska 1985).

decision¹⁶ to identify the statements that we reject and do not consider in reaching our decision.

To the extent that the Petition takes issue with the same statements we disavow herein, our disavowal renders those arguments moot, and we did not consider them in our review of the hearing officer's decision. Additionally, as we proceed through the hearing officer's decision, we address other related issues from the Petition. We hope this approach will yield an inclusive and coherent discussion of our reasons for finally denying these two applications.

B. Accurate Reporting on a Fish Ticket is an Essential Requirement for a Legal Harvest and Conservation of the Fishery

1. The Applicant has a Legal Duty to Report the Location of Catch on a Fish Ticket

As this record makes clear, and as the hearing officer emphasized, the applicants' fish tickets fail to record a single landing of sablefish within Prince William Sound during the qualifying years (1991-1994).¹⁷ In contrast, the father reported catch from Prince William Sound both before and after the qualifying years.¹⁸ Moreover, the son (who began fishing in 1991) reported catch from Prince William Sound after the qualifying years.¹⁹

On the issue of the absence of any fish tickets to support the applicants' claims, the hearing officer made an abbreviated assessment,²⁰ as follows:

¹⁶ H.O. Dec. at 17-25.

¹⁷ H.O. Dec. at 19.

¹⁸ *Id.* at 8 (citing Exhibit 8).

¹⁹ *Id.* at 9, n.18 (citing Exhibit 8, pp.1 & 3).

²⁰ *Id.* at 19.

[The absence of any fish tickets], of course, is not necessarily fatal to Mr. Kuzmin's claims. He can still prevail if he can prove that legally harvested blackcod from the fishery were delivered on his fish tickets [reporting catch from waters outside of Prince William Sound].

We find this statement to be confusing and misleading, because the law (at the relevant time for this application and today) is explicit that a landing is legal only if it is properly reported, and the fisher has an affirmative duty to report accurately (among other things) the location of the catch.

AS 16.05.690(a) required as follows:²¹

Each buyer of fish shall keep a record of each purchase showing the name or number of the vessel from which the catch involved is taken, the date of landing, vessel license number, pounds purchased of each species, number of each species, and where possible, statistical area in which the fish were taken, and other information the department requires. Records may be kept on forms provided by the department. Each person charged with keeping the records shall report them to the department in accordance with regulations adopted by it.

AS 16.05.690(b) further required:

A person may not knowingly enter false information on a fish ticket or supply false information to a person who is recording information on a fish ticket.

Under this statute, the department's regulation 5 AAC 39.130(b) & (c) required (in relevant part with emphasis added) as follows:

²¹ We are quoting the law (and the regulations to follow) as they appeared in the 1994-1995 brochure provided to fishermen by ADF&G and included herein in relevant part as Attachment A.

- (b) Each buyer of raw fish, each fisherman selling to a buyer not licensed to process fish (a catcher/seller), and each person or company who catches and processes his or her own catch or has that catch processed by another person or company, shall record each landing on an ADF&G fish ticket. A catcher/seller must complete an ADF&G form in order to obtain fish tickets. Fish tickets must be submitted to a local representative of the department within seven days after landing, or as otherwise specified by the department for each particular area and fishery. . . . The record must include the following:
- (1) the name of the individual or company buying the fish, the processor code assigned to each buyer by the department, and the signature of the buyer or his representative;
 - (2) the full name and signature of the permit holder;
 - (3) the name or the Coast Guard number of the vessel employed in taking the fish;
 - (4) the date of the landing of the fish;
 - (5) the permanent vessel license plate number or, for set gillnets and fish wheels, the fisherman's five-digit CFEC permit serial number;
 - (6) the type of gear by which the fish were taken;
 - (7) the nearest headland or bay or statistical catch area in which the fish were taken;
 - (8) information applicable to the following species:
 - (A) the number and pounds of salmon by species;
 - (B) the number of pounds of king, Dungeness and Tanner crab;

- (C) the pounds of other fish or shellfish by species;
- (9) the CFEC permit number of the operator of the unit of gear with which the fish were taken, imprinted on the fish ticket from the valid permit card at the time of delivery only; the imprinting requirement of this paragraph may be suspended by a local representative of the department after presentation by the fisherman of documentation from the department or CFEC that the permit card has been lost, transferred or destroyed; if the above suspension is granted, then the buyer or fisherman shall write the permit number on the fish ticket at the time of delivery only;
- (10) other information the department may require.
- (c) Each fisherman shall furnish to the buyer factual catch data necessary for completion of reports required by the department.

Under AS 16.05.710(d)(1), the regulation is a “commercial fishing law” and even an unintentional violation is subject to strict liability, substantial fines, and forfeiture under AS 16.05.722.

The CFEC has taken the ADF&G fish ticket requirement very seriously over the years. For example, in *Scholz*,²² we stated:

²² CFEC 88-022-A (Final Comm. Dec. on Admin. Rev. 11/3/1989 at 7).

The applicant's largely unsupported claim that such violations [failure to file fish tickets for sales to private individuals] were common at the time, even if shown to be true, would not improve his position. The legislature intended the benefits of entry limitation to go only to those commercial fishermen in compliance with the law. See, for example, *Simpler v. State*, CFEC, 728 P.2d 227, 230 (Alaska 1986). This principle underlies all Commission regulations for evaluating claims to entry permits. See, for example, *Arkanakyak*, CFEC 75-488 (1989 at 6); *Dudrick*, CFEC 75-822 (Rec. Dec. at 3, 1983); *Dupree*, CFEC 75-298 (1979) at 2; and *Wik*, CFEC 75-259 (1977 at 3).

