

**HB**

**112**

<TARGET><BILL>HB 112</BILL><SUBJECT>HB  
112</SUBJECT><COMM>HFSH29</COMM></TARGET>

# Alaska State Legislature

## Chair

Fisheries Committee

## Member

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



## REPRESENTATIVE LOUISE STUTES

District 32

Kodiak-Cordova-Yakutat

E-Mail: [Rep.Louise.Stutes@akleg.gov](mailto:Rep.Louise.Stutes@akleg.gov)

## Session:

Alaska State Capitol, #416  
Juneau, AK 99801

Phone: (907) 465-2487

Fax: (907) 465-4956

Free: (800) 865-2487

## Interim:

305 Center Avenue, Suite 1  
Kodiak, AK 99615

Phone: (907) 486-8872

Fax: (907) 486-5264

## HB 112 Sponsor Statement

House Bill 112 bill repeals the Alaska Commercial Fisheries Entry Commission (CFEC), assigns the commission's adjudicatory functions to the Office of Administrative Hearings, and transfers the commission's other duties to the Department of Fish and Game (DFG).

In 1973, the Alaska Legislature enacted the Limited Entry Act (AS 16.43) creating the first comprehensive limited entry program in the country. The Act created the CFEC as a regulatory body and quasi-judicial agency to implement and administer the program. Since its inception the CFEC has limited entry to 68 fisheries, considered nearly 23,000 applications and annually issues over 29,000 fishing permits and vessel licenses. Currently there are 28 license applications remaining and few fisheries are being monitored for limited entry.

HB112 offers a significant cost savings to the state. In addition to deleting the three commissioner positions; DFG can find efficiencies in the Research, Licensing and IT functions at the CFEC. Any additional revenue from permit fees would go to the Division of Commercial Fisheries to benefit the resource and the fishermen who depend on it. Additionally, administering limited entry permits under the DFG umbrella would streamline the permitting and licensing process for fishermen. Adjudications currently handled by the commissioners would be handled by the Office of Administrative Hearings; an independent office that manages a multitude of hearings for other state agencies.

In times of limited budgetary resources we need to look hard at making cuts to keep vital state services in place and I feel the bill will accomplish exactly that.

This bill would become effective 90 days after is signed into law by the Governor.

# Alaska State Legislature

## Chair

Fisheries Committee

## Member

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



## REPRESENTATIVE LOUISE STUTES

District 32

**Kodiak-Cordova-Yakutat**

E-Mail: [Rep.Louise.Stutes@akleg.gov](mailto:Rep.Louise.Stutes@akleg.gov)

## Session:

Alaska State Capitol, #416  
Juneau, AK 99801

Phone: (907) 465-2487

Fax: (907) 465-4956

Free: (800) 865-2487

## Interim:

305 Center Avenue, Suite 1

Kodiak, AK 99615

Phone: (907) 486-8872

Fax: (907) 486-5264

HB 112 enacts a change in statutes repealing references to the Commercial Fisheries Entry Commission and establishing a Commercial Fisheries Entry Division in the Department of Fish and Game. The majority of the sections in HB 112 enact conforming amendments replacing references to Commercial Fisheries Entry Commission with Commercial Fisheries Entry Division. The sectional below lists the topic of the section in which the conforming amendment occurs.

Please note that a sectional analysis of a bill or resolution should not be considered an authoritative interpretation of the measure itself. The legislation is the best statement of its contents.

Section 1 — Powers and Duties of the Commissioner of the Alaska Department of Fish and Game

Section 2 — Process to petition the Board of Fisheries to establish a moratorium on new entrants into a commercial fishery

Section 3 — Vessel license statute

Section 4 — Social Security number to child services agency

Section 5 — Vessel number plate

Section 6 — Issuance of permanent vessel number plate

Section 7 — Prohibition on landing or delivering fish in state without landing permit

Section 8 — Issuance of landing permits

Section 9 — Confidentiality of records

Sections 10, 11, 12 - Loans for purchase of Alaska limited entry permits

Section 13 — Limited entry permit loan default and foreclosure

Section 14 — Transfer of entry permit after foreclosure

Section 15 — Sale of a foreclosed permit

Section 16 — Commercial Fishing Loan Act definitions section modification

Section 17 — Salmon Fishery Associations

Section 18 — Establishes the Commercial Fisheries Entry Division

Section 19 — Powers and Duties of the Commercial Fisheries Entry Division

Section 20 — Regulations and hearing procedures

Section 21 - Application of Administrative Procedure Act

Sections 22, 23 — Requirement for entry permit

Section 24— Failure to renew an entry permit

Section 25 — Death of a permit holder

Section 26 — Voluntary relinquishment of a permit

Section 27, 28, 29 — Annual fee for entry permit

Sections 30, 31, 32, 33 — Transferability of permits

Section 34 — Emergency permit transfers

Section 35 — Administrative areas

Sections 36, 37, 38, 39— Interim use permits

Section 40 — Moratorium on new entrants into certain fisheries

Section 41 — Moratorium in Southeast Alaska Dungeness crab fishery

Sections 42 — Moratorium on late entry

Sections 43, 44— Designation of distressed fisheries

Sections 45, 46— Determination of the maximum number of entry permits for initial issue

Section 47 —Standards for initial issuance of entry permits

Sections 48, 49, 50, 51, 52 — Application for initial issuance of entry permits

Sections 53, 54 — Initial issuance of entry permits

Section 55 — Optimum number of entry permits

Section 56—Revision of optimum number of entry permits

Section 57— Establishment of buy-back funds and permit buy-back assessments

Section 58—Administration of buy-back program

Sections 59, 60 — Issuance of new entry permits; appropriations related to fleet reduction

Sections 61, 62 — Educational entry permit

Sections 63, 64 — Terms and conditions of education entry permit

Section 65 — Accounting of harvest

Section 66 — Adoption of regulations

Sections 67, 68 — Terms and Conditions of special harvest area entry permits

Section 69 — Adoption of regulations

Sections 70, 71, 72 — Demerit point system for commercial salmon fishery violations

Sections 73, 74 — Assessment of demerit points

Sections 75, 76, 77 — Permit suspensions

Section 78 — Notice and appeal

Section 79 — Required notice to department

Section 80 — Hearings in proximity to Board of Fisheries Meetings

Sections 81, 82, 83, 84, 85, 86, 87, 88 - Commission revocation or suspension of permits

Section 89, 90, 91, 92, 93 — Penalties

Sections 94, 95 – Permit transfers while under suspension

Sections 96, 97 -- Suspension and revocation of permits

Section 98—Public disclosure of certain documents prohibited

Section 99 — Annual report requirement

Sections 100, 101, 102 — Definitions

Section 99 — Child support lien against commercial fishing earnings

Sections 100, 101, 102 — Definitions

Section 103 — Liens on real and personal property

Section 104 — Interim use and entry permits for fisheries

Section 105 — Regulation of fisheries

Section 106 — Interim use and entry permits for dive fisheries

Section 107 — Election to approve and or terminate dive fishery management assessment

Section 108 — Interim use and entry permits for salmon fisheries

Section 109 — Election to approve and or terminate salmon fishery assessment

Section 110 — Permit buy-back assessment

Section 111 — Election to approve and or terminate seafood development tax

Section 112 — Commercial fishery entry division

Section 113 — Pledge of permit for security on loan with the Commercial Fishing and Agriculture Bank (CFAB)

Section 114 — Initial notice of default (CFAB)

Section 115 — Foreclosure (CFAB)

Section 116 — Cancellation of foreclosed entry permits (CFAB)

Section 117 — Buy-back of foreclosed entry permits (CFAB)

Section 118 — Sales of foreclosed entry permits (CFAB)

Section 119 — Definition of “division”

Section 120 — Repeal of Commercial Fisheries Entry Commission statutes and references: Definition section of Commercial Fishing Loan Act - 16.10.360(1), enabling statute of Commercial Fisheries Entry Commission — 16.43.02, Commission term of office, vacancy and removal — 16.43.030, Commission quorum — 16.43 .040, Commission qualifications — 16.43 .050, Commission compensation — 16.43.060, Commission legal counsel — 16.43.070, Commission Employment of personnel — 16.43 .080, a portion of the Southeast Alaska dive fisheries statute is deleted as it is no longer valid statute — 16.43 .228(e), The Commercial Fisheries Entry Commission is removed from the exempt service statute 39.25.110(1 1)(D), removes the Commercial Fisheries Entry commission from the public official financial disclosure law 39.50.200(b)(10)

Section 121 — Transition language

Section 122 — Employees

Section 123, 124, 125, 126, 127 — Effective dates

## Explanation of Changes HB 112, Version A to Version W

Page 11, line 22:

Delete "and quasi-judicial"

Page 13, line 18:

Delete "hearing procedures"

Insert "hearings"

Page 13, lines 21 -24:

Delete all material and insert:

"(b) An administrative hearing on a contested case under this chapter shall be conducted by the office of administrative hearings (AS 44 .64.010). Notwithstanding AS 44.64.060(e), the office of administrative hearings shall render the final administrative decision."

Page 13, line 25, through page 14, line 7:

Delete all material.

Reletter the following subsection accordingly.

Page 14, lines 12- 17:

Delete all material and insert:

"administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) [DO NOT] apply to administrative hearings on contested cases conducted by [ADJUDICATORY PROCEEDINGS OF] the office of administrative hearings (AS 44.64.010) held under this chapter. Final [COMMISSION EXCEPT THAT FINAL] administrative determinations by the office of administrative hearings [COMMISSION] are subject to judicial review as provided in AS 44.62 .560 - 44.62.570."

Page 32, lines 26 - 27:

Delete "regulations adopted by the department [COMMISSION] under 8 AS 16.43.110."

Insert "AS 16.43.110(b) [REGULATIONS ADOPTED BY THE COMMISSION UNDER AS 16.43.110]."

Page 34, line 7:

Delete "department"

Insert "office of administrative hearings"

Page 34, line 16:

Delete "department"

Insert "office of administrative hearings"

Page 34, line 24:

Delete "department"

Insert "office of administrative hearings"

Page 34, lines 27 - 30:

Delete "The show cause hearing shall be [CONDUCTED BEFORE A QUORUM OF COMMISSIONERS AND SHALL BE] presided over by a hearing officer appointed by the office of administrative hearings [COMMISSION] who shall rule on the presentation of evidence and other procedural matters."

Insert "The show cause hearing shall be conducted and a decision shall be issued [BEFORE A QUORUM OF COMMISSIONERS AND SHALL BE PRESIDED OVER BY A HEARING OFFICER APPOINTED] by the office of administrative hearings under AS 16.43.110(b) [COMMISSION WHO SHALL RULE ON THE PRESENTATION OF EVIDENCE AND OTHER PROCEDURAL MATIERS]."

Page 35, line 13:

Delete "department"

Insert "office of administrative hearings"

Page 42, following line 16:

Insert a new bill section to read:

Sec. 112. AS 44.62.330(a)(27) is amended to read:

(27) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.871 or commercial fisheries under AS 16.43;"

Renumber the following bill sections accordingly.

# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version: HB 112  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB112-DOA-OAH-03-13-15  
Title: REPEAL CFEC; TRANSFER FUNCTIONS TO  
ADFG  
Sponsor: STUTES  
Requester: House Fisheries

Department: Department of Administration  
Appropriation: Centralized Administrative Services  
Allocation: Office of Administrative Hearings  
OMB Component Number: 2771

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services	61.9		45.4	45.4	45.4	45.4	45.4	45.4
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>61.9</b>	<b>0.0</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>

**Fund Source (Operating Only)**

1007 I/A Rcpts	61.9		45.4	45.4	45.4	45.4	45.4
<b>Total</b>	<b>61.9</b>	<b>0.0</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>	<b>45.4</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Chris Kennedy, Deputy Chief Administrative Law Judge  
Division: Office of Administrative Hearings  
Approved By: Sheldon Fisher, Commissioner  
Agency: Department of Administration

Phone: (907)269-8170  
Date: 03/14/2015 09:30 AM  
Date: 03/14/2015

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

BILL NO. HB 112

### Analysis

This bill would abolish the Commercial Fisheries Entry Commission (CFEC), transferring most of its functions to a new commercial fisheries entry division in the Department of Fish and Game (ADFG). Under section 122 of the bill, CFEC employees, including adjudicatory staff, would become employees of the Department of Fish and Game upon the effective date of the act.

Section 20 of the bill provides that all adjudicatory proceedings under AS 16.43 shall be conducted by the Office of Administrative Hearings (OAH). In assessing the cost of conducting this work, OAH has made the following findings and assumptions:

(1) Section 121 of the bill provides that litigation and hearings pending at the time the act becomes effective "may be continued and completed." OAH understands that the continuing litigation and hearings pending would be completed under the jurisdiction of OAH and ADFG.

(2) Based on discussions with CFEC, OAH understands that hearings have already been completed in all 28 of the commission's pending initial permit cases; that proposed decisions have already been written by the CFEC hearing officer in 22 of the 28, and that the hearing officer will draft the remaining six decisions prior to the earliest anticipated effective date of the transfer. In preparing this fiscal note, OAH has assumed that these initial permit cases would be fully resolved by CFEC prior to transfer, or, if not, that final decisionmaking authority over any remaining cases would reside within ADFG and that any further assistance to the final decisionmaker would be furnished by ADFG personnel (potentially to include transferred personnel) or by the Department of Law. If final decision authority regarding some or all of these 28 cases were instead transferred to OAH, the resources needed would be somewhat greater.

(3) OAH finds that the majority of the work done by the CFEC hearings staff is work of a nature that traditionally, in the context of other administrative proceedings in Alaska, is not regarded as adjudicatory. OAH has confirmed that ADFG would not seek to assign such work to OAH by regulation.

(4) OAH has confirmed that ADFG would, by regulation, adopt a traditional model for adjudication of contested appeals.

(5) CFEC has not limited a commercial fishery in ten years. OAH has verified that ADFG does not presently envision that it would limit a commercial fishery during the time horizon of this fiscal note. Were such a limitation to occur, it could significantly increase the adjudicatory workload.

Based on discussions with CFEC regarding appeal rates over the last two years, OAH projects that it would be necessary to adjudicate cases in approximately the following numbers per year: 5 temporary transfer cases, 5 permanent transfer cases, and 11 miscellaneous hearings (includes reinstatements, district boundary changes, fee refunds, merit/demerit matters, and enforcement hearings). OAH projects that this work would require 275 billable administrative law judge (ALJ) hours per year, together with approximately 100 hours of ALJ time for consultation, training, and setup in the first year. Costs have been projected above using OAH's approved cost allocation rate of \$165 per hour.

OAH is presently operating at or beyond capacity. The additional hearing load of this work alone would not support the creation of a new full-time administrative law judge position. In the absence of a new PCN, OAH will instead contract out hearing responsibilities to contractors as appropriate.

# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version: HB 112  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB112-DFG-CFED-03-15-15  
Title: REPEAL CFEC; TRANSFER FUNCTIONS TO  
ADFG  
Sponsor: STUTES  
Requester: House Special Committee on Fisheries

Department: Department of Fish and Game  
Appropriation: Commercial Fisheries  
Allocation: Commercial Fisheries Entry Commission  
OMB Component Number: 471

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>	<b>FY 2016</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
Personal Services	3,359.3		3,359.3	3,359.3	3,359.3	3,359.3	3,359.3
Travel	45.0		45.0	45.0	45.0	45.0	45.0
Services	650.9		650.9	650.9	650.9	650.9	650.9
Commodities	99.1		99.1	99.1	99.1	99.1	99.1
Capital Outlay	15.0		15.0	15.0	15.0	15.0	15.0
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>4,169.3</b>	<b>0.0</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>

**Fund Source (Operating Only)**

1005 GF/Prgm	4,169.3		4,169.3	4,169.3	4,169.3	4,169.3	4,169.3
<b>Total</b>	<b>4,169.3</b>	<b>0.0</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>	<b>4,169.3</b>

**Positions**

Full-time	25.0		25.0	25.0	25.0	25.0	25.0
Part-time	3.0		3.0	3.0	3.0	3.0	3.0
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 (separate supplemental appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 (separate capital appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/16

**Why this fiscal note differs from previous version:**

Initial fiscal note.
----------------------

Prepared By:	Carol A. Petraborg, Division Operations Manager	Phone:	(907)465-6077
Division:	Administrative Services Division	Date:	03/05/2015 08:00 AM
Approved By:	Sunny Haight, Administrative Services Director	Date:	03/15/15
Agency:	Fish and Game		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

BILL NO. HB 112

Analysis

House Bill 112 repeals the Alaska Commercial Fisheries Entry Commission (CFEC) and transfers its duties, responsibilities, and employees to a newly created Commercial Fisheries Entry Division established within the Department of Fish and Game (ADF&G).

While the general staffing structure remains unchanged by the bill, the three Commissioner positions that were created in AS16.43.020 are deleted. The division will maintain 25 full-time and 3 part-time positions.

This analysis assumes that with the elimination of the Commissioners, a new Division Director will be hired by the Commissioner of ADF&G. Initial appeals of transfers and other miscellaneous cases would continue to be handled by division staff. Subsequent appeals and other adjudicatory functions will transfer to the Office of Administrative Hearings (OAH) within the Department of Administration, requiring the Commercial Fisheries Entry Division to transfer funds via Reimbursable Services Agreement (RSA) to OAH. Based on CFEC's appeal rates over the last two years, OAH estimates an increased workload of approximately 375 billable hours in the first year at a rate of \$165 per hour, and 275 billable hours in subsequent years.

Positions Deleted

11-3008, Commissioner, CFEC - (\$209.0)  
11-3034, Commissioner, CFEC - (\$195.9)  
11-3035, Commissioner, CFEC - (~~\$209.0~~)  
(\$613.9)

Position Added

Division Director, Range 27/F - \$189.6

The total transfer outlined below is based on FY2016 Governor Amended budget, a reduction of \$613.9 for the deletion of three Commissioners, the addition of one Division Director at \$189.6, and a transfer of \$61.9 from Personal Services to Services for the adjudications RSA.

Total transfer by line item:

Personal Services	\$3,359.3
Travel	\$ 45.0
Services	\$ 650.9
Commodities	\$ 99.1
<u>Equipment</u>	<u>\$ 15.0</u>
<b>TOTAL</b>	<b>\$4,169.3</b>

Potential savings in operating costs will be determined as the functions between the two entities are reviewed and efficiencies identified.

In consultation with OMB and the Legislative Finance Division we have to match the House structure at this time and cannot change "commission" to "division" with an active allocation. This will be flagged in the Legislative Finance Division's review to modify if the legislature adopts the bill.

# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version: HB 112  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB112-DFG-CFEC-03-09-2015  
Title: REPEAL CFEC; TRANSFER FUNCTIONS TO  
ADFG  
Sponsor: STUTES  
Requester: House Special Committee on Fisheries

Department: Department of Fish and Game  
Appropriation: Commercial Fisheries Entry Commission  
Allocation: Temp Allocation for CFEC in its own Appropriation  
(HB12)  
OMB Component Number:

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>	<b>FY 2016</b>	<b>FY 2016</b>					
Personal Services	(3,845.5)	3,845.5					
Travel	(45.0)	45.0					
Services	(589.0)	589.0					
Commodities	(99.1)	99.1					
Capital Outlay	(15.0)	15.0					
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>(4,593.6)</b>	<b>4,593.6</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

1002 Fed Rcpts	(114.4)	114.4					
1005 GF/Prgm	(4,479.2)	4,479.2					
<b>Total</b>	<b>(4,593.6)</b>	<b>4,593.6</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time	(28.0)	28.0					
Part-time	(3.0)	3.0					
Temporary							

<b>Change in Revenues</b>							
---------------------------	--	--	--	--	--	--	--

**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 (separate supplemental appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 (separate capital appropriation required)  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes  
If yes, by what date are the regulations to be adopted, amended or repealed? 07/01/16

**Why this fiscal note differs from previous version:**

Initial fiscal note

Prepared By:	Shirley A. Penrose, Operations Manager	Phone:	(907)790-6960
Division:	Commercial Fisheries Entry Commission	Date:	03/09/2015 08:00 AM
Approved By:	Benjamin E. Brown, Commissioner	Date:	03/09/15
Agency:	Commercial Fisheries Entry Commission		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

BILL NO. HB 112

**Analysis**

House Bill 112 repeals the Commercial Fisheries Entry Commission (CFEC).

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 3, 2015

**SUBJECT:** Transferring the duties of the Alaska Commercial Fisheries Entry Commission to a Division of the Department of Fish and Game (Work Order No. 28-LS0485\A)

**TO:** Representative Louise Stutes  
Attn: Reid Harris

**FROM:** Alpheus Bullard *AB*  
Legislative Counsel

This memorandum accompanies the bill described above. I have several comments.

The bill abolishes the Alaska Commercial Fisheries Entry Commission (commission), assigns the commission's adjudicatory functions to the Office of Administrative Hearings, and transfers the commission's other duties to the Department of Fish and Game (department). The commission was established in 1973. Much of the existing statutory framework for the commission has not been amended since that time. Accordingly, please review the provisions of the bill carefully to ensure that they are consistent with your intent.

### **Constitutional Issue - establishing a departmental division through legislation**

The Constitution of the State of Alaska was designed with a strong executive in mind. *Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976) at 3, n.3. The power provided to the executive by the Constitution of the State of Alaska includes the power to "make changes in the organization of the executive branch or in assignment of functions among its units which [the governor] considers necessary for efficient administration."<sup>1</sup> The executive

---

<sup>1</sup> Art. III, sec. 23 of the Constitution of the State of Alaska provides:

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

order power of the governor is discussed in the Alaska Constitutional Convention Proceedings (pages 2226 - 2229) and it appears clear that the delegates viewed it as providing the governor the power, as an administrative matter, to organize the functions of the executive branch, but not to enlarge, diminish, or otherwise alter those functions.

"The legislative power of the State is vested in a legislature. . . ." Art. II, sec. 1, Constitution of the State of Alaska. *Black's Law Dictionary* (8th ed. 2004) defines "legislative power" as the power of the legislature "to make laws and to alter them." *Id.* at p. 919. It's not clear to what degree this law making power permits the legislature to dictate the manner in which the department is structured. Art. III, sec. 23 is entitled "[r]eorganization." This suggests that organization of executive branch departments is a task for the executive branch subject to legislative disapproval. Such an understanding is supported by the section's provision that a change in the organization of the executive branch that requires the force of law takes effect if the legislature takes no action.

In *Bradner*, the Alaska Supreme Court recognized that implicit in the Alaska constitution is the doctrine of separation of powers. That doctrine, that one branch of government may not exercise the powers committed to another branch, is designed to avoid the "tyrannical aggrandizement of power by a single branch of government . . . ." *Bradner, supra*, at 5.<sup>2</sup> The doctrine limits the authority of each branch to interfere with the powers that have been delegated to the other branches. Determining whether an intrusion by one branch of government into the powers of another branch amounts to a violation of the doctrine in a specific situation can be difficult.

To determine whether the legislature has violated the separation of powers doctrine by statutorily establishing a commercial fisheries entry division within the department, a court would examine the nature of the power assigned to the division, whether the legislature is assigned such a power under the constitution, whether the constitution suggests that this power is to be shared by two branches, and whether the limits of any

---

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

Note that if the legislature were to merge the sport fish and commercial fisheries divisions, this provision permits the governor to again reorganize the department. If such a re-reorganization required changes to statute, the governor would have to make the change through an executive order. If the governor were to again separate the department's administrative duties relating to sport and commercial fisheries, the legislature would have to disapprove of the governor's reorganization to maintain a structure that merges these responsibilities in a single administrative unit of the department.

<sup>2</sup> See also *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947 (Alaska 1975).

express grant have been exceeded or there has been an encroachment on another branch. *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 35 (Alaska 2007), citing *Bradner*, 553 P.2d at 6 - 8.

The Constitution of the State of Alaska grants both the legislature and the executive broad power to organize administrative bodies.<sup>3</sup> Alaska courts have also recognized that the legislature has constitutional power to allocate executive department functions and duties among the different administrative bodies within state government.<sup>4</sup> However, while the legislature has the authority under art. III, sec. 22 of the constitution to allocate executive and administrative "functions, powers, and duties" between administrative bodies by law, that portion of this bill which establishes a new division within the department and transfers the commission's duties to that division may be interpreted by a court as addressing the internal organization of the department instead of allocating executive functions, powers, and duties among principal departments. The question is, to what degree is the determination of the organizational structure of the department a shared responsibility between the executive and legislative branches -- because the blending of governmental powers is permitted only to the extent granted by the constitution and will not be inferred in the absence of an express constitutional provision. *Bradner*, 553 P.2d at 7.

If this bill becomes law and is subsequently challenged, I don't know whether a court would find that the legislature overstepped its authority. While AS 16.05.090(c)<sup>5</sup> provides that a section of subsistence hunting and fishing be established in the

---

<sup>3</sup> Art. III, sec. 22 of the Constitution of the State of Alaska provides:

**Executive Branch.** All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

<sup>4</sup> See *Alaska Public Interest Research Group v. State*, 167 P.3d 27 (Alaska 2007), and *Capital Information Group v. State, Office of the Governor*, 923 P.2d 29, 40 (Alaska 1996).

<sup>5</sup> AS 16.05.090(a) provides:

(a) The commissioner may, with the approval of the governor, establish a departmental division of commercial fisheries, a departmental division of sport fisheries, a departmental division of game, and other departmental divisions as are necessary.

Representative Louise Stutes  
February 3, 2015  
Page 4

department, the constitutionality of any statutory directive relating to inter-departmental organization is not assured. What is certain, is that the executive branch has the constitutional authority to subsequently reorganize the department and reassign these duties through executive order in a manner "consider[ed] necessary for efficient administration," despite those provisions of the bill which establish the commercial fisheries entry division and task it with the commission's duties.

#### **Other Notes**

Employees of the commission are currently in the exempt service. Under the bill, employees of the department working in the commercial fisheries entry division will likely be in the classified service, as are the majority of the department's other employees. Is this consistent with your intent?

Please review my changes relating to a moratorium on new entrants in a fishery. These appear in bill secs. 2 and 40, AS 16.05.251(g) and AS 16.43.225(b), respectively. Currently, the process involves the commissioner of the department, the Board of Fisheries, and the commission. Please ensure that these bill sections work in the manner you intend without the involvement of the commission.

Under existing AS 16.43.120, the Administrative Procedure Act (AS 44.62) does not apply to adjudicatory proceedings of the commission. While the bill transfers the responsibility for these hearings to the Office of Administrative Hearings (AS 44.64), sec. 21 of the bill continues to provide that hearings are not subject to AS 44.62. Is this your intent?

A number of provisions amended in the bill contain dated references. For example, see AS 16.43.230 (designation of distressed fisheries) (bill sec. 43) referencing the number of units of gear fished in a fishery during any one of the four years immediately preceding January 1, 1973. Do you want to update these references?

Finally, because AS 16.43 is subject to some delayed amendments in 2018 (under Ch. 2, SLA 2014), some sections in this bill will not take effect until 2018. See secs. 82, 91, 93, 95, and 97.

Please review the bill to determine whether it achieves your goals. If you have questions, please do not hesitate to contact me.

ALB:lnd  
15-069.lnd

Enclosure



# LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature  
Division of Legal and Research Services  
State Capitol, Juneau, AK 99801

(907) 465-3991 phone  
(907) 465-3908 fax  
[research@akleg.gov](mailto:research@akleg.gov)

---

## Research Brief

TO: Representative Louise Stutes  
FROM: Susan Haymes, Legislative Analyst  
DATE: February 2, 2015  
RE: Legislative History of the Commercial Fisheries Entry Commission  
*LRS Report 15.178*

---

***You asked about the creation of the Commercial Fisheries Entry Commission. Specifically, you wished to know under what circumstances it was established.***

---

In 1973, the Alaska Legislature enacted the Limited Entry Act (AS 16.43) creating the first comprehensive limited entry program in the country.<sup>1</sup> The purpose of the law was to promote "the conservation and sustained yield management of Alaska's fishery resources and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination." The Act created the Commercial Fisheries Entry Commission (CFEC) as a regulatory and quasi-judicial agency to implement and administer the program. The CFEC is headed by three commissioners who are appointed by the Governor and confirmed by the Legislature. Commission staff is organized into five sections: administration, adjudications, research and planning, licensing, and information technology.<sup>2</sup>

---

### Early Attempts at Limited Entry

---

At the time of statehood, Alaska's salmon fisheries were largely controlled by lower 48 canning companies, many of which used fish traps to harvest the resource.<sup>3</sup> In the 1950s, for example, the six largest canning companies owned 40 percent of the canneries and processed 50 percent of the salmon harvest. Of the 434 fish traps licensed in 1948, only nine percent belonged to Alaska residents, while 56 percent were owned and operated by the eight largest companies.<sup>4</sup> In 1960, Governor William Egan in his message to the Joint Assembly of the First Alaska State Legislature noted:

On January 1 of this year, Alaska's Department of Fish and Game was handed the depleted remnants of what was once a rich and prolific fishery. From a peak of three-quarters of a billion pounds in 1936, production dropped in 1959 to its lowest in 60 years.<sup>5</sup>

Alaska proceeded to ban fish traps and the Alaska Department of Fish and Game (ADF&G) implemented management measures to restore runs and to match harvest opportunities to the actual abundance of the returning salmon runs. A rebound in salmon runs and the removal of fish traps encouraged many new people to enter the fisheries during the 1960s. In an effort to restrict the number of participants, Alaska lawmakers passed laws in 1961 and 1968, both of which failed to

---

<sup>1</sup> Ch 79 SLA 1973. The Alaska Supreme Court upheld the constitutionality of the Limited Entry Act in *State v. Ostrosky*, 667 P.2d 1184 (Alaska 1983), *appeal dismissed*, 467 U.S. 1201, 104 S. Ct. 2379, 81 L.Ed. 2d. 339 (1984).