In fact, to be eligible to apply for a Prince William Sound sablefish fixed gear entry permit, 20 AAC 05.778(a) requires (with emphasis added) as follows:

To be eligible to apply for an entry permit in the Prince William Sound sablefish fixed gear . . . [fishery], **an individual must have legally harvested the fishery resource** while participating in the relevant fishery as a holder of an interim-use permit issued under AS 16.43.210 during at least one of the years 1991 – 1994.

Additionally, eligible applicants seeking participation points must satisfy 20 AAC 05.782, which requires (in relevant part with emphasis added) as follows:

Applicants who legally harvested sablefish from the fishery over the 1991 – 1994 time period will be awarded points for the seasons in which they participated. . . .

In turn, the CFEC specifically included the ADF&G reporting requirements in our definition of “legally harvest sablefish” set forth (with emphasis added) in 20 AAC 05.786(3) as follows:

“legally harvest sablefish” means the commercial harvest and sale of sablefish from the Prince William Sound Areas as a CFEC interim-use permit holder during fishing seasons established by the Alaska Department of Fish and Game under 5 AAC 28.210, using a vessel that had a valid State of Alaska vessel license as required by AS 16.05.490 and a vessel that had an Alaska Department of Fish and Game Prince William Sound sablefish permit as required by 5 AAC 28.220, using gear that were legal for the harvest of Prince William Sound sablefish under 5 AAC 28.050, 5 AAC 28.230, and 5 AAC 39.165, and while complying with all other applicable commercial fishing laws and regulations, and **where the sablefish sales were in accordance with regulations governing the sale or use of commercially caught sablefish applicable at the sale, including regulations regarding proper completion of reports required of processors, buyers, and fishers. . . .**

In light of these governing statutes and regulations, we reject the hearing officer’s statement (quoted above at the beginning of this subsection) implying that an unreported catch could somehow qualify as a legal catch.²³ The notion is directly contrary to the governing statutes and regulations, including CFEC’s (previously quoted) definition of a legal harvest of sablefish under 20 AAC 05.786(3).

2. **Failure to Report Catch on a Fish Ticket Precludes Credit for Participation, Unless the Applicant can Prove Facts that Relieve the Applicant of Responsibility for the Failure**

CFEC is obligated to follow Alaska law governing and administered by ADF&G. Consequently, the failure to report catch on a fish ticket can be excused only in cases where the fisher can prove facts that would relieve the individual fisher from responsibility for the failure.

²³ H.O. Decision at 19.

For example, we believe the CFEC reached a sound decision in *Huff*,²⁴ where the applicant proved that he and the processor correctly identified the location of his catch, but later, an ADF&G fish ticket editor mistakenly entered the wrong location over the original entry. Thus there was no misrepresentation by the fisher, and the CFEC allowed him credit for his landing.²⁵

In contrast, we now specifically overrule the policy set forth in *Svenson*,²⁶ where the CFEC allowed a hearing officer's decision to become final, in which the hearing officer authorized credit to an applicant who intentionally misrepresented the location of his catch for his own stated purposes of achieving an economic and political advantage over foreign fishers.

We also now specifically overrule the policy expressed in *Zenuhin*,²⁷ where the CFEC allowed a hearing officer decision to become final, in which the hearing officer had granted credit to a fisher who misrepresented the location of his catch, because he assumed he was in compliance with the law.²⁸ The applicant in *Zenuhin* failed to make a reasonable inquiry as to his catch reporting duties. In other cases, the CFEC has held fishers accountable for information that their reasonable inquiry would have yielded.²⁹

²⁴ CFEC 89-335-A (1998).

²⁵ Similarly in *Carder*, CFEC 88-233-A (1999 H.O. Dec. at 9 and 16), the applicant submitted fish tickets to report his crab sales but ADF&G rerouted the tickets for research purposes resulting in their absence from ADF&G's computer records. Also similarly sound are the CFEC cases addressed by the Alaska Supreme Court in *May v. State, Commercial Fisheries Entry Comm'n*, 175 P.3d 1211, 1217-1218 (Alaska 2007); *Krumal*, CFEC 90-105 (1994); *Ayojiak*, CFEC 75-514 (1983); and *Weis*, CFEC 00-038-A (2001).

²⁶ CFEC 89-212-A (1991).

²⁷ CFEC 98-125-A (1999).

²⁸ Similarly, we now overrule the policy conveyed by *Stewart*, CFEC 89-240-A (1995), in which the CFEC allowed a hearing officer's decision to become final where the hearing officer awarded points premised on the applicant's apparent negligent misrepresentation of the location of his catch.

²⁹ *Arkanakyak*, CFEC 75-488 (1/6/82 Comm. Dec. on Remand at 13).

In short, the CFEC will not excuse a willful or negligent failure to submit an accurate fish ticket that conforms to the law. The CFEC may excuse such failure only if the applicant proves facts that would eliminate the individual's responsibility for the failure.