<sup>2</sup> More information on CFEC is available at <http://www.cfec.state.ak.us/>.

<sup>3</sup> The lack of self-rule in salmon management and the influence of the canning companies on federal management were primary forces behind the statehood movement.

<sup>4</sup> John H. Clark, Andrew McGregor, Robert D. Mecum, Paul Krasnowski and Amy Carroll, "The Commercial Salmon Fishery in Alaska," Reprinted from the Alaska Fisheries Research Bulletin, Vol. 12 No. 1, Summer 2006, <http://www.adfg.alaska.gov/static/home/library/PDFs/afrb/clarv12n1.pdf>.

<sup>5</sup> "The Commercial Salmon Fishery in Alaska," p.3.

pass constitutional muster. The 1961 measure would have allowed the Board of Fisheries to restrict fishing within a management area to state residents, whenever it was determined that the expected salmon run was less than the optimum (ch 62, SLA 1961). The law was declared unconstitutional before any regulations could be implemented.<sup>6</sup> In the second attempt, lawmakers passed a statewide salmon net gear entry restriction program (ch 186, SLA 1968). The law required that anyone who wished to apply for a gear license needed to have previously fished in that area or fished as crew for at least three years within the given area. The courts again found the legislation unconstitutional, concluding that it created a closed class of participants.<sup>7</sup> The U.S. Supreme Court vacated that decision, but the issue was later litigated in state Superior Court. In 1971, an Alaska Superior Court held that the 1968 law violated Section 15 of Article VIII of the Alaska Constitution, which provides that “[n]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State.”<sup>8</sup>

By the early 1970s, salmon runs again declined to record low levels, driving home the difficulty of managing the salmon fisheries. Confronted with a serious economic crisis that threatened the livelihood of fishermen and the viability of the salmon fisheries, a constitutional means of limiting the number of participants became imperative. In 1971, the Alaska Legislature proposed a constitutional amendment to address the concerns identified by the courts by adding the following language to Article VIII, Section 15:

This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent on them for a livelihood and to promote the efficient development of aquaculture in the State.<sup>9</sup>

In 1972, Alaska voters overwhelmingly approved the amendment, paving the way for a limited entry program in Alaska.

#### **Limited Entry Act of 1973**

---

In his Affairs of State Address in 1973, Governor Egan cited the protection of Alaska’s salmon fisheries and the relief of economic distress among the state’s fishermen as one of the administration’s top priorities.<sup>10</sup> To that end, the Governor introduced a bill proposing a comprehensive limited entry program for Alaska’s salmon fisheries.<sup>11</sup> In the transmittal letter accompanying the legislation, the Governor stated the purpose of the program was to stabilize the number of participants at levels that would provide an adequate livelihood for those fishermen.<sup>12</sup> The Governor further noted the importance of eliminating part-time fishermen to allow for improved management of the resource and the establishment of a professional fishery.

The Governor proposed that the program be administered by a full-time regulatory commission. Trying to determine directly in statute which individuals would receive limited entry permits was “hopelessly inadequate, both legally and practically.” He further explained,

---

<sup>6</sup> *Brown v. Anderson*, 202 F. Supp. 96, 103 (D. Alaska 1962). The court found the 1961 law violated the U.S. Constitution’s privileges and immunities and commerce clauses, as well as the Alaska’s constitution equal protection and due process clauses.

<sup>7</sup> *Bozanich v. Reetz*, 297 F.Supp. 300 (D. Alaska 1969), *vacated*, 397 U.S. 82, 90 S. Ct. 788, 25 L.Ed. 2d 68 (1970).

<sup>8</sup> *Bozanich v. Norenberg*, Civil Case No. 70-389 (Alaska Super., March 8, 1971). The 1968 law also violated Section 3 of Article VIII which states, “Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.”

<sup>9</sup> Senate Joint Resolution 10 (1971).

<sup>10</sup> *Alaska Senate Journal*, Eighth Legislature, First Session, January 10, 1973.

<sup>11</sup> The Governor’s bill was SB 39; the companion bill, HB 126, ultimately became the vehicle for the Limited Entry Act of 1973.

<sup>12</sup> *Alaska Senate Journal*, Eighth Legislature, First Session, January 11, 1973, pp. 27-50.

A full-time regulatory commission is the only way to apply general legislative standards to each area and type of gear with fairness to all areas.

The commission approach has the added advantage of being easier to defend legally. As long as the statutory purpose and standards are valid, the point of legal attack would be a particular regulation or application of a statutory standard by the commission.<sup>13</sup>

In its February 1973 report to the Legislature, the Governor's Study Group on Limited Entry concluded that given the variety in gear, species, fishing conditions, and local economies in Alaska's fisheries:

[W]e felt that the only way to treat all fishermen fairly is to create a full-time commission with a full-time staff that can study each area, and look carefully at conditions in the fishery and the needs of the people participating in it. . . . Only a full-time regulatory commission with staff support will have the time and the ability to look at each area of the state, evaluate the economic condition of the fishery, looking separately at each type of gear, and then adopt regulations setting definite requirements for entry permits which make the most sense for that area and type of gear.<sup>14</sup>

An important aspect of the legislation was to determine who would initially receive a limited entry permit.<sup>15</sup> Nonresidents had traditionally fished in several of Alaska's salmon fisheries. The Governor and the Legislature wanted to establish a program that would "protect and enhance the employment opportunities of resident fishermen, help maintain economies of small coastal communities, and at the same time not violate constitutional rights of nonresident fishermen." As a result, the proposed legislation tasked the commission, for each fishery, with developing a hardship ranking system based upon the two broad concepts of past participation and economic dependence on the fishery (AS 16.43.250). In short, the commission was to issue a restricted number of permits to individual applicants based on criteria such as how long they had fished, how hard it would be for them to find other work if excluded from the fishery, and how much they had invested in boats and gear. A full-time commission was viewed as the best means of implementing such a complicated regulatory program that would also need to fairly adjudicate claims raised by individual applicants during the limitation process. The Governor noted,

The bill's legislative standards of preference for entry permits will require findings of fact regarding an applicant's degree of economic dependence upon the fishery and his extent of past participation in the fishery. Such facts must be established fairly and sufficiently in order to avoid abuses of the system that would be unfair to all fishermen. Provisions concerning hearings and appeals will safeguard the rights of individual applicants for entry permits.<sup>16</sup>

The law also provided for permits to be transferred by sale or by gift to other individuals (AS 16.43.170). This mechanism avoids the problem of a closed class and allows permits to be passed along within families or sold without upsetting the amount of gear in each fishery. One of the duties of the commission is to oversee the transfer of limited entry permits.

Since its inception, the CFEC has limited entry to 68 fisheries, considered nearly 23,000 discrete applications, and annually issues over 29,000 fishing permits and vessel licenses, and reviews over 1,000 permanent transfer requests.

We hope this is helpful. If you have questions or need additional information, please let us know.

---

<sup>13</sup> *Alaska Senate Journal*, 1973, p. 18.

<sup>14</sup> Governor's Study Group on Limited Entry, "A Limited Entry Program for Alaska's Fisheries," February 1973, p. 2. The report is available in the Legislative Reference Library.

<sup>15</sup> The Governor and other policymakers considered other limited entry approaches such as freezing the issuance of new licenses or issuing permits by lottery. These ideas were rejected for legal and practical reasons.

<sup>16</sup> *Alaska Senate Journal*, 1973, p. 18.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Fish and Game**

OFFICE OF THE COMMISSIONER  
Headquarters Office

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

**MEMORANDUM**

TO: Bruce Twomley  
CFEC Commissioner

DATE: February 4, 2015

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

PHONE: 907-465-4100

SUBJECT: Commercial Fisheries Limited Entry Commission Program Review

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

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

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

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

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

I look forward to discussing this report with you.

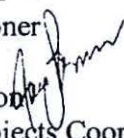
cc: Jim Whitaker, Chief of Staff  
Kris Curtis, Legislative Auditor  
Ben Brown, CFEC Commissioner  
Vern Rupright, CFEC Commissioner

# MEMORANDUM

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

TO: Sam Cotten  
Commissioner

DATE: 1/31/2015

FROM: Tom Lawson   
Special Projects Coordinator

PHONE: 465-4100

SUBJECT: Commercial Fisheries Entry Commission Review

---

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

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

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

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

Attachment

cc: Kevin Brooks, Deputy Commissioner, ADF&G

# **Commercial Fisheries Entry Commission Review**

---

**Prepared for:**

**Alaska Department of Fish & Game**

**Prepared by:**

**Tom Lawson, Special Projects Coordinator**

**Alaska Department of Fish & Game**

**January, 2015**

# Table of Contents

---

List of Tables, Figures and Appendices .....	3
Tables .....	3
Figures.....	3
Appendices.....	3
Introduction .....	5
Recent Legislative Activity .....	6
Purpose .....	7
Commercial Fisheries Entry Commission Background.....	8
History and Overview.....	8
Establishing a Limited Entry Fishery.....	8
Adjudications. ....	10
Court Decisions. ....	11
Carlson Case.....	11
Commission Decisions and Activities.....	13
Internal Revenue Service. ....	13
Fees, Budget, and Revenue.....	14
Fees .....	14
2005 Fee Increase. ....	15
Fishermen’s Fund.....	16
Budget.....	18
Excess Revenue.....	19
Findings and Recommendations.....	23
Overarching Findings .....	23
Adjudications Backlog.....	29
Fees, Revenue and Budget.....	34
Optimum Number.....	38
Staffing and Administration.....	45
Information Technology.....	54

## Commercial Fisheries Entry Commission Review

---

Licensing Section.....	58
Research Section.....	60
Adjudications Section.....	62
Management.....	65
Organizational Structure .....	66
Alternatives for the future .....	67
Overarching Recommendations .....	71

---

# List of Tables, Figures and Appendices

---

## Tables

Table 1 – CFEC Revenue Generated by Fiscal Year, 1985 - 2014

Table 2 – Fisherman Fund Transfers by Fiscal Year, 2001 - 2014

Table 3 – CFEC Expenditures by Line Item and Position Counts, FY2001 - 2014

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

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

Table 6 – Status of Capital Project Appropriations funded with CFEC Receipts, FY2006 - FY2014

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

Table 8 – Commissioner Adjudication Decisions and CFEC Adjudications Section (hearing officer and paralegal) Decisions, 1996 - 2013

Table 9 – CFEC Position Titles with Salary Ranges Compared to Classified Service Job Classes with Salary Ranges

Table 10 – Filled Temporary Positions and Associated Vacant Permanent Positions

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

## Figures

Figure 1 – Commercial Fisheries Entry Commission Organizational Chart, FY2016 Governor's Operating Budget Request

## Appendices

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

## Commercial Fisheries Entry Commission Review

---

Appendix B – Alaska Supreme Court Cases Affecting Practices of the Commercial Fisheries Entry Commission. 2010.

Appendix C – Commercial Fisheries Entry Commission Decisions and Activities, 1993-2011.

Appendix D – Letter of Intent, Ch. 211 SLA 1990 (HB 124).

Appendix E – Commercial Fisheries Entry Commission, memo to file, April 30, 2003, Subject: CFEC Contributions to Fishermen’s Fund.

Appendix F – The Alaska Commercial Fisheries Entry Commission’s Explanation of the Time Required to Complete Adjudications. 2013.

Appendix G – Executive Summary, Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report. CFEC Rpt 04-3N. Alaska Commercial Fisheries Entry Commission. 2004.

Appendix H – Report to the Cook Inlet Salmon Task Force on the Buy-Back Program under the Alaska Limited Entry Act. 2008.

Appendix I – Departments of Administration and Commerce and Economic Development Selected State Compensation Issues Including Alaska Seafood Marketing Institute and Alaska Industrial Development and Export Authority. 1999.

Appendix J – FY14.DFG.Licensing Modernization Project Charter. Department of Fish and Game. 2012.

# Introduction

---

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

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

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

### Recent Legislative Activity

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

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

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

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

---

<sup>1</sup> Commercial Fisheries Entry Commission, Annual Report, 2012, at 1.

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

The audit is expected to be conducted in 2015.

### **Purpose**

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

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

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

---

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

# Commercial Fisheries Entry Commission Background

---

The Commission's 2012 annual report states:

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

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

## History and Overview

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

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

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

---

<sup>4</sup> Commercial Fisheries Entry Commission 2012 Annual Report at ii.

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

---

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

**Adjudications.** If an entry permit application is denied, or if an applicant is dissatisfied with their assigned points<sup>8</sup>, the appeal process begins in the Adjudications Section. There are three levels of appeals within CFEC, administrative hearing, administrative review, and reconsideration, after which the applicant can then go to state court.<sup>9</sup> A hearing officer conducts the administrative hearing and then issues a determination that is reviewed by the Commission. The Commission participates in the second and third level of appeal. There is a direct relationship between the value of the fishery and the number of appeals of denied or challenged entry permit applications. While an entry permit status is under appeal or pending court action, the applicant is issued an interim-use permit which allows the individual to fish in the limited fishery in question. It is a common occurrence that applicants who have had an entry permit application denied will appeal and request time extensions or seek judicial relief, so they can continue to fish on an interim permit until a final decision is made.

Throughout this process the Information Technology Section provides technological support.

---

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

<sup>7</sup> AS 16.43.200.

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

<sup>9</sup> 20 AAC 05.1800 – 20 AAC 05.1870.

## Commercial Fisheries Entry Commission Review

---

The Commission completed the 68<sup>th</sup> and last limitation in 2004. Since then, the Commission has periodically received petitions to limit fisheries, but after examination, the limitation criteria were not met. The vessel-based weathervane scallop limited entry fishery, established in 2004, was repealed December 30, 2013.<sup>10</sup> The total number of limited entry fisheries is now 67.

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

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

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

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

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

---

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

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

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

---

<sup>14</sup> Commercial Fisheries Entry Commission 2003 Annual Report at 11.

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

<sup>16</sup> HOUSE CS FOR CS SENATE BILL 93(FIN) (Ch.16 SLA 2005).

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

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

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

---

<sup>17</sup> *Id.* at 757.

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

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

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

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

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

In 1992:

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

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

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

## Fees, Budget, and Revenue

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

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

---

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

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

<sup>23</sup> Commercial Fisheries Entry Commission 1993 Annual Report at Adjudications Section.

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

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

<sup>26</sup> AS 16.05.490, AS 16.43.160.