3. **The Applicants Have Failed to Prove a Harvest in Fact from Prince William Sound, But, if They Had Established an Actual Harvest, Their Failure to File a Fish Ticket Precludes Credit for Participation**

An applicant before the CFEC bears the burden of proving each point claimed and proving by a preponderance of the evidence that a determination of the CFEC is in error.³⁰

In the case before us, fish ticket records fail to record a single landing within Prince William Sound by the applicants during the entire qualifying period from 1991 through 1994. In addition, the applicants have failed to produce any corroboration of their claims with respect to 1991 and 1992.³¹

The absence of a fish ticket to document the applicants' claimed landings within Prince William Sound is a fact in evidence that supports a strong inference a landing did not occur.³² In *May*, the Alaska Supreme Court commented on *May*'s failure to produce any corroborating statements from crewmembers or other witnesses,³³ stating as follows:

³⁰ *Suydam v. Commercial Fisheries Entry Comm'n*, 957 P.2d 318, 322 (Alaska 1998); 20 AAC 05.520(a); & 20 AAC 05.1820(d).

³¹ As we discuss below, while the applicants, to corroborate their testimony, introduced a single affidavit addressing 1993 and three affidavits addressing 1994, we assigned these affidavits little weight, because they were very short on detail, and the affiants were not subject to cross examination. Additionally, with respect to 1993 and 1994, we discuss other factors that disqualify or moot the applicants' claims.

³² *May*, 175 P.3d at 1222.

³³ *May*, 175 P.3d at 1221 & 1222.

Because May failed to produce fish tickets to demonstrate sale of black cod caught with pots, he must overcome the negative inference that results from his failure to produce fish tickets.

The court concluded May's statement alone was not sufficient to overcome the negative inference that no landing occurred,³⁴ stating as follows:

In this case, that statement is insufficient to overcome the negative inference that arises from his inability to produce fish tickets.

Similarly, in the cases before us, the applicants have failed to prove facts that would overcome the negative inference that arises from their failure to produce any fish tickets.

Alternatively, even if the applicants' claimed catch in fact occurred, their failure to produce any fish tickets would not result in credit toward a permit, because an unreported catch is generally illegal.³⁵ The applicants have not carried their burden of proving that failure to properly report their claimed catch would not be a violation of the law in this case.

4. **Fish Tickets Are Necessary to Avoid Overfishing in a Fishery Managed by Quota**

Although the practice is specifically prohibited by statute today,³⁶ in the terminal salmon fisheries like Bristol Bay,³⁷ there were instances where an applicant's catch in the

³⁴ *Id.* (footnote omitted).

³⁵ *Bowhay*, CFEC 89-338 (2000); *Wettengel*, CFEC 97-004 (1997); and *Carder* CFEC 88-232 (1992).

³⁶ AS 16.05.680(b).

³⁷ That is, those fisheries managed by in-river escapement and not by quota.

fishery was recorded on another skipper's fish ticket for the fishery. For the sake of management and conservation of a terminal salmon fishery, this error at least reports the amount of catch to be recorded from the fishery. In broad terms, this situation yields a fish ticket recording the amount of catch in the fishery.

The applicants' claims arise in a different and more consequential situation. The fishery outside of Prince William Sound in which the applicants participated is managed separately by the federal government under a separate federal quota. The Prince William Sound sablefish fixed gear fishery is managed independently under a separate state guideline harvest range. If in fact there were a catch in the inside state fishery reported as a catch in federal waters, that catch would not have been recorded against the state's guideline harvest range for the inside fishery. Failures to report any of the applicants' claimed Prince William Sound catches would create a risk of overfishing the state fishery and a threat to conservation of the resource.³⁸ (Conversely, the catch in the federal fishery would be over reported and the full quota might not be harvested as a result.)

The Alaska Supreme Court has highlighted the importance of conservation as a critical element in decisions under the Limited Entry Act. Upholding a CFEC optimum number decision, the Court stated,³⁹ as follows:

The fishery, as well as the fishers' livelihood, depends on a sustainable catch. Thus, CFEC wrote that it believed that "conservation of this resource is the primary consideration."

Similarly, concerning a CFEC maximum number decision, the court stated,⁴⁰ as follows:

³⁸ See discussion in *Petticrew*, CFEC 89-199-A (2008 at 12-14). Affirmed *Petticrew v. Alaska CFEC*, Superior Court Case Number 1JU-08-750 CI (June 29, 2009 Decision on Appeal).

³⁹ *Simpson v. State, Commercial Fisheries Entry Comm'n.*, 101 P.3d 605, 613 (Alaska 2004).

⁴⁰ *Johns v. Commercial Fisheries Entry Comm'n.*, 758 P.2d 1256, 1264 (Alaska 1988).

The CFEC's action was justified by resource conservation reasons. Imposing a limited entry system for these reasons is expressly authorized by article VIII, section 15 of the Alaska Constitution.

C. **The Applicants Failed to Prove any Facts That Would Excuse Their Failure to File Fish Tickets**

1. **The Petition's Parade of Alleged Impracticalities is Unsupported and Unpersuasive**

Without support in the record, the Petition asserts that the processors to whom the applicants sold fish employed a rule or practice against reporting more than one statistical area on more than one fish ticket per delivery.⁴¹ Similarly without support in the record, and apparently as excuses for failing to meet the legal duty to report accurately the information required on fish tickets,⁴² the Petition presents a parade of alleged impracticalities: “comply with the very complex federal, international and state laws, regulations, and customary practices”; “keep paperwork to a minimum”; “avoid delays in deliveries”; “maximize the quality”; “maximize the time the gear is fishing”; “limit turn-around time”; avoid having to “segregate their catch into at least six bins or holds”; or “have the dock worker . . . issue . . . one detailed fish ticket having multiple statistical areas”⁴³

In fact, the hearing officer offered to subpoena processors and their employees to determine what, in fact, may have taken place with respect to the catches reported on this record.⁴⁴ The applicants and their attorney never responded to this offer.