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

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

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

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

\*\*\*

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

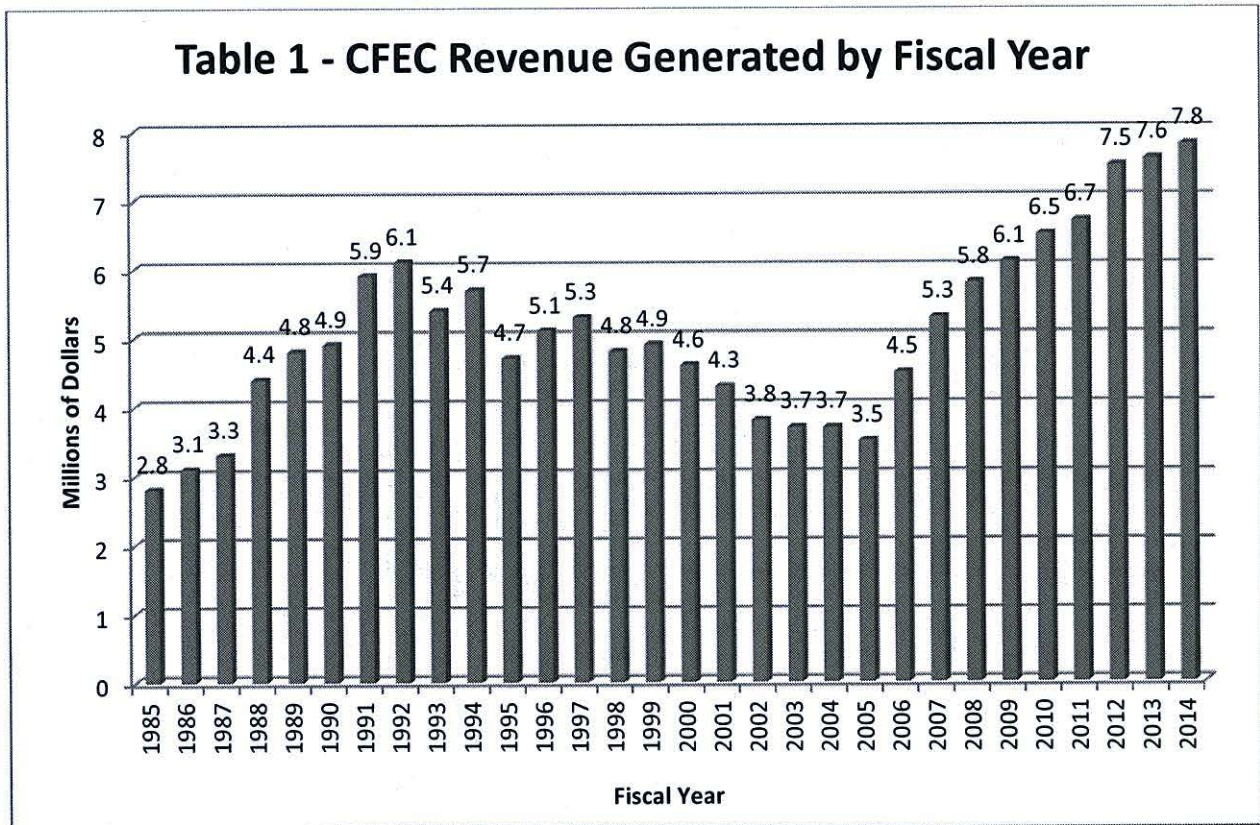
---

<sup>27</sup> 20 AAC 05.245(a)(1).

<sup>28</sup> 20 AAC 05.245(a)(2).

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

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



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

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

<sup>29</sup> Commercial Fisheries Entry Commission 2012 Annual Report at 24.

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

---

<sup>32</sup> AS 23.35.060(a).

<sup>33</sup> Commercial Fisheries Entry Commission, memo to file, April 30, 2003, Subject; CFEC Contributions to Fishermen's Fund at 2.

## Commercial Fisheries Entry Commission Review

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

**Table 3 – CFEC Expenditures by Line Item and Position Counts**

**FY2001 - FY2014**

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

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

## Commercial Fisheries Entry Commission Review

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

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

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

Source: Alaska Budget System

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

Beginning in the FY2005 operating budget<sup>34</sup> and continuing to the present FY2015 operating budget, there is language that authorizes that the amount appropriated for the Commission includes "...the unexpended and unobligated balance on June 30, [of the prior fiscal year], of the Department of Fish and Game, Commercial Fisheries Entry Commission program receipts from licenses, permits and other fees."<sup>35</sup>

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

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

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

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

Commercial Fisheries Entry Commission Review

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

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

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

## Commercial Fisheries Entry Commission Review

---

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

## Commercial Fisheries Entry Commission Review

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

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

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

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

# Findings and Recommendations

---

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

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

## Overarching Findings

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

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

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

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

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

---

<sup>36</sup> AS 26.43.010.

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

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

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

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

\*\*\*

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

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

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

---

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

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

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

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

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

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

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

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

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

---

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

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

<sup>42</sup> *Id.*

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

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

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

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

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

---

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

<sup>44</sup> Alaska Constitution, Article 8 – Natural Resources:

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

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

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

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

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

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

\*\*\*

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

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

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

A 2003 Performance Review perhaps sums it up best:

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

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

---

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

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

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

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

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

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

One example of court modification is:

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

\*\*\*

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

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

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

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

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

---

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

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

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

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

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

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

### **Adjudications Backlog**

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

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

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

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

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

---

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

## Commercial Fisheries Entry Commission Review

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

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

Source: CFEC Adjudications Section

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

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

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

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

## Commercial Fisheries Entry Commission Review

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

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

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

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

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

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

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

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

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

However, now - nine years later - the reasons for delay are no longer valid. The Commissioners now issue only a handful of permit application decisions each year - see Table 8. The Commission normally strives to complete administrative reviews of emergency and permanent transfers in the same calendar year when the transfers take place. However, recently the Commission allowed a backlog of reviews to accumulate, and did not complete their final review of cases from 2012 and 2013 until late in calendar year 2014.<sup>56</sup> This seriously reduced level of production came at a time when the Commission and their immediate support staff consisted of up to five attorneys,<sup>57</sup> an operations manager, an administrative clerk, and two executive secretaries (one temporary).

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

---

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

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

<sup>56</sup> Jill Wood, Paralegal, CFEC,, personal communication.

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

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

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

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

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

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

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

Five of the six permit applications at the administrative hearing level are for the salmon hand troll statewide limited fishery (Table 7). The last known address of all permit applicants indicates all are based in Southeast Alaska. Only one of the five permit applicants has fished each year, including 2014, under an interim entry permit, since the fishery was limited in the early 1980's. The other four individuals haven't been issued an interim entry permit for this fishery since the year they last fished ranging between 1985 and 2006.<sup>59</sup> Hearings were held on three of the permit applications in the 1980s but no hearing officer's decisions have been issued. The other two permit applicants' hearing requests were granted in the 1980's but hearings haven't been conducted.

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

---

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

## Fees, Revenue and Budget

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

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

---

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

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

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

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

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

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

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

\*\*\*

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

---

<sup>62</sup> *Id.* at 4.

<sup>63</sup> *Id.* at 6.

\*\*\*

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

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

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

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

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

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

---

<sup>64</sup> *Id.* at 5-6, 8.

<sup>65</sup> Alaska Budget System.

<sup>66</sup> *Id.*

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

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

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

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

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

\*\*\*

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

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

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

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

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

---

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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

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

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

## Optimum Number

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

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

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

\*\*\*

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

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

\*\*\*

---

<sup>70</sup> *Id.*

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

*[T]here is a tension between the limited entry clause of the state constitution and the clauses of the constitution which guarantee open fisheries. We suggested that to be constitutional, a limited entry system should impinge as little as possible on the open fishery clauses consistent with the constitutional purposes of limited entry, namely, prevention of distress to fishermen and resource conservation. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of the permit holders and permits values, while exceeding the constitutional purposes of limited entry.*

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

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

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

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

(1) the number of entry permits sufficient to maintain an economically healthy fishery that will result in a reasonable average rate of economic return to the fishermen participating in that fishery, considering time fished and necessary investments in vessels and gear;

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

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

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

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

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

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

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

However, the Alaska Supreme Court, as explained in the above quote from Johns decision, articulated the mechanism by which the Limited Entry Act was constitutional, namely the optimum number designation. The optimum number would allow the Commission to add more permits into a fishery if the courts deemed a fishery "too exclusive." The exclusiveness of a fishery is constitutional if the level of exclusivity is for 1) resource conservation; or 2) to prevent economic distress in a fishery. The Alaska Supreme court went on to state, "Because this risk of unconstitutionality exists, the CFEC should not delay in embarking on the optimum number process, except where there is a substantial reason for doing so." [emphasis added] *Johns*, 758 P.2d at 1266. The court remanded the case to the superior court with instructions to order the CFEC to begin the optimum number process.

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

Further:

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

---

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

<sup>76</sup> Kurt Iverson, Research Section Project Leader, CFEC, personal communication.

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

\*\*\*

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

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

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

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

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

*...constitutional purposes of limited entry, namely, prevention of distress to fishermen and resource conservation. The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without this mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive*

---

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

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

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

### Staffing and Administration

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

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

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

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

---

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

<sup>79</sup> Alaska Budget System.

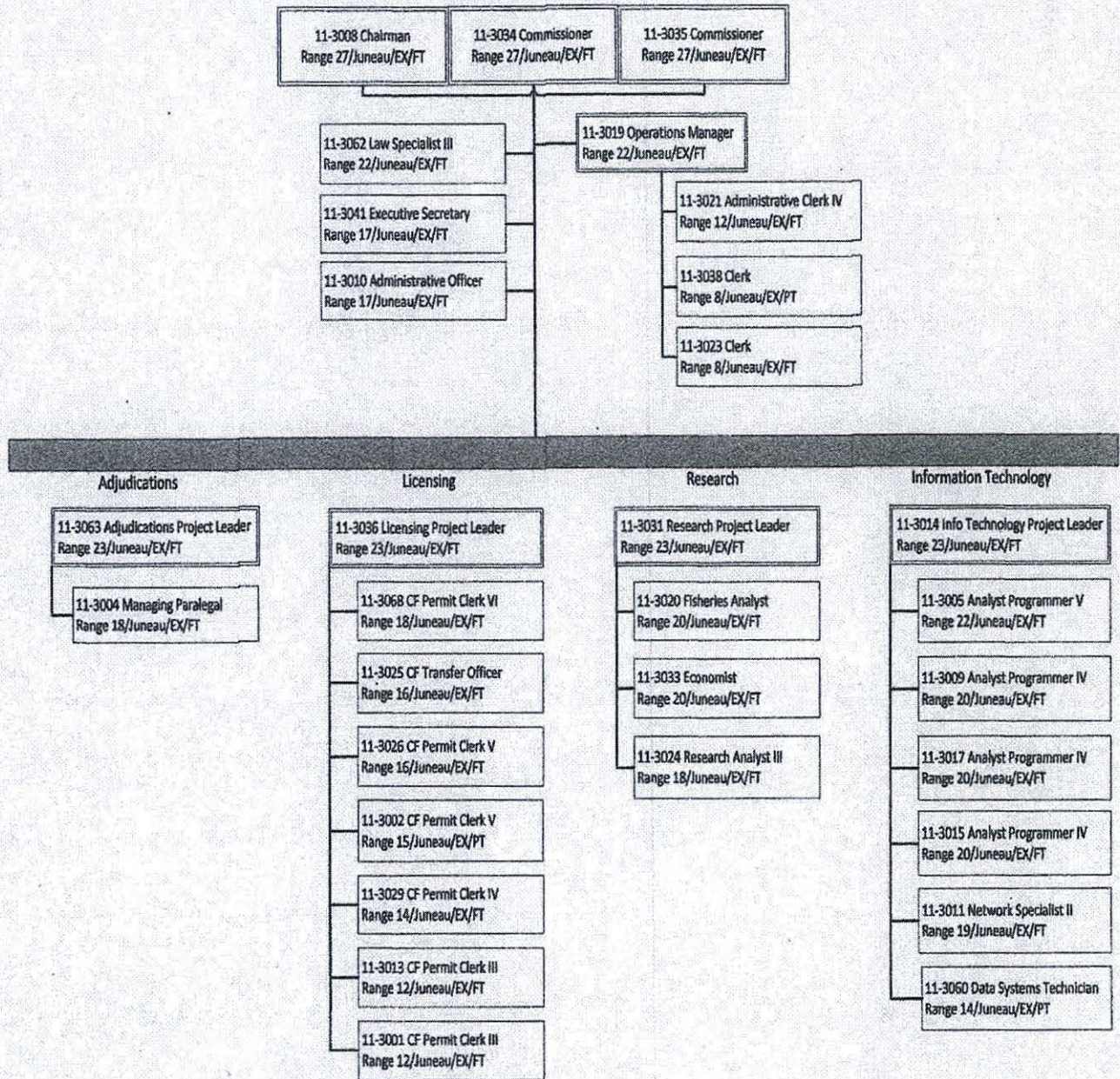
<sup>80</sup> AS 39.25.110 (11) (D). CFEC does not have to follow certain personnel procedures which have been put in place to carry out the intent of the State Personnel Act. The primary purpose of this act is "to establish a system of personnel administration based upon the merit principle..." Alaska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

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

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

Figure 1 – Commercial Fisheries Entry Commission

(Administratively attached to the Department of Fish and Game)



Revised 11/18/2014

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

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

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

***Finding #12: There are no position descriptions.***

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

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

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

A few definitions are in order:

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

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

---

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

<sup>83</sup> Shirley Penrose, Operations Manager, CFEC, personal communication.

<sup>84</sup> Classification Glossary of Terms, Division of Personnel and Labor Relations, Department of Administration.

<sup>85</sup> AS 39.25.100.

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

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

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

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

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

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

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

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

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

---

<sup>87</sup> Classification Glossary of Terms, Division of Personnel and Labor Relations, Department of Administration.

<sup>88</sup> Office of Management and Budget, 2008. Revised Program Manual at 15, 16.

Commercial Fisheries Entry Commission Review

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

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

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

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

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

**Table 10 – Filled Temporary Positions and Associated Vacant Permanent Positions**

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

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

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

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

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

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

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

<sup>90</sup> Stacie Bentley, HR Manager, personal communication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: CFEC annual reports

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

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

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

---

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

## Information Technology

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

- Licensing Systems
- Fisheries Database
- Technology Development for Adjudications and Research
- Agency Technical Support
- Website Design and Maintenance<sup>92</sup>

In particular,

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

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

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

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

The 2002 CFEC annual report noted:

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

---

<sup>92</sup> Commercial Fisheries Entry Commission 2012 Annual Report at 3.

<sup>93</sup> *Id* at 7.

of data with other state and federal agencies. Additionally, switching to more widely-used technology will help to ensure the long-term maintenance and stability of the system by improving the Commission's ability to hire personnel with relevant training and experience to fill future IT position vacancies.

During FY2002, the Commission acquired Oracle 9i software and upgraded the server hardware in preparation for the licensing rewrite project. The project plan was completed in October of 2002 and the target date for completion of the project is August of 2005.<sup>94</sup>

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

As reported in the 2008 CFEC annual report:

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

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

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

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

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

---

<sup>94</sup> Commercial Fisheries Entry Commission 2002 Annual Report at 9, 10.

<sup>95</sup> Commercial Fisheries Entry Commission 2008 Annual Report at 10.

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

\*\*\*

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

\*\*\*

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

The "result" has yet to be delivered.