⁴¹ Petition at 11 & 12.

⁴² *Id.* at 1 & 2.

⁴³ In fact, as we note below, fish tickets were designed for this option. Exhibits 34 & 35.

⁴⁴ Transcript at 11.

Contrary to the Petition's claim, we have rarely seen compliance with the law give way to convenience – especially among individuals facing the risk of strict liability under AS 16.05.722.

Additionally, the Petition's parade of alleged impracticalities fails to consider the option of reporting reasonable estimates of the Prince William Sound portion of a delivery.⁴⁵ A reasonable estimate would not have been an overwhelming burden and would have avoided the failure to report the alleged Prince William Sound catch and consequent risk of overfishing.

Finally, the information appearing on the face of the fish tickets in the record is the result of conversations between the applicants and the individuals representing the processors who filled out the tickets.⁴⁶ If, in fact, the applicants told their processors that part of their delivery came from Prince William Sound and part from outside federal waters, that would reflect catch from two geographically separate fisheries, each under separate management, and each with a separate guideline harvest level. If only a copy of a single fish ticket reporting only a single statistical area were returned to the applicants, that should have prompted a reasonable enquiry by the applicants. *See Arkanakyak*,⁴⁷

2. **The Applicants' Testimony With Respect to Their Fish Tickets is Unpersuasive**

The testimony and evidence herein fail to excuse the complete lack of Prince William Sound fish tickets.

⁴⁵ Fish ticket forms provide this option in their upper right hand corner. Exhibits 34 & 35.

⁴⁶ Transcript at 33-34.

⁴⁷ CFEC 75-488 (January 6, 1982 Comm. Dec. on Remand at 13).

The failure of the applicants to produce sufficient evidence to meet their burden of proving a legal catch in fact occurred in Prince William Sound is not the fault of the hearing officer, who, at the first hearing, offered,⁴⁸ as follows:

HEARING OFFICER: Right. Okay. Give me the names of the people at these canneries and their addresses and I will send them a subpoena.

Similarly, CFEC retrieved the applicants' actual fish tickets from Alaska State Archives, entered them into the record, and shared them with the applicants. The fish tickets failed to report any landings within Prince William Sound during the four qualifying years (1991 – 1994). The fish tickets uniformly recorded landings in outside federal waters. In the face of this obstacle, the hearing officer repeatedly requested the applicants and their attorney to review each of the fish tickets and to develop an affidavit identifying the particular fish tickets they claimed represented catch that the applicants alleged was from within Prince William Sound.⁴⁹

The hearing officer thus called for potentially useful exercises relevant to the lack of any documented catch. However, the applicants and their attorney never responded to these opportunities.

The resulting record (which we discuss below) is marked by the applicants' testimony conveying a lack of detail and poor recollection.

⁴⁸ Transcript at 11.

⁴⁹ Transcript at 48-52.

While the hearing officer did a very thorough job of assembling the record and the facts in this case, we do wish to reject some of his statements and to emphasize that these statements will play no part in our reasoning to reach a decision. For example, we reject the hearing officer's statement⁵⁰ as follows:

The Kuzmins testified that they fished in state waters for sablefish because it was easier than fishing in federal waters and that they only went into federal waters after Prince William Sound closed. That testimony is demonstrably false.

Our major problem with the statement is that it makes a wholly unnecessary affirmative finding ("demonstrably false").⁵¹ The hearing officer's overbroad conclusion is also very awkward as applied to the two stated propositions: (1) where it was "easier" to fish and (2) when the applicants left Prince William Sound for federal waters.

From the applicants' testimony, we are persuaded that there were times when the weather made fishing in outside federal waters more difficult than fishing in Prince William Sound.⁵² Therefore, we reject the hearing officer's categorical conclusion that such a statement is "demonstrably false."

With respect to the second claim (that the applicants only went into federal waters after Prince William Sound closed), while we reject the hearing officer's statement, we find the applicants failed to meet their burden of proof. Our conclusion is based in part on the applicants' limited recollection and ambiguous testimony. For example, we highlight⁵³ the following:

⁵⁰ H.O. Dec. at 20.

⁵¹ See *Kalmakoff*, 693 P.2d at 849.

⁵² Transcript at 33.

⁵³ Transcript at 27, 45, 46, & 48.

ATTORNEY HOUGH: Right. So do you remember what you would do as far as fishing salmon, blackcod and halibut?

FEDOR KUZMIN: I don't remember exactly, but I was fishing blackcod and salmon, but I don't remember what I was doing – which first – which after.

* * *

HEARING OFFICER: Eros, do you have any recollection of what happened in '93 and '94 ...

EROS KUZMIN: No.

* * *

HEARING OFFICER: Was there ever an instance – was there ever an occasion where you caught only Prince William Sound fish and sold only Prince William Sound fish?

FEDOR KUZMIN: I don't remember. Shhhhhhh... I mean this is lots of years, I don't remember what I did.

* * *

HEARING OFFICER: Okay. Do you – do you believe that there are any of these fish tickets that we have here for '91, '92, '93 and '94 for you and Eros Are there any here that show only federal caught sablefish?