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

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

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

The current website was launched in the spring, 2006.<sup>97</sup> Many sections of the website are kept up-to-date, but other sections are not. For example, the linked version of the statutes includes

---

<sup>96</sup> Alaska Budget System.

<sup>97</sup> Commercial Fisheries Entry Commission 2006 Annual Report at 6.

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

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

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

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

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

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

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

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

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

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

## Licensing Section

As stated in the 2012 CFEC Annual Report:

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

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

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

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

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

---

<sup>98</sup> Department of Fish and Game, 2012. FY14 Annual IT Plan at 4.

<sup>99</sup> Commercial Fisheries Entry Commission 2012 Annual Report at 9.

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

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

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

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

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

### Research Section

The duties of the Research Section are:

- Fisheries Data Collection
- Economic Profiles
- New Limitations Research
- Priority Hardship (“Point” System) Development and Testing
- Optimum Number Research<sup>100</sup>

In particular,

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

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

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

---

<sup>100</sup> Commercial Fisheries Entry Commission 2012 Annual Report at 3.

## Commercial Fisheries Entry Commission Review

---

holdings, permit transfer statistics, and basic characteristics of Alaska's fishing fleets and permit holders, including data on residency.<sup>101</sup>

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

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

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

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

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

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

---

<sup>101</sup> *Id.* at 18.

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

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

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

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

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

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

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

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

## Adjudications Section

The duties of the Adjudication Section are:

- Application Processing and Classification
- Administrative Hearings
- Case Management

---

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

<sup>104</sup> Glenn Haight, Executive Director, Board of Fisheries, personal communication.

## Commercial Fisheries Entry Commission Review

---

- Decisions on Claims
- Preparation of Official Record in Judicial Appeals
- Residency and Fraud Investigations<sup>105</sup>

In particular:

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

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

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

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

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

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

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

---

<sup>105</sup> Commercial Fisheries Entry Commission 2012 Annual Report at 3.

<sup>106</sup> *Id.* at 6.

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

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

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

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

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

---

<sup>107</sup> Examples of the complex services OAH provides include:

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

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

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

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

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

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

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

## Management

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

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

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

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

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

---

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

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

## Organizational Structure

AS 16.43.020(a) states:

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

### Alternatives for the future

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Commercial Fisheries Entry Commission Review

---

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

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

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

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

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

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

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

## Overarching Recommendation

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

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



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER


Commercial Fisheries Entry Commission

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

MEMORANDUM

TO: Sam Cotton  
ADF&G Commissioner

DATE: February 23, 2015

FROM:  Bruce Twomley, Chair  
Benjamin Brown, Commissioner  
Verne Rupright, Commissioner

PHONE: 907-790-6944

SUBJECT: Commercial Fisheries Entry Commission Program Review (author: Tom Lawson)

Enclosed is our written response to the Commercial Fisheries Entry Commission Program Review authored by Tom Lawson.

We were given the understanding that we would have an opportunity to review and comment on the report in draft stage. Since that did not happen, we are providing this written response.

We note the author was afforded 5 months to prepare his report. We have done our best to respond within 2 weeks.

This week, at the UFA reception, a fisherman told the Chair that he thought the report contained more praise than criticism. We think that is a fair statement, and we are grateful to the author for his praise.

We are sensitive to the criticism, however, because the author accepted as true, complaints about the Commissioners without offering the Commissioners an opportunity to respond.

In any event, we would be grateful if you would place our response on your website. We are publishing this response on CFEC's website.

The form of our response is to quote statements from the report followed by CFEC's response in bold. With one exception, the statements from the report are introduced in the same order as they appear in the report.

Enclosures

cc: Jim Whitaker, Chief of Staff  
Kris Curtis, Legislative Auditor

**Lawson Report, page 28**

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

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

\*\*\*

One example of court modification is:

\*\*\*

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

**CFEC Response:**

**This comment reflects a misunderstanding. The *Simpson* case quoted above did not modify the program. The *Simpson* case upheld an optimum number rationale principally written by the Chair (without a full study), and it upheld the Commission's understanding of the law governing maximum numbers, which the Commission had applied since the *Johns* decision in 1988.**

**Since 1996, the Commission has suffered only two partial reversals from the Alaska Supreme Court, which (consistent with the Commission's decision-making strategy suggested by the late Justice Rabinowitz in the *Kalmakoff* case), had no effect on the program. The cases that modified the program arose before Chairman Twomley served on the Commission beginning in the fall of 1982. The Alaska Supreme Court issued those decisions following their 1983 *Ostrosky* case, and Chairman Twomley participated in implementing those**

**decisions by modifying Commission regulations. This story is told in part in the author's Appendix F.**

---

**Lawson Report at page 29, under Finding #6, last paragraph**

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

**CFEC Response:**

**The generalization about the nature of the transfer cases is much too broad. We have attached a counter example. In the *Williams* case, Attachment I, intervention by the Commissioners prevented an elderly resident of a rural village from losing \$40,000 of her life savings. The stakes in transfer cases can be sufficiently high that the Commissioners have always made them our top priority.**

**Additionally, a number of the transfer cases we decided in 2014 required serious analysis and necessary supervision of reviewing staff to ensure that fishermen get what they are entitled to under the Limited Entry Act.**

**Lawson Report, page 30, under Finding #6, first full paragraph**

In 2006, the Supreme Court forcefully reprimanded CFEC when the Court issued its decision in *Brandal v. CFEC*. Mr. Brandal's claim for a limited entry permit began at CFEC in 1978, 22 years prior. The Court stated that "CFEC's handling of this case was inexcusable" and that the delay was "unconscionable." The Court admonished CFEC for proceeding at a "glacial pace," and stated that CFEC's reasons for the delay were "wholly unpersuasive." [footnote omitted]

**CFEC Response:**

**The commission unanimously won the *Brandal* case which held that the fisherman who continued to fish during the pendency of his application suffered no harm and in fact obtained a windfall. Additionally, the context reveals that the author of the *Brandal* decision was not responding to the Commission's reasons for the time required and, instead, was responding to a one-sentence summary by the Commission's attorney.**

***Brandal* was among the Chignik cases the Commission consciously put aside, when the Commission received a petition from the community asking CFEC not to complete the adjudications. The petition came at a time when other fisheries were under great pressure and in need of immediate attention (for example Cook Inlet due to Board actions, and Southeast fisheries due to the U.S./Canada Salmon Treaty). All salmon fisheries came under pressure by 1997, when the bottom dropped out from under world salmon markets due to competition from farmed salmon. At that point the Commission felt obligated to address Bristol Bay first, as the largest salmon fishery affecting the most people. The**

**Commission turned back to the Chignik cases including *Brandal* only after the Commission had largely completed the Bristol Bay fisheries. From the 80's through at least the first decade of our current century, the Commission had to select the cases it adjudicated by *triage*. The Commission has achieved a manageable caseload only very recently.**

---

**CFEC Response: [to supplement Table 8 on page 31 of Lawson Report]**

**For 2014, the hearing officer and paralegal decisions included 8 miscellaneous decisions and 44 permit transfer decisions for a total of 52 decisions. Also for 2014, the Commissioners' decisions included 14 miscellaneous decisions, 2 permit application decisions, and 75 transfer decisions for a total of 91 decisions.**

---

**Lawson Report, page 32, under Finding #6, second to last paragraph**

However, recently the Commission allowed a backlog of reviews to accumulate, and did not complete their final review of cases from 2012 and 2013 until late in calendar year 2014.[footnote omitted]

**CFEC Response:**

**The Chair takes full responsibility for the Commissioners' reduced case production at the end of 2012 and carrying over to 2013. Two Commissioners are required for a quorum, and until November of 2014, the Commission had only two Commissioners. When transfer cases are appealed to the**

**Commissioners, an applicant has signaled that the individual's immediate right to fish is at stake, and the Commissioners (like the intermediate level of review) decide the case in a matter of days. For the cases that are not appealed, the Commissioners pull all of them together and, generally, complete them before the end of each calendar year. Deciding them together helps the Commission see differences among the cases and be more consistent in its decision making, which is a critical form of supervision for the paralegal and the licensing staff.**

**At the end of 2012, Commissioner Twomley's son Christopher was living in San Pedro Sula, Honduras, and attending the University of San Pedro Sula. The family had not seen Christopher in two years, and Christopher invited his mother, his father, and brother to visit him over the Christmas holidays. The family agreed to make the trip during the Christmas holidays—the time during which Chair Twomley would normally have been completing the transfer decisions as he has done for more than 30 years. Commissioner Twomley thought he could complete the decisions promptly after his return, but, with the Legislature in session, that proved to be impracticable.**

**Lawson Report, pages 32-33, under Finding #6**

Equally important is that the Commission's diminished performance occurs when the agency is only minimally involved in other tasks . . . . Unlike the past, there have not been any time-consuming or meaningful regulatory or statutory issues in many years, other than the unsuccessful attempt in 2013 at extending the sunset date for the vessel-based limited entry systems for the weathervane scallop and Bering Sea hair crab fisheries. [footnote omitted]

**CFEC Response:**

**This statement is unfair to the Commissioners, who for more than two years were reduced to 2 and were working at their capacity. Years ago, we eliminated our Executive Director and have been carrying those responsibilities ever since on top of our caseload.**

**Among other things, the Commissioners and staff were implementing relief provided in the *Carlson* class action. The irony of the *Carlson* case is that, although the class numbered some 95,000 individuals, only 4,700 class members were entitled to receive damages under CFEC calculations approved by the court. That left some 90,000 unhappy class members entitled to request hearings from CFEC to challenge the CFEC calculations, and further to appeal to court if they remained unhappy. We found that class members were not getting their questions answered by the administrators of the class, and we calculated that if we took the time to adequately answer their questions, we could deflect a number of hearing requests. To begin with, we assembled all of our adjudication staff in our conference room and one**

**individual (starting with the Chair) would call a class member who had left a phone message, and respond to the class member's questions. After the conversation, the group would critique the response, and gradually we developed very sound communications technique for the class members, which we believe deflected a large number of hearing requests.**

**Additionally, among other things, the Commission experienced an increased workload while the issue of the state waters scallop fishery was before the Legislature. Legislation to extend the fishery did not pass. For the first time in the Commission's history, we then faced the task of administering a new open-access fishery.**

-----

***Lawson Report, page 33***

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

**CFEC Response:**

**The examples provided by the Report are unique cases, where communications problems caused delay. The author refers to two cases where hearings have not been conducted. In one case, hearings were scheduled in 1982 and 1993, but the applicant failed to appear. There was a problem with the notice for the 1993 hearing date. The other applicant failed to respond to a hearing officer's letter attempting to schedule a hearing. For a third applicant, the CFEC made attempts as recently as 2012 to complete the administrative record but the applicant failed to reply. All of these applicants live in rural communities**

**(Angoon, Myers Chuck, Pelican, Haines, Yakutat). We do not want a literal application of the rules to cause irreparable harm to an Alaskan applicant.**

**In a number of cases, hearings have been held and the administrative record has been completed, but the hearings were held by a different hearing officer. In these cases, the applicant can request a new hearing. One case needs a supplemental hearing. The two cases where hearings have not been held will require formal notice and scheduling. Applicants must be given at least 30 days advance notice of a hearing. We have always tried to accommodate the applicants' schedules for hearings. Hearings often reveal the need for supplemental evidence, so applicants must be given time to locate and produce it. These due process concerns make a completion deadline at the end of 2016 more realistic. (Please be aware that the Commissioners may find it necessary to remand cases to the hearing officer.)**

**These were appropriate cases for doing last. None of the applicants were fishing. None were in a fishery that was distressed. In fact, the salmon handtroll and Kodiak herring purse seine fisheries are characterized by a low percentage of permit holders actually fishing.**

---

**Lawson Report, page 64**

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

**CFEC Response:**

**In permit transfer cases, our overriding concern is to prevent the loss of fishing time. Emergency transfer hearings are usually held within a day or two of the initial denial, and sometimes the same day. A preliminary order allowing the transfer on a provisional basis can be issued immediately after the hearing if the claimant proves the case. A denial requires a written decision by the paralegal within a day or two of the hearing. We believe that the Commission's flexibility, speed and agency expertise make CFEC the best alternative for handling these cases. And transfer cases are not as "minimal" as the author suggests. The stakes can be very high because the immediate right to fish is at issue. See, for example, the *Williams* case, Attachment I, where an elderly resident of a rural village stood to lose \$40,000 of her life savings.**

**We have approximately 40 permit transfer cases per year, plus miscellaneous cases on such matters as demerit points and permit fee refunds. The emergency transfer cases are usually heard by paralegals.**

**The recommendation to eliminate the paralegal position is short-sighted. We note that the paralegal was not interviewed in the context of this report. The paralegal does far more than conduct transfer hearings and assist the hearing officer. Among the paralegal's other duties:**

- 1. Assist in preparing the administrative record for cases on appeal. The commissioners will be issuing decisions into 2016. Their remaining cases are in lucrative fisheries such as sablefish, roe herring, and crab. It is likely that some of their decisions will be adverse to the applicant and the applicant will appeal to court.**
- 2. Records retention. The paralegal is the primary person at the CFEC for preparing fish tickets for archiving. Typically, there are thousands of fish tickets issued each year.**
- 3. In addition, the CFEC's record retention schedule requires frequent review about whether to retain or destroy records.**
- 4. Information requests. The paralegal is very familiar with CFEC records and resources and is the primary source of information requested by other agencies and the public.**

**Even if OAH were to take over transfer and other CFEC appeals, a CFEC liaison would be required to provide them with the administrative record, other evidence that may be needed, and background information such as prior CFEC decisions on similar issues. The paralegal with her unique background would be the ideal person to provide this service.**

---

**Lawson Report, page 34, under Recommendation #2**

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

**CFEC Response:**

**In fact, court appeals are more likely than not, but the author is absolutely correct about the need to anticipate reversals or remands from the court. The author might have asked the Commissioners for their view as to what is “achievable.” Our best calculation for a reasonable target remains the end of 2016 to complete the cases before us. Writing decisions requires blocks of time, and we do have competing responsibilities. The hiring of an Executive Director may serve to alleviate this problem. The cases that are last in line are some hard cases raising difficult issues—a fact that has not gone unnoticed by at least one Superior Court Judge.**

**Furthermore, a threat hangs over judicial appeals of Commission decisions. Please see our discussion below in response to Recommendation #19. Reversal of a Commission rule by the court can be applied retroactively to require reopening previously closed applications and allowing new applications for permits long after the application deadline.**

---

**Lawson Report, page 42, end of last paragraph**

Neither the former or current Research Section Project Leader was ever directed by the Commission to do an optimum number study after completion of the Bristol Bay Optimum Number Report.