FEDOR KUZMIN: I don't remember.

HEARING OFFICER: Okay.

FEDOR KUZMIN: I don't remember about the fish tickets.

And outside federal waters appear to have afforded better fishing. From the father's following testimony,⁵⁴ we understand that catch rates were generally higher in federal waters outside of Prince William Sound:

ATTORNEY HOUGH: . . . So, why – why would you have, you know, fish in the state waters, go fish in federal waters, then go deliver it in Seward?

FEDOR KUZMIN: Because it's too long to go to Seward to deliver not much fish

The father is not the only applicant to observe better sablefish fishing in federal waters outside of Prince William Sound.⁵⁵ And the Petition reinforces this point,⁵⁶ as follows:

If he could set gear or retrieve gear in blackcod areas in the open, Gulf side because of weather, he would go to the area toward Middleton Island, the location at which he obviously did best

In any event, we reject the hearing officer's affirmative finding that the applicants' statements about when they chose to fish in Prince William Sound or in outside waters were "demonstrably false."⁵⁷ Therefore, the statement plays no part in our reasoning to reach this decision.

We also reject the hearing officer's statement⁵⁸ as follows:

They also testified that Prince William Sound was only open only 36-48 hours at a time. That, too, is demonstrably false.

⁵⁴ Transcript at 38.

⁵⁵ See *Frary*, CFEC 98-011-A (12/31/2003 H.O. Dec. at 6).

⁵⁶ Petition at 6.

⁵⁷ H.O. Dec. at 20.

⁵⁸ *Id.* at 21.

Again, we do not agree with the hearing officer's affirmative finding that the testimony is "demonstrably false." The father's testimony is ambiguous at best, and he fails to specify which years he is discussing even though the openings varied from year-to-year.⁵⁹ As we noted above, fishing in federal waters was desirable when the weather permitted.

In any event, we can limit our discussion, because the Petition has not challenged this statement by the hearing officer.

Additionally, we reject the hearing officer's statement of the inference to be drawn from the lengths of the applicants' fishing trips,⁶⁰ as follows:

All of those trips were suspiciously short. It's unlikely that any trip shorter than five days included fish caught in Prince William Sound.

In reaching his conclusion, the hearing officer has failed to state all of his assumptions (nothing about travel times or lengths of sets, for example). We cannot follow his reasoning, and we do not comprehend why only Prince William Sound would be implicated in his analysis.

3. Fish Tickets Fail to Support Landings in Prince William Sound

a. The Applicants Have Failed to Prove Their Rockfish Bycatch Theory

⁵⁹ Transcript at 32-33.

⁶⁰ H.O. Dec. at 21.

The hearing officer⁶¹ and the Petition⁶² focus on the father's May 20, 1993 delivery.⁶³

The Petition asserts that the fish ticket reports a catch of "at least five rockfish species found in Prince William Sound Inside waters and not found in outside waters." The Petition further asserts that the "deliveries were made to the delivery station closest to the traditional blackcod fishing areas of Prince William Sound."⁶⁴

In fact, the fish ticket reports a delivery in Seward of only four species of rockfish, three of which are slope rockfish (rougheye, shortraker and redbanded) plus four pounds of demersal shelf rockfish (yelloweye).⁶⁵

The only related evidence in the record is the father's testimony which acknowledges rockfish are caught in federal waters,⁶⁶ as follows:

ATTORNEY HOUGH: That fish ticket has a statistical area of 475900 which is what I am point to. Could those rougheye [rockfish] be caught out at 475900?

FEDOR KUZMIN: No. There – I used to fish for blackcod where there were just a few rough fish.

And the father further testified that he delivered sablefish to Seward after he fished federal waters.⁶⁷

⁶¹ H.O. Dec. at 22.

⁶² Petition at 5.

⁶³ Exhibit 34 (p. 1, fish ticket 299898).

⁶⁴ Petition at 5.

⁶⁵ Exhibit 34 (p.1).

⁶⁶ Transcript at 37.

⁶⁷ Transcript at 38.

The father's testimony cannot support an argument that rockfish are not caught in federal waters and are only caught inside Prince William Sound. In any event, a claim that rockfish may not have been caught in the particular federal statistical area identified on the fish ticket does not support an inference that they must, therefore, have been caught within Prince William Sound.

We also are not persuaded that a delivery in Seward raises an inference that fish were landed within Prince William Sound.⁶⁸ The father's testimony is that he ran from federal waters to deliver in Seward and that fishing in federal waters helped to ensure that they caught sufficient fish to warrant the run.⁶⁹

Also contrary to the theory that a delivery in Seward signifies a Prince William Sound catch are the facts that, in 1993, three deliveries to Seward were made when Prince William Sound was closed.⁷⁰

Similarly, in 1994, all four tickets show catches (landings), when Prince William Sound was closed, and the two May 30th tickets show delivery to Seward.⁷¹

At the same time we note the father's testimony, as elicited by his attorney, can be confusing. For example,⁷² as follows:

⁶⁸ Although without support in the record, the Petition twice asserts that the applicants could obtain better prices by delivering in Seward. Petition at 4 & 8.

⁶⁹ Transcript 38.

⁷⁰ Exhibit 34 (pps. 3-5)

⁷¹ Exhibit 35 (pps. 1-4).

⁷² Transcript at 51.

FEDOR KUZMIN: I don't understand much.

ATTORNEY HOUGH: ... you know, if you delivered in Cordova, you know it's not, you know, state water fish, maybe, I don't know ...

FEDOR KUZMIN: Right.

b. **The Applicants' Concession Clarifies Their Participation in Federal Waters**

The Petition and testimony concede that a landing when the Prince William Sound fishery was closed would constitute a landing in federal waters. In the following exchange, the parties are examining one of the two May 30th, 1994 fish tickets⁷³ to consider how one can review the fish tickets reporting federal catch to determine which ones – if any – may have included fish that the applicants claimed they caught in Prince William Sound,⁷⁴ as follows:

ATTORNEY HOUGH: The first day is May 30th for blackcod.

FEDOR KUZMIN: Okay.

ATTORNEY HOUGH: We know it wasn't open in state waters.

FEDOR KUZMIN: Oh, I see.

ATTORNEY HOUGH: We're going to say, no that's federal. And there is others

⁷³ Exhibit 35 (pps. 3 & 4), showing fish tickets 297548 & 297547, which on their face show the date sablefish were caught (landed) to have been after the Prince William Sound fishery closed.

⁷⁴ Transcript at 51.

As the Petition⁷⁵ states:

not all deliveries included black cod from Prince William Sound, and some deliveries were at times precluding legal fishing in Prince William Sound.

This distinction prompts our reexamination of fish tickets landing sablefish for 1993 and 1994 showing federal waters catch at times when Prince William Sound was closed for sablefish.

For 1993, the federal waters catch reflected in tickets in 299890, 299874, and 299875,⁷⁶ all show rougheye catch. In fact, the first two show a relatively substantial catch of rougheye (867 and 913 pounds, respectively).

For 1994, the federal waters catch reported on ticket 297820 shows landings of rougheye and thornyhead rockfish as well as red snapper.⁷⁷ Two additional fish tickets, (297548 & 297547) reporting federal waters catch and dated May 30, 1994,⁷⁸ each show a catch of three species of rockfish (yelloweye, redbanded and shortraker) that looks very much like the distribution of catch in fish ticket 299898.⁷⁹ We note that the applicants' attorney relied upon fish ticket 299898 as the major premise for his argument – contrary to the face of the ticket – that the catch really took place within Prince William Sound and not federal waters as reported by the ticket.

⁷⁵ Petition at 6.

⁷⁶ Exhibit 34 (pps. 3-5).

⁷⁷ Exhibit 35 (p.1). Red snapper is a generic term, but in Alaska it normally refers to yelloweye rockfish, a demersal shelf rockfish.

⁷⁸ Exhibit 35 (pps. 3 & 4). One of these tickets was the subject of the exchange between the father and his attorney that conceded this was a federal waters catch. Transcript at 51.

⁷⁹ Exhibit 34 (p. 1).

We are not persuaded by the theory put forth by the applicant's attorney that a bycatch of rockfish in the sablefish fishery warrants assigning the catch to state waters in Prince William Sound. On this record, the applicants have not met their burden of proof.

c. Disavowal of Two More Hearing Officer Statements

In an alternative approach to explain why a 1993 fish ticket did not imply a catch within Prince William Sound, the hearing officer stated,⁸⁰ as follows (with emphasis in the original):

First, the trip began on May 15, two days before the fishery opened, and the delivery took place seven days later although the fishery had been open only four days (May 17-20). Obviously, he started in federal waters. Since he started there, he probably stayed there. Next, it's significant that all but one of his other fish tickets that show sales of rockfish followed short trips, suggesting that they took place entirely within federal waters

We disavow these statements, and we do not rely upon these statements in reaching our decision. We do not follow this part of the hearing officer's analysis as he appears to be making assumptions that we do not share.

Secondly, we note that the hearing officer correctly identified the boundaries of Prince William Sound.⁸¹ However, we disagree with the hearing officer's statement that the applicants and their affiants misunderstood the boundaries of Prince William Sound.⁸² We do not believe the evidence in the record supports the hearing officer's statement, and we disavow the statement.

⁸⁰ H.O. Dec. at 22 (examining 5/22/1993 fish ticket 299800, Exh. 34 at p.2).

⁸¹ H.O. Dec. at 23.

⁸² *Id.* at 23 & 24.

d. **Qualification of the Hearing Officer's Statement
Concerning IFQs**

We do not accept the hearing officer's statement concerning IFQ's,⁸³ as follows:

The possibility exists, of course, that the Kuzmins actually had landings in the fishery but reported them all as being in federal waters in the hope that they could obtain IFQ based on inflated figures.

We specifically disavow this speculative statement with respect to the motivation or the intent of the applicants, and, in its place, we would note that the qualifying years for federal sablefish IFQ (Individual Fishermen's Quota) were in 1988, 1989, and 1990.⁸⁴ The father applied for federal IFQ in March of 1994.⁸⁵ In March of 1995, the National Marine Fisheries Service (NMFS) denied the father's application, because he had no vessel with sablefish landings in the federal fishery during the qualifying years. NMFS allowed the father until May 19, 1995, to appeal from the denial.⁸⁶

We do not know if the father pursued an appeal, but he did testify about his IFQ application,⁸⁷ as follows (with emphasis added):

ATTORNEY HOUGH: How come you didn't get IFQ's?

FEDOR KUZMIN: Huh – good question. They didn't give me any.

ATTORNEY HOUGH: Well, you applied on time, right?

⁸³ H.O. Dec. at 24.

⁸⁴ Exhibit 18 (p.1).