**CFEC Response:**

**This statement is false. Last year on September 24, 2014, we directed the Research Project Leader to proceed with optimum number determinations in two fisheries, and we further directed the Leader to fully explore whether these determinations could be achieved without a full optimum number study. The author interviewed the Research Project Leader one week later on October 1<sup>st</sup>.**

---

***Lawson Report, page 43***

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

**CFEC Response:**

**We do not fully agree with this statement. The Chair's cautionary words about optimum number studies largely come from a context of warning fishermen desiring a buy-back program as to what they are getting into. There is potential for time, intrusion, and cost. However, two developments suggest the possibility of a more compact approach. First, the Legislature greatly helped the Commission by authorizing more than a single number that would be just right for a fishery. The Legislature has authorized an optimum number to be a range**

**of numbers, which provides a bigger and safer target. Additionally, the *Simpson* case upheld an optimum number rationale without an optimum number study. In every case, we should be asking whether we need an optimum number study.**

---

**Lawson Report, page 44**

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

**CFEC Response:**

**We disagree with the suggestion to reduce the concept of an optimum number to a formula, because we believe it is inconsistent with the constitutional authority that is the foundation for limited entry in Alaska. We believe, in the more than 25 years following the *Johns* decision in 1988, if there were a workable formula, someone would have suggested it. In fact, Article VIII, Section 15 of the Alaska Constitution expresses the purposes of limited entry in concepts: serving conservation and preventing economic distress among fishermen and those dependent upon them. Given great differences from fishery to fishery, attempting to turn those concepts into a formula creates a terrible risk. In fact, when the Alaska Supreme Court in *Johns* identified the optimum number as the key to defending the constitutionality of a limited fishery, the Supreme Court provided limited entry with a gift—not a burden. In fact, in *Johns*, we have an Alaska Supreme Court case that we embrace and apply. It would be counterproductive to turn away from this sound guidance and to create a risk of more litigation.**

**Lawson Report, page 44, second paragraph under Recommendation #6**

None of the three optimum numbers has needed revision under the terms of AS 16.43.300.

**CFEC Response:**

**This statement is not accurate. Professor and Director of ISER, Gunnar Knapp provided the future salmon price estimates which served as the foundation for the modeling that contributed to the Bristol Bay optimum number range determination. Today, Gunnar Knapp is the first to admit that his assumptions (during the salmon crisis) were mistaken and that world salmon markets have changed for the better. Knapp, Trends in Alaska and World Salmon Markets (partially updated November 3, 2014).**

**[Gunnar.Knapp@uaa.alaska.edu]**

---

**Lawson Report, page 45, under Staffing and Administration, footnote 81**

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

**CFEC Response:**

**Salaries for limited entry Commissioners were initially tied to those for Alaska District Court Judges. The Legislature advanced District Court Judges' salaries over time, but not those of Commissioners. As a footnote, Chair Twomley has always been grateful for his salary, but he did go 25 years without an increase,**

**and, as a wholly exempt agency, the commission has often frozen salaries to meet budget cuts.**

**Please examine the *Williams* case, Attachment I. The stakes in this and other cases are sufficiently high that CFEC Commissioners equipped with agency expertise can best decide them.**

---

**Lawson Report, page 47**

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

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

**CFEC Response:**

**In fact, last fall, as active managers the Commissioners identified an inappropriate salary increase and denied the request. This development prompted our consideration of a new staff manual. To advance this project, the Chair took two on-line courses in writing Administrative Manuals.**

---

CFEC Response to Lawson Report

Lawson Report, page 47

*Finding #12: There are no position descriptions.*

CFEC Response:

**This statement must be a misunderstanding. We have job descriptions in our personnel files.**

---

Lawson Report, page 48

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

CFEC Response:

**We disagree. As active managers, the Commissioners review every proposed salary increase. Our reclassifications are reviewed by the Division of Personnel, and CFEC is open to seeking assistance from the Division of Personnel in reclassifying positions.**

---

**Lawson Report, page 50, last paragraph**

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

**CFEC Response:**

**Questions about the performance of the temporary positions should have been directed to the Commissioners who supervise them. As supervisors, the Commissioners review employees' time sheets and know exactly when and where they work.**

**Two of the temporaries do perform some of their work outside the office but that does not diminish their valuable contribution to the Commission. One employee was not visible in the office due to a protracted, life threatening injury.**

**The Operations Manager works early hours to secure uninterrupted time to complete CFEC projects. Nonetheless, she posts her cell phone number of her office door so that anyone can reach her anytime, and she comes to the office at any time she is needed.**

---

**Lawson Report, page 51**

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

**CFEC Response:**

**This finding surprises the Chair and others who were face-to-face with the author, because we thought the author understood that temporary positions were very appropriate to CFEC's current situation. And this would be an inopportune time to be terminating temporary staff and attempting to recruit permanent employees. Most temporaries are working on an as-needed basis, they are saving the state a significant amount of money, and they are doing essential work. The author at our conversation agreed that we were getting excellence at a bargain. For example, the Adjudications Section Leader has more than 30 year's experience and is one of the best hearing officers in the state.**

**At CFEC, agency expertise is critical. As a testament to agency expertise please review our Attachment I, the *Williams* case. In that case our prompt action and agency expertise prevented an elderly woman in a rural village from losing some \$40,000 of her life savings. The vast experience of our temporary employees embodies our agency's expertise.**

**For example, in one instance, a temporary employee with almost 25 years' experience with CFEC suffered a protracted and life-threatening health**

CFEC Response to Lawson Report

**emergency. The individual was in hospitals and at home recovering and, therefore, not in the office.**

---

**Lawson Report, page 51**

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

**CFEC Response:**

**CFEC has already undertaken this task and would be happy to pursue this goal.**

---

**Lawson Report, page 51**

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

**CFEC Response:**

**We have job descriptions in our personnel files. We will review them to ensure that they are satisfactory.**

---

**Lawson Report, page 52**

*Recommendation #9: Terminate the practice of hiring retired employees in long term, nonpermanent positions: Type: Administrative*

**CFEC Response:**

**We have a critical need for the employees we have at this time. Our work product would be impaired if we were to terminate them at the end of this fiscal year. Additionally, with respect to the adjudication positions, we believe it is likely we will have a duty to limit one or more additional fisheries during the coming year. Doing so creates an almost instant caseload for which these employees would be needed. We benefit from the employees' experience, and we would hope to retain their services through any transition for as long as they are willing to provide them.**

**Additionally, however, we are responding favorably to Recommendation #18 (replace the operations manager position with an operations director.)**

---

**Lawson Report, page 52**

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

**CFEC Response:**

**This is a sound recommendation, and we note that this year we completed CFEC's annual report for 2014 by January 2015.**

---

CFEC Response to Lawson Report

**Lawson Report, page 53, paragraph following Table 11**

The operations manager is responsible for preparation of the annual report.

**CFEC Response:**

**This is incorrect. In the past, the content of the report has been the responsibility of the Research Project Leader. The Operations Manager has been responsible only for assembling and publishing the report.**

---

**Lawson Report, page 53**

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

**CFEC Response:**

**CFEC agrees with the recommendation.**

---

**Lawson Report, page 55, second paragraph**

The Oracle based rewrite/upgrade of the licensing system never occurred.

**CFEC Response:**

**This statement is not accurate. CFEC did labor under a system with a Btrieve database and programming in COBOL. The project CFEC undertook was to employ a relational database (Oracle) and to program with a more current**

**computer language (Java). Establishing the hardware and transferring data to the new system represented the bulk of the project.**

**During 2003, CFEC hired a new IT manager, who was a well-regarded programmer from the Alaska Department of Fish & Game who formerly worked for the Permanent Fund. The moment the programmer examined the CFEC hardware in our server room, he walked away in dismay. The Chair followed him to ask his advice, which was, “do you have a paper alternative?”**

**Subsequently, CFEC recruited our current IT manager from a private IT corporation, and he undertook the task even though two of his predecessors said that task was impossible and couldn't be completed. But today, the task is largely complete and Oracle is fully employed with modern programming languages. In other words, the cake is baked, and what remains is to apply icing in the form of improved screen tools for the Licensing staff.**

---

**Lawson Report, page 55, third paragraph**

Unfortunately, the web-based permit and vessel license renewal, while increasingly popular with fishers, is really nothing more than a data capture screen. On-line, fishers renew permits or license, pay with a credit card, and get a confirmation. In house however, the licensing staff must re-key every data field completed by the fisher into the licensing system . . . .

**CFEC Response:**

**In developing the web-based permit and vessel license renewal program, our IT manager originally programmed for automatic data collection that relieved**

**licensing staff of the need to re-key data already entered by the fisher. The Licensing Project Leader declined this offer to maintain the licensing practice of re-keying.**

---

**Lawson Report, page 56**

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

**CFEC Response:**

**The final stages of the conversion (including improved screen tools for the licensing section) will be completed during 2016. Some development and implementation cannot go forward during the months that constitute the 2 yearly peak licensing seasons**

---

**Lawson Report, page 57**

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

**CFEC Response:**

**IT has nearly completed this task which will be live shortly.**

---

**Lawson Report, page 58, first paragraph**

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

**CFEC Response:**

**This may not be a sound comparison. If one considers a denominator that includes all of ADF&G and CFEC, the numerator that produces a 5.5% ratio must be gigantic. The case for CFEC, however, is the complexity of the tasks IT must perform and the very high level of service IT provides to the licensing section that warrants additional IT staff.**

---

**Lawson Report, page 59**

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

**CFEC Response:**

**The Licensing Project Leader has not brought any current conflicts to the attention of the commissioners. The commissioners note that there is a great deal of direct service provided by IT to the Licensing section not reflected in the report. The level of staffing in the IT section ensures continuation of this service.**

---

**Lawson Report, page 59, first paragraph under Finding #21**

Further, all on-line renewals must be re-keyed as if they were paper application. Errors have to be corrected by IT staff.

**CFEC Response:**

**The IT Section Leader programmed the original online renewal system so that renewals would not have to be re-keyed by Licensing employees as if they were paper applications. The Licensing Project Leader declined the offer.**

---

**Lawson Report, page 59, second paragraph under Finding #21**

Most interviewees acknowledged the conflicts between the IT and Licensing Sections.

**CFEC Response:**

**We are aware of past conflicts between some members of Licensing and IT in which Licensing bore its share of responsibility. This finding encroaches on some personnel issues on which the commissioners cannot comment. Additional, but confidential, information would be needed to fully evaluate or discuss this claim.**

---

**Lawson Report, page 59**

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

**CFEC Response:**

**We disagree.**

**In 2013, there were 6 employees in the licensing section after the Licensing Project Leader decided not to fill a vacant position. By the time of the peak spring licensing season (April, May, and June), an employee was on extended leave, leaving 5 staff members.**

**By available measures, the 2013 spring licensing season made more demands on a licensing staff than those of 2014. For example, in April, May, and June, more permanent and emergency transfer requests were submitted in 2013 than in 2014.**

**In the fall of 2013, the Licensing Project Leader knew that another employee would be on extended leave during the 2014 spring licensing season. Yet, in January 2014, when we asked the Licensing Project Leader and other managers if they had any unbudgeted needs that we could try to address, we heard nothing from the Licensing Project Leader about the coming season, and so we responded to other requests to commit the available dollars. Then, in April, the Licensing Project Leader came to the Commissioners and asked for a new**

**permanent position in licensing. The commissioners offered to employ a new seasonal position in the licensing section. The Licensing Project Leader declined our offer.**

**In response to a request from the Licensing Project Leader, the Commissioners reassigned an employee from another section to act as receptionist and answer the phone in order to free up more licensing staff. Additionally, we offered to train the individual acting as receptionist so that the individual could respond to a greater range of questions from fishermen and thereby further relieve licensing staff. The Licensing Project Leader did not accept our offer.**

**The Commissioners on their own initiative offered eligible licensing employees overtime for the spring licensing season and further directed all staff to avoid making any unnecessary requests upon licensing staff until the seasonal pressures had subsided. Finally, the Commissioners excused the Licensing Project Leader from attending CFEC management council meetings during the peak season.**

**The level of staffing in the licensing section was the same in 2013 as it was in 2014, and the collective experience of the employees who worked in April, May, and June of the two years was the same.**

**Additionally, other staff members volunteered to help. For example, a large Community Development Quota (CDQ) organization began financing the purchase of limited entry permits and submitted contracts purporting to take**

**the limited entry permits as collateral to secure the loans, which violated the Limited Entry Act. The Chair had worked in the area and knew some of the Board members of the CDQ. To relieve licensing staff of the burden, the Chair began calling executives (most of whom were out of the State of the time) and taking return calls. After a day of such calls, by 6:30 in the evening, the Chair was able to email a key individual and dictate language for the CDQ to use to release the entry permits from all of their security agreements. It was after 10 in the evening, when the Chair got an email confirmation from the CDQ that they would be submitting rewritten contracts the following morning.**

**In short, the Commissioners respectfully disagree with the claim that they failed to support the licensing section during the 2014 spring licensing season.**

**Finally, we note that for the current fiscal year beginning last July we have added an additional employee to the licensing section bringing their staff total to 7.**

---

**Lawson Report, page 64, fourth paragraph under Recommendation 16**

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

**CFEC Response:**

**We wholly concur with this observation. We have instructed our research staff to monitor more than one fishery for possible limitation. When the record shows that limiting a fishery will serve conservation and help prevent economic**

**distress among fishermen and those dependent upon them, we have an affirmative duty under the Limited Entry Act to go forward with a limitation. It is likely we will limit one or more fisheries during the next calendar year and that is a principal reason for not eliminating the hearing officers at this time.**

---

Lawson Report, page 65

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

**CFEC Response:**

**The time taken to adjudicate applications for entry permits was simply the result of the magnitude and complexity of the task. The Chair represented plaintiffs in the *Molly Hootch* class action which went on for decades. Similarly, the Chair was a respondent in the *Carlson* class action, which went on for decades. In the Chair's view, the limited entry project, with 68 limited fisheries and different point systems for evaluating applicants is more complex and more labor intensive than either of those class actions. With almost 23,000 applications, it is a given that some applicants will be last in line. The larger class of cases to be adjudicated is the yearly onslaught of transfer cases, where the immediate right to fish is at stake. We have always made these cases the highest priority to avoid unnecessary loss of fishing time. CFEC can turn these cases around in a matter of days, which is a function of agency expertise and our making these cases an absolute priority. We believe we can demonstrate that CFEC, as is, beats the alternatives for handling these cases.**

---

**Lawson Report, page 65**

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

**CFEC Response:**

**In the Commissioners view, most staff do not experience a lack of leadership or low morale overall. Since the loss of the Executive Director, the Commissioners have served as administrative law judges and as hands-on managers. The Commissioners, as managers, were required to give direction and perform personnel actions.**

**As we note below we are inclined to accept Recommendation #18 to restore the position of Executive Director.**

**The Commissioners are not reticent about giving direction when necessary.**

**For example, the Commissioners in 2014 directed staff to monitor more than one fishery for proposed limitation and to develop proposals for optimum numbers in two fisheries.**

**In 2013, when the Commission began to implement an open access state scallop fishery, the Commissioners gave direction to appropriate staff about how to calculate permit fees for the new open access fishery. When our proposal did not appear among the alternatives presented by research, we rejected their**