⁸⁵ Exhibit 15 (p.1).

⁸⁶ Exhibit 18.

⁸⁷ Transcript at 41.

FEDOR KUZMIN: -- It looked like we had been late the years they took – federal waters. **We went for federal waters fishing later than they took the years.**

HEARING OFFICER: Well IFQ's were based on the years 1988, 89 and 90 I guess, weren't they?

FEDOR KUZMIN: Well probably. I don't remember exactly what years, but we were already late. **One year we had been late.**

Due to the overlapping of the federal sablefish IFQ program and the state limitation of Prince William Sound sablefish, it is possible that an applicant could have had a misguided (in view of the different qualifying years) incentive to develop a federal waters fishing history. The CFEC made its initial decision to initiate limited entry for the Prince William Sound sablefish fixed gear fishery by adopting a maximum number of entry permits for the fishery in 1995.⁸⁸ The CFEC did not adopt a point system for the fishery until 1997.⁸⁹ Therefore, participants in the Prince William Sound fixed gear sablefish fishery during the years 1991 through 1994 would not have known at the time that these four years would become the qualifying years for the state limitation.

But in this case, the applicants have failed to meet their burden of proving a landing in fact within Prince William Sound during the qualifying years. Therefore, we do not need to enquire about their respective states of mind regarding fishing history in federal waters.

⁸⁸ See 20 AAC 05.320(e)(3)[Effective 11/6/2005, Register 176]; 20 AAC 05.778[Effective 12/15/1995, Register 136].

⁸⁹ See 20 AAC 05.782 [Effective 7/26/1997, Register 143].

V. **SUMMARY OF THE APPLICANTS' FAILURE TO PROVE
THEIR CLAIMS**

A. **Despite Support from the Alaska Department of Fish & Game and the
Commission, the Applicants Failed to Meet their Burden of Proving
that they Legally Harvested Sablefish in Prince William Sound
During 1991 – 1994**

Although the applicants reconstructed their fishing history with the help of ADF&G and the original fish tickets retrieved from State Archives by the CFEC, their testimony is marked by lack of detail and poor recollection.

The hearing officer attempted to help the applicants build the record by retrieving their actual fish tickets and by inviting them to name employees of their processors to which they sold their fish so that the hearing officer could subpoena testimony from those individuals.⁹⁰ The applicants and their attorney never responded to this offer.

Additionally, the hearing officer requested the applicants and their attorney to review the fish tickets provided by the CFEC and identify those tickets (all of which on their face report only catch in federal waters outside of Prince William Sound) that they claimed included landings in fact within Prince William Sound.⁹¹ The applicants and their attorney never responded to this request.

Under 20 AAC 05.778(a), the applicants could have established their eligibility to apply for a Prince William Sound sablefish fixed gear permit by proving their participation in any one of years 1991 through 1994. The following subsections will summarize the applicants' failure to prove their claims by year.

⁹⁰ Transcript at 11.

⁹¹ Transcript at 48-52.

B. The Applicants Failed to Prove Their 1994 Claims

The applicants introduced three affidavits to corroborate their claims to have fished in Prince William Sound in 1994. Anton Reutov and his son Ivan Reutov stated in their affidavits that they were “in the same catcher group” as the applicants and saw the applicants harvest fish within Prince William Sound during 1994.⁹² Additionally, Foka Kuznetsov stated that he crewed for Eros Kuzmin on the *Combine* during 1994 (and 1993), and they harvested fish from within Prince William Sound.⁹³

The three affidavits are executed on the same date, follow the same form, appear to have been written by the same individual,⁹⁴ and uniformly lack detail. The applicants failed to call their affiants as witnesses thereby depriving the CFEC of an opportunity to cross examine them as to (among other things) their ability to observe, their interest (if any) in the outcome of the proceeding (as a crewmember or member of the same catcher group), and whether their observations occurred when the Prince William Sound sablefish season was open.

We should also note that the Petition (without evidentiary support) asserts that the son fished and made deliveries separate from his father’s fishing activities.⁹⁵ If these claims are true, they cast doubt on Foka Kuznetsov’s opportunity (as the son’s crewman) to have fully observed the father’s fishing activity.

Finally, we note that the affidavits reflect the same lack of detail found in the applicants’ testimony. Consequently, we assign very little weight to the affidavits.

⁹² Exhibits 10 & 11.

⁹³ Exhibit 29.

⁹⁴ See Transcript at 2, 4-5, 8-9. The affidavits appear to have been written by Steve Callison, the applicants’ first attorney.

⁹⁵ Petition at 2.

Even if the CFEC were to assign greater weight to the affidavits, they would not improve the applicants' claims to credit for 1994 participation in Prince William Sound. All recorded landings attributed to the applicants during 1994 are reported as taking place in federal waters outside of Prince William Sound, and, as conceded, all of the reported landing dates were at times when Prince William Sound was closed to fishing sablefish. Additionally, although the hearing officer made the same finding the commissioners made,⁹⁶ the Petition did not challenge the finding (that the applicants failed to prove a single 1994 landing in Prince William Sound) and, thereby, conceded the absence of landings within Prince William Sound during 1994.

Additionally, the applicants⁹⁷ and their attorney conceded that their 1994 landings did not come from Prince William Sound.⁹⁸ The dates of the landings are evidence that the landings did not take place within Prince William Sound (or, if they did, that they were at times when Prince William Sound was closed for sablefish, and, therefore, illegal).

Therefore, under 20 AAC 05.778(a), 20 AAC 05.782, and 20 AAC 05.786(3), even if the claimed landings in fact occurred within Prince William Sound during 1994, they could not be credited toward the applicants' claims for that year.

C. The Applicants Failed to Prove Their 1993 Claims

Concerning 1993, the applicants have offered only Foka Kuznetsov's affidavit to corroborate their claims. Again, for the reasons stated above, we assign little weight to the affidavit. In any event, for 1993 the son failed to prove that he registered his vessel the *Combine* for sablefish fishing within Prince William Sound, or that he obtained the requisite ADF&G permit for the fishery.⁹⁹ The applicant's failure to register and to

⁹⁶ H.O. Dec at 12, 14 & 20.

⁹⁷ We note that the son adopted the testimony of his father. Transcript at 49.

⁹⁸ Transcript at 51 & Petition at 6.

⁹⁹ H.O. Dec. at 5, 11, & 23.

obtain the vessel permit, under 20 AAC 05.778(a), 20 AAC 05.782, and 20 AAC 05.786(3), renders any fishing he did illegal and not entitled to credit toward a limited entry permit.

Although the father did register his vessel in 1993, this fact fails to improve his claim to credit for 1993. The father failed to introduce a single fish ticket reporting a Prince William Sound catch for 1993. An unreported catch would be illegal and would not support credit toward a limited entry permit.

Additionally, under 20 AAC 05.782, even if the father were to prevail on his claim to have participated lawfully within Prince William Sound during 1993, a successful claim would yield only five points. For some time now, the CFEC has denied all applications in this fishery which have proven only five points toward their entry permits.¹⁰⁰ Given our denial of all of the father's other claims, his 1993 claim becomes moot.

D. The Applicants Failed to Prove Their Claims for 1991 and 1992

With respect to 1991 and 1992, the applicants have introduced no affidavits or other evidence to corroborate their testimony. Because the applicants failed to produce any fish tickets to demonstrate their sale of sablefish caught within the Prince William Sound fishery, they face the burden of overcoming the negative inference that no sale, in fact, occurred.¹⁰¹ We have weighed the applicants' testimony as evidence, but, in light of the hearing officer's sound conclusion that the applicants lacked credibility,¹⁰² we do not believe their testimony is sufficient alone to meet their burden of proof.¹⁰³ Additionally,

¹⁰⁰ Limited Fisheries Status Report: http://www.cfec.state.ak.us/mnu_Limitations.htm

¹⁰¹ *May*, 175 P.3d at 1222.

¹⁰² H.O. Dec. at 24. There is sufficient evidence in the record to support the hearing officer's credibility assessment without any reliance on the hearing officer's statement that the applicants were confused about the boundaries of the Prince William Sound fishery, which statement we rejected above.

¹⁰³ *May*, 175 P.3d at 1222.

because of their interest in the outcome of this proceeding, CFEC is entitled to be skeptical of their testimony.¹⁰⁴

Finally, we conclude the applicants have not carried their burden of proving their factual claims.

VI. CONCLUSION

We have disavowed certain statements of the hearing officer and do not rely on those statements in reaching our conclusion. None of the statements we reject were necessary to reach the hearing officer's overall conclusion that the applicants failed to meet their burden of proof. We adopt the hearing officer's overall conclusion that the applicants have failed to meet their burden of proof, but we adopt only those portions of the hearing officer's decision consistent with this opinion. To be clearly understood, this decision should be read together with that of the hearing officer.

We conclude the applicants failed to prove that they legally harvested sablefish while participating in the Prince William Sound sablefish fishery as holders of interim-use permits issued under AS 16.43.210 during at least one of the qualifying years from 1991 – 1994, as required under 20 AAC 05.778 to be eligible to apply for an entry permit. Even if there had been a landing in fact, it could not have been credited toward a limited entry permit for one or more of the following reasons: (1) the applicants failed to prove they reported a single Prince William Sound landing on a fish ticket; (2) the applicants failed to prove they had a landing when the Prince William Sound fishery was

¹⁰⁴ *State, CFEC v. Baxter*, 806 P.2d 1373, 1375 (Alaska 1991).

open; or (3) with respect to the son's 1993 fishing, he failed to prove that he registered his vessel for the fishery or that he obtained the requisite ADF&G permit for the fishery.¹⁰⁵

For the above-stated reasons, the applicants have failed to establish their eligibility to apply for a Prince William Sound sablefish fixed gear limited entry permit, and they have failed to meet their burden of proving any of their point claims toward an entry permit. Therefore, we finally deny these two applications.¹⁰⁶

DATED at Juneau this 19th day of September, 2013.

By Direction of the

COMMERCIAL FISHERIES ENTRY COMMISSION

A handwritten signature in black ink, appearing to be "Benjamin Brown", written over a horizontal line.

Benjamin Brown, Commissioner
Bruce Twomley, Chairman

¹⁰⁵ The applicants have failed to prove their factual claims. A reviewing court will apply the substantial evidence test to questions of fact. *Kuzmin v. CFEC*, 223 P.3d 86, 89 (Alaska 2009) [citing, amidst other authority, *Kuzmin v. State, Commercial Fisheries Entry Comm'n*, No. S-10947, 2004 WL 595608 at *4 (Alaska, March 24, 2004)].

¹⁰⁶ Attachment B addresses the time required for the CFEC to reach this decision.