**proposals and insisted that fees be developed that would be more fair to fishermen by taking account of the open access history of the fishery and thereby initially reduce the fees.**

**Earlier, the Chair took the initiative and drafted an optimum number rationale for the Northern Southeast inside sablefish longline fishery without waiting for an optimum number study from research. This rationale and the resulting optimum number were upheld by the Alaska Supreme Court in the *Simpson* case.**

**In 2014, when we found that some members of the licensing section were misinterpreting and misapplying our new regulation for reinstatement of entry permits that had been cancelled for nonpayment of fees, we called for face-to-face meetings with staff in order to work through some cases together and offer instructions on how to understand and apply the regulation.**

**Also in 2014, when the Chair learned that a member of the licensing staff was requiring a fisherman to go through extra bureaucratic hoops not required by CFEC regs, he promptly intervened to spare the fisherman and to spare licensing staff unnecessary work.**

**Additionally, in 2014, when the Chair learned that an elderly woman in a rural village stood to lose \$40,000 of her life savings, the Commissioners promptly intervened and took jurisdiction of the matter resulting in the *Williams* case appended as Attachment I.**

**In the fall of 2014, the Commissioners did not approve a proposed raise they found to be unwarranted.**

**The notion that the agency lacks leadership and accountability is inaccurate.**

---

Lawson Report, page 66

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

**CFEC Response:**

**We are inclined to accept this recommendation. However, we believe it would be wise to get to the end of this legislative session to assess where we stand before making the change.**

---

Lawson Report, page 67

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

**CFEC Response:**

**This is a sound recommendation. However, we believe our assessment that we will make every effort to have completed decisions by the end of 2016 is more reasonable.**

**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.**

**Recently, the commission decided the *Kuzmin* cases, which denied two applicants, who did not appeal to the courts. This complex case illustrates 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 was foresighted and assigned to the commission a statutory duty to issue all 13 permits when doing so would not exceed the maximum number by more than 5% or 10 permits – whichever is greater. All 13 became winners, and CFEC closed out the entire fishery.**

**But CFEC cannot always reach such a favorable conclusion, and a serious threat hangs over 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 stakes are unusually high at this stage of near completion of 68 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.**



THE STATE  
of **ALASKA**

GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission  
8800 Glacier Highway, Suite 1C  
PO Box 11030  
Juneau, Alaska 99811-0300  
Main: 907.789.616  
Licensing: 907.789.615  
Fax: 907.789.617

September 2, 2014

**CERTIFIED RETURN RECEIPT**

**Lisa M. Williams**  
Box 363  
Naknek, AK 99633

**John B. Roehl**  
Box 104  
Naknek, AK 99633

**Violet Willson**  
Box 104  
Naknek, AK 99633

**Brad D. De Noble, Attorney for John B. Roehl & Violet Willson**  
De Noble Law Offices, LLC  
11517 Old Glenn Hwy., Suite 202  
Eagle River, AK 99577

**Re: Provisional Decision and Order**  
**Lisa Williams Permanent Transfer of Limited Entry Permit**  
**S04T 65633 to John B. Roehl**  
**CFEC# 14-053-P**

**Dear Parties to this Request for Permanent Transfer:**


Enclosed is our Provisional Decision and Order approving the requested transfer. Our approval is provisional, because (as set forth in the decision) it is subject to the payment of the \$50.00 transfer fee, the sworn submission we requested from the transferee and his mother, Violet Willson, concerning their agreement with respect to her payment of the purchase price for the permit, and the sworn statement from Violet Willson detailing her payments to the transferor.

**ATTACHMENT I**  
**(pages 1 of 32)**

This decision and order are provisional, because the parties, Lisa M. Williams (transferor), John B. Roehl (transferee), and Violet Willson, may submit written comments and proposed written evidence for inclusion in this record, provided such items are received by the commission within 60 days from the date of this letter and the Provisional Decision and Order. Additionally, any of the parties may request an evidentiary hearing provided such request is supported by a detailed offer of proof and received by the commission within 60 days from the date of this letter and Provisional Decision and Order.

Questions about this procedure may be addressed to commissioners Twomley or Brown.

By Direction of the  
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner  
Bruce Twomley, Chairman

**STATE OF ALASKA**  
**COMMERCIAL FISHERIES ENTRY COMMISSION**

In Re the Application of

Lisa M. Williams

for Permanent Transfer of Entry Permit  
S04T 65633 to John B. Roehl

CFEC# 14-053-P

**COMMISSION PROVISIONAL DECISION AND ORDER**

**Counsel**

Brad D. De Noble, De Noble Law office LLC, 11517 Old Glenn  
Hwy., Suite 202, Eagle River, AK 99577, attorney for John B. Roehl  
and Violet Willson

**Procedural and Factual Background**

On October 11, 2010, the Commercial Fisheries Entry Commission (CFEC) approved Walter E. Wassillie's transfer of Bristol Bay salmon set net Entry Permit S04T 65633 (the subject of this proceeding and hereinafter the Entry Permit) to Lisa Marie Williams.<sup>1</sup>

<sup>1</sup> Lisa Marie Williams received and subsequently transferred another permit that is not a subject of this administrative proceeding. On February 14, 2011, her husband, Earl A. Williams transferred Bristol Bay salmon set net entry permit S04T 60941 to Ms. Williams. On May 31, 2011, Ms. Williams transferred this permit to her niece, Shannon Marie Eldridge.

On July 9, 2013, Lisa M. Williams (hereinafter, the transferor) executed and faxed to CFEC her Notice of Intent to Permanently Transfer the Entry Permit. On the form the CFEC Licensing Project Leader duly noted its July 9, 2013 filing date, its September 7, 2013 effective date, and its July 9, 2014 expiration date,<sup>2</sup> as required by AS 16.43.170(b) and 20 AAC 05.1710(a).

AS 16.43.170(b) provides in relevant part as follows:

[T]he holder of an entry permit may transfer the permit to another person or to the commission upon 60-day notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer the permit.

Commission regulation 20 AAC 05.1710(a) provides in relevant part as follow:

The holder of an entry permit . . . may establish a filing date, effective date, and expiration date for the permanent transfer under AS 16.43.170(b) of the holder's entry permit by filing a completed and signed notice with the commission on the form designated Holder's Notice of Intent to Permanently Transfer Entry Permit, provided by the commission . . . . The commission will return to the holder a copy of the notice form that states the filing date, effective date, and expiration date for permanent transfer of the entry permit by the holder.

On July 23, 2013, the transferor faxed a new Notice of Intent to Permanently Transfer the Entry Permit executed by her on July 19, 2013.<sup>3</sup> However, contrary to 20 AAC 05.1710(a) and

---

<sup>2</sup> Exhibit A.

<sup>3</sup> Exhibit B.

without explanation, the Licensing Project Leader failed to note the filing, effective, and expiration dates on this second Notice of Intent and to return a copy to the transferor. However, under AS 16.43.170(b) and 20 AAC 05.1710(a), a Notice of Intent takes effect by operation of law upon its filing with the commission.

With her second Notice of Intent, and despite the fact that the Commission had received no such paperwork, the transferor included her notarized statement asking the commission to disregard any proposed transfer of her Entry Permit to Aaron Roberts or Kern Roberts.<sup>4</sup> Nothing more related to Aaron or Kern Roberts appears in Ms. Williams' CFEC file.

On November 8, 2013, on behalf of Violet Willson, the Alaska Dept. of Fish & Game King Salmon Area Office faxed to CFEC the first page of an executed and notarized Request for Permanent Transfer of the Entry Permit from the transferor to John Roehl (Violet Willson's son, and, hereinafter, the transferee).<sup>5</sup> This fax also included the second Notice of Intent to Permanently Transfer the Entry Permit executed by the transferor on July 19, 2013.<sup>6</sup>

The November 8, 2013 fax also included a photocopy of an \$18,000 cashier's check by the Wells Fargo Bank branch in King Salmon to transferor with the note "payment on half set net permit Violet Willson." The Cashier's check is dated July 26, 2013.

The November 8, 2013 fax further included Violet Willson's written October 24, 2013 statement reciting that the transferor had called needing some money because they would have to move out of the Coast International Hotel. Ms. Willson stated that she had a friend go over and give them \$500.00 for the room and food. She then transferred \$2,000 into their Wells Fargo account. Ms. Willson further stated that later she told them she would pay off the remainder owed for the permit and made a bank transfer. The written statement is accompanied by a copy of a bank statement apparently from Wells Fargo showing an October 24, 2013 withdrawal of \$2,000.00, followed by an October 29, 2013 withdrawal of \$17,500.00. Ms. Willson

<sup>4</sup> Exhibit C, hereinafter the Roberts Statement.

<sup>5</sup> This fax included only the first page of the Request for Permanent Transfer of Entry Permit form, executed and notarized on July 26, 2013, at Naknek, Alaska. The fax did not include the information survey on the following page of the form.

<sup>6</sup> Again, the Licensing Project Leader did not note the filing, effective, or expiration dates on this second Notice of Intent.

summarized her payment of the last \$20,000.00 she paid for the permit as follows: \$500.00 delivered by a friend, \$2,000 by bank transfer, and \$17,500 by bank transfer.

Finally, the November 8, 2013 fax included a Sale Agreement reciting that a \$20,000 down payment was due by July 31, 2013, and \$20,000 final and complete payment was due by December 31, 2013, for a total of \$40,000. On the face of the sale agreement is a receipt for the first \$20,000. The Sale Agreement is signed, on July 26, 2013, by the transferor and transferee whose signatures are notarized on that date.

The Licensing Project Leader sent notices dated November 12, 2013, to the transferor, with a copy to the transferee and Violet Willson, stating five reasons why she would not approve the transfer and requiring more information as set forth in the notices.<sup>7</sup> Her Denial Notice failed to inform the parties of the time limit for submitting the requested information, required by 20 AAC 05.1707(b) as follows:

A request for permanent transfer of an entry permit must be supported by documentation and such other supporting information as is required by the commission. If the required documentation or information in support of a request for permanent transfer is not submitted to the commission within 60 days after notification by the commission that the information is required, the commission will deny the request for permanent transfer of the entry permit.

On January 8, 2014, the Licensing Project Leader notified the transferor, transferee, and Ms. Willson that she was denying the Request for Permanent Transfer, because the transferor had failed to supply the requested information within the 60-day time limit following the notification as required by 20 AAC 05.1707(b). The notice further informed the parties of their

<sup>7</sup> Hereinafter the Denial Notices, Exhibit D. The content of both notices is identical but one bears the heading "ZND Notice." Both notices bear the same November 12, 2013 mailing date and fail to notify the parties they are under a deadline for supplying the requested information.

right to request a hearing under 20 AAC 05.1805.<sup>8</sup> The notice is flawed because the 60-day time limit from the original November 12, 2013 request for information had not yet run.

On February 21, 2014, attorney Brad De Noble appeared on behalf of Violet Willson with a timely request to the commission to complete the permanent transfer based upon the July 26, 2013 executed Request for Permanent Transfer of Entry Permit, the signed and notarized July 26, 2013 sale agreement and receipt of payment, and the transferor's July 19, 2013 executed Notice of Intent to Permanently Transfer of Entry Permit. In the alternative, attorney De Noble requested the commission to prohibit the transferor from transferring the permit to any other individual until this matter were resolved.

On February 26, 2014, the Licensing Project Leader wrote to attorney De Noble, enclosed "copies of the letters that were sent to the parties," but, without further explanation advised that the Commission could not act on the Notice of Intent form or the Request for Permanent Transfer form that he submitted but would notify attorney De Noble of any attempt by the transferor to permanently transfer the permit.

On April 1, 2014, a permit broker based in Washington state emailed the Licensing Project Leader indicating that the transferor had requested their help with a sale of her S04T 65633 permit. The Licensing Project Leader duly forwarded this email to attorney De Noble.

As we discuss below, we are treating the attorney's submission as a Petition for Administrative Review by the commissioners of the Licensing Project Leader's denial of the requested permanent transfer, and we assume jurisdiction over this matter.

### Discussion

For the reasons discussed below, we believe the record presents a *prima facie* case for the commission to complete the requested transfer of the permit. Therefore we are issuing this Provisional Decision and Order authorizing the requested transfer subject to the parties' opportunity to comment and to propose submission of additional evidence.

<sup>8</sup> The certified mailing to the transferor was returned by the post office marked "Unclaimed."

We are treating attorney Mr. De Noble's February 21, 2014 request as a Petition for Administrative Review by the commissioners under 20 AAC 05.1845 of the Licensing Project Leader's denial of the requested permanent transfer of the Entry Permit. We also hereby assume jurisdiction over this matter.<sup>9</sup>

This provisional decision represents our view that this record supports a *prima facie* case for completing the transfer. The interested parties, Ms. Williams, Ms. Willson, and Mr. Roehl, or their authorized representatives, will have 60-days from the date of this Provisional Decision and Order to offer written argument or written evidence in response to this Provisional Decision. The interested parties may also have 60 days from the date of this preliminary decision to request an evidentiary hearing, but such request must be supported by a detailed offer of proof.

We view the Licensing Project Leader's January 8, 2014 denial of this transfer as a procedural ruling premised on her perceived lateness of a response from the interested parties. We believe the underlying substance of her views is set forth in her Denial Notices dated November 12, 2013, that state her five reasons for refusing to complete the transfer.<sup>10</sup> Our following discussion will address the Denial Notices.

First, the Denial Notices invoke the 20 AAC 05.1712(d)(3) requirement that a request for a permanent transfer of an entry permit:

must be filed with the commission within 90 days after the Holder's completed and signed Request for Permanent Transfer of Entry Permit form.

The Denial Notices are correct that the request for permanent transfer form was filed more than 90 days after the permit holder's execution of the form, but the letter is mistaken in declaring that the Request for Permanent Transfer and other supporting papers were received by the Entry Commission on November 12, 2013. In fact, the items in support of this permit transfer were received by the commission on November 8, 2013. Friday, October 24, 2013, is the 90<sup>th</sup> day following the July 26 execution of the Request for Permanent Transfer, and only 15

<sup>9</sup> *Carla*, 96-003-P (1996); *M.S.*, CFEC 98-089-E (1998).

<sup>10</sup> Exhibit D.

additional days passed before the commission received the Request for Permanent Transfer on November 8.

CFEC's purpose in adopting 20 AAC 05.1712(d)(3) was to create a regulatory obstacle to one form of prohibited lease of an entry permit.<sup>11</sup> Early in its history, the commission discovered parties attempting to conceal a lease by having the permit holder request a permanent transfer of the entry permit. However, at the same time, the transferee executed notarized transfer papers, which the transferor could keep in a drawer during the period of the lease. After the period of the lease (normally at least for the length of a season), the original permit holder completed and submitted the executed papers either to get the permit back or to transfer the permit to a third party of his choice. In contrast, the case before us presents no original transfer of the entry permit that could have initiated a lease, and the proposed transfer did not come together until the tail end of the Bristol Bay salmon fishery, leaving no hint of a lease on this record. Reliance on the fact that the transfer papers arrived at the commission shortly after the regulatory deadline creates a meaningless obstacle to this transfer and serves no statutory or public policy purpose.

Additionally, the 90-day requirement is a procedural regulation which the commission has authority to waive when the ends of justice so require.<sup>12</sup> The commission's ability and willingness to waive 20 AAC 05.1712(d)(3) 90-day submission requirement is not a new principle for CFEC.<sup>13</sup> For example, in the 1995 *Smith* case, the transferor submitted the transfer request forms nearly seven months after he signed them.<sup>14</sup> CFEC commissioners adopted the Hearing Officer's waiver of the 90-day deadline in light of the Hearing Officer's analysis,<sup>15</sup> as follows:

As noted in Forquer v. State, CFEC, 677 P. 2d 1236, 1243 (Alaska 1984):

[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.

<sup>11</sup> AS 16.43.150(g).

<sup>12</sup> *Forquer v. State, CFEC, 677 P.2d 1236, 1243-1245 (Alaska 1984)*.

<sup>13</sup> *See, for example, Smith, CFEC 95-003-P (1995 Hearing Officer dec. at 1, 5-6)*.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

20 MC [sic] 05.1712(d)(3), which sets the 90 day deadline for filing permit transfer forms, is unquestionably procedural. Accordingly, the CFEC can consider relaxing the 90 day filing rule if, in this case, "the ends of justice require it." Id.

The purpose of the 90 day filing deadline is more to serve the interests of the CFEC than the interests of the parties to a transfer. In its effort to enforce AS 16.43.150(g), the deadline serves to screen and locate transfers that may contain prohibited leases or retained rights of repossession. There is nothing on record suggesting that the proposed transfer violates the prohibitions of leases or retained rights of repossession. As the record demonstrates, the proposed transfer stems from unfortunate domestic and financial difficulties in the Smith family .

...

As between the parties to a proposed transfer, other CFEC regulations establish rules for withdrawing notices of intent and permit transfer requests. The 60 day notice of intent period had already run when the CFEC received the request for the permanent transfer of Permit I, so it could not be withdrawn unilaterally by [transferor] Lyle J. Smith. 20 AAC 05.1710(b). Since the permit transfer request was filed with the CFEC, it could be withdrawn only by the written consent of both the holder and the proposed transferee. 20 AAC 05.1712(e). In this case, Lyle J. Smith would be able to circumvent the rules governing withdrawals of permit transfer requests if this proposed transfer was not approved.

The proposed transfer of the Entry Permit now before the commission is supported by substantially complete documentation, and the record indicates one of the parties paid the full \$40,000.00 purchase price last December. We are approaching the end of August, and the transferee has missed an entire salmon season. We believe this record amply supports our waiver of this procedural deadline to serve the interests of justice by allowing the commission to rule on the merits of this proposed transfer.

Second, the Denial Notices point out that a survey page was not submitted with the permanent transfer form, and the \$50.00 processing fee has not been paid.

One of the parties may have a copy of the completed survey page, in which event we would welcome its submission. However, there is sufficient information in the record to

demonstrate that this was an arms length transaction where the purchaser paid the seller the agreed upon purchase price for the permit. Those facts substantially cover the most important information to be gathered by the survey page. We would find substantial compliance and waive submission of the survey page, if it cannot be found and submitted. Additionally, we would conclude that the transfer complies with the Limited Entry Act subject to the condition that the \$50.00 transfer fee be paid (and the terms of the fourth requirement discussed below must be met) before CFEC finally approves the transfer.

Third, the Denial Notices transmitted a new transfer form and required both the transferor and transferee to complete and return the form. We do not believe that this requirement would produce substantially more information for the commission than we already have. Therefore, we waive this requirement.

The Denial Notices also stated as follows:

Please note that we have received the bill of sale which shows that Violet Willson has paid you [Lisa Williams] in full for the permit sale. This bill of sale is signed by both you and John.

These observations suggest that the interests of justice would be served by not erecting any unnecessary obstacles to the completion of this permanent transfer.

As a fourth requirement, the Denial Notices called for the following:

Additionally our office will need to have a written agreement between John [transferee] and [his mother] Violet [who paid the purchase price], indicating if the money is to be paid back to Violet and if so their terms.

This requirement paraphrases question 5 of the transfer survey on page 3 of the transfer form. Along with the payment of the \$50.00 transfer fee, the requested agreement between the transferee and his mother must be sworn to, notarized, reviewed and approved before the transfer

can be completed. In this sworn document (or a separate sworn statement), we request Violet Willson to specify the amount she has paid to the transferor.

Fifth and finally, the Denial Notices state as follows:

Our records show that you [Lisa Williams] do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

In fact, the file contains two Notices of Intent that the transferor executed and faxed to CPEC. The Licensing Project Leader noted filing, effective, and expiration dates on the transferor's first, July 9 Notice of Intent acknowledging its full force at the time. Contrary to the requirements of 20 AAC 05.1710(a) and without explanation, the Licensing Project Leader neglected to note filing, effective, and expiration dates on the second Notice of Intent submitted by the transferor.

The transferor's Roberts Statement<sup>16</sup> refers to her July 9 Notice of Intent<sup>17</sup> and could be construed as her request to revoke her first Notice of Intent in order to block any proposed transfer of her Entry Permit to Aaron Roberts or Kern Roberts. This view is reinforced by the transferor's filing of her second Notice of Intent dated July 19, 2013,<sup>18</sup> at the same time she submitted the Roberts Statement on July 23, 2013. The second Notice of Intent satisfies the requirements of AS 16.43.170 and 20 AAC 05.1710. Therefore, we believe that the second properly filed Notice of Intent was in full force and effect by law when the commission received the parties' Request for Permanent Transfer on November 8, 2013.

---

<sup>16</sup> Exhibit B.

<sup>17</sup> Exhibit A.

<sup>18</sup> Exhibit B.

**Conclusion**

For the reasons stated, by this Provisional Decision and Order, we conclude that the proposed transfer of Bristol Bay salmon set net entry permit S04T 65633 should be provisionally approved, subject to the payment of the \$50.00 transfer fee and the sworn submission we requested from the transferee and his mother, Violet Willson, concerning their agreement with respect to her payment of the purchase price for the permit. We have also requested a sworn statement from Ms. Willson detailing her payments to the transferor.

The parties to this provisionally-granted transfer, Lisa M. Williams (transferor), John B. Rochl (transferee), and Violet Willson, may submit written comments and propose written evidence for inclusion in this record, provided such items are received by the commission within 60 days from the date of this Provisional Decision and Order. Additionally, any of the parties may request an evidentiary hearing, provided such request is supported by a detailed offer of proof and received within 60 days of this Provisional Decision and Order.

Dated at Juneau this 2<sup>nd</sup> day of September, 2014.

By Direction of the  
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner  
Bruce Twomley, Chairman

RECEIVED  
LIBRARY  
JUL 09 2013  
CFEC

### Commercial Fisheries Entry Commission Notice of Intent to Permanently Transfer Entry Permit

2800 Glacier Hwy, #109  
P.O. Box 110002, Juneau, AK, 99811-0002  
Phone: 907-788-6150  
Fax: 907-788-6170  
www.cfec.state.ak.us

This notice must be on file with the Entry Commission for at least 60 days before the permit may be permanently transferred to another person. Filing a Notice of Intent to Transfer does not obligate you to permanently transfer the permit and you need not name a proposed transferee in this notice.

This notice expires one year from the date of filing. If a new Notice of Intent is received prior to the expiration date, it will be effective immediately without an additional waiting period. Name, address and licenses held are public information that may be released.

A Notice of Intent to Transfer is not required if a permit is being transferred from the Estate of a permit holder who is deceased.

I, LISA WILLIAMS, hereby notify the Entry Commission that I intend to permanently transfer my  
Permit holder's name (please print)  
entry permit, 504T 68633B for the CRYSTAL BAY fishery,  
Permit number Fishery resource, gear and area

— Check the space at left if you wish to have the Entry Commission include your name and mailing address in its list of permit holders who intend to transfer a permit. This list is available to the public and may be requested by persons interested in purchasing a permit.  
Please provide your phone number if you wish to have it listed: \_\_\_\_\_

— If you would like the Entry Commission to send you the Permanent Transfer form with your copy of this Notice of Intent, please check the space at left. These forms are available at Department of Fish and Game offices throughout Alaska and on the Entry Commission's website listed above.

[Signature] Date 7/9/2013  
Permit holder's signature\*  
[Redacted] Date of birth  
[Redacted]  
Social security number  
P.O. Box 363  
Permanent mailing address  
Naknek AK 99633  
City State Zip code

\* Authorization must be attached if not signed by the permit holder.

COMMISSION USE ONLY  
DATE FILED: 7-9-13  
EFFECTIVE DATE: 9-7-13  
EXPIRATION DATE: 7-9-14

# Commercial Fisheries Entry Commission Notice of Intent to Permanently Transfer Entry Permit

8800 Glacier Hwy, #100  
P.O. Box 110502, Juneau, AK 99811-0502  
Phone: 907-789-6180  
Fax: 907-789-6170  
www.cfec.state.ak.us

This notice must be on file with the Entry Commission for at least 60 days before the permit may be permanently transferred to another person. Filing a Notice of Intent to Transfer does not obligate you to permanently transfer the permit and you need not name a proposed transferee in this notice.

This notice expires one year from the date of filing. If a new Notice of Intent is received prior to the expiration date, it will be effective immediately without an additional waiting period. Name, address and licenses held are public information that may be released.

A Notice of Intent to Transfer is not required if a permit is being transferred from the Estate of a permit holder who is deceased.

I, LISA M. WILLIAMS hereby notify the Entry Commission that I intend to permanently transfer my  
Permit holder's name (please print)  
entry permit S04T65633H for the BRISTOL BAY fishery.  
Permit number Fishery resource, gear and area

RECEIVED  
JUL 23 2013  
CFEC

Check the space at left if you wish to have the Entry Commission include your name and mailing address in its list of permit holders who intend to transfer a permit. This list is available to the public and may be requested by persons interested in purchasing a permit.  
Please provide your phone number if you wish to have it listed: \_\_\_\_\_

If you would like the Entry Commission to send you the Permanent Transfer form with your copy of this Notice of Intent, please check the space at left. These forms are available at Department of Fish and Game offices throughout Alaska and on the Entry Commission's website listed above.

Lisa M. Williams July 19, 2013  
Permit holder's signature Date  
[Redacted] [Redacted]  
Social security number Date of birth  
P.O. Box 363  
Permanent mailing address  
Naknek ALASKA 99633  
City State Zip code

\* Authorization must be attached if not signed by the permit holder.

### COMMISSION USE ONLY

DATE FILED: \_\_\_\_\_  
EFFECTIVE DATE: \_\_\_\_\_  
EXPIRATION DATE: \_\_\_\_\_

Revised November 2008

ATTACHMENT I  
(pages 15 of 32)

09044

COMMERCIAL ENTRY COMMISSION  
8800 GLACIER HWY #109  
P.O. BOX 110302  
JUNEAU, ALASKA  
33811-0302

RECEIVED  
JUL 23 2013  
CFEC

PHONE 907-789-6150  
FAX 907-789-6170

ATTENTION EVON,

ON JULY 9<sup>TH</sup> 2013 INTENDING TO TRANSFER UPON SALE (JULY 7<sup>TH</sup> 2013) LISA WILLIAMS OWNER OF BRISTOL BAY SET NET PERMIT 50476813H (PAID A "INTENT TO TRANSFER" CONCERNING AARON ROBERTS TO COMMERCIAL FISHING ENTRY COMMISSION STARTING THE 6<sup>TH</sup> WE REQUIREMENT OF TRANSFER AT THE TIME THEIR AIB DOCUMENTS IN THE POSSESSION OF KERIN ROBERTS NOTORIZED BY ME SUCH AS: A SKIFF FOR DOWNPYM SECURITY TO BE RETURN UPON FINALIZATION OF PERMIT 50476813H A COPY OF IT BEING A GIFT TO ME FROM MY HUSBAND EARL WILLIAMS IN INTENT TO TRANSFER INTENT TO PERMANENT TRANSFER AGREEMENT AND PROBESARY AND POWER OF ATTORNEY ALLOWING HIM TO SIGN MY NAME OF SKIFF TRANSFER UPON THE PERMANENT TRANSFER OF PERMIT 50476813H DUE TO UNPREDICTABILITY WHERE I MIGHT BE CONCERNING MY HUSBANDS CONDITION NOTE TO USE AND RETURN MY EXISTING RIGHT WITH A FAIR AND JUST 6 MONTH NOTICE TO DNR AND AARON OR KERIN HIMSELF, ALL NOTORIZED AND GIVEN TO KERIN ROBERTS.

THE PURPOSE AND REASONING OF THE DISCOUNTED IMMEDIATE SALE OF MY PERMIT WERE GROUNDS OF NECESSITY DUE TO MY HUSBANDS CANCER CARE EXPENSES AND MEDICATIONS, CREDIT CARD DUE AND ON A LIMITED TIME BANK OUR CREDIT CARD BAL, LAWYER FEES ALSO ON TIME LIMIT BY JULY 12<sup>TH</sup>, NO FOOD, ELECTRIC FILING TO GET CUT OFF, 2013 FISHING EXPENSES AND SO FOR FRAMING THE OPENING OF A SMALL BUSINESS TO ACCOMMODATE MY HUSBANDS ABILITIES TO SUPPORT OUR FAMILY. MY HUSBAND COULD NOT COMPLETE THE SEASON DUE TO "EXTREMED" MEDICAL REASON AND WE HAD TO SELL IMMEDIATELY FOR THESE REASONS AND MORE.

KERIN WAS VERY WILL AWARE OF THESE REASONS AND DIRE NECESSITY FOR OVER A MONTH KERIN THEN DECIDED TO CHANGE WITHOUT FURTHER REGARD, OUR REQUIREMENT OF A PROMPT AND TIMELY \$5,000.00 DOWNPYM TO 7,500.00 AND WE HAVR TOLD HIM "MANY OF TIMES THIS CANNOT HAPPEN WE NEEDED OUR MONEY, FULL SELLING POINT AT 31,000.00 MEANING 9,000.00 LESS THEN MARKET VALUE AT THIS POINT WE HAVR DECIDED TO CANCEL THE SALE DUE TO THIS HAS BEEN GOING ON "WAY TO LONG" AND THE "FINANCIAL DAMAGES HAVR TAKEN EACH" DUE TO KERIN NOT TAKING IMMEDIATELY ACTION ON AGREEMENT. WE ALSO FEEL KERIN AS NO RESPECT TO THE FACT I AM THE OWNER OF THE PERMIT AND WE IN CALLING BROTHER ON WHAT HE WANTS TO PAY FOR DOWNPYM (NOT CONSIDERING THE REASONS FOR THE MORE THAN FAIR SALE FOR IMMEDIATE NEEDS AND PURPOSE OF THE SALE (MENTIONED ABOVE)

ANY/ALL TRANSACTIONS ARE TO BE REGUARDED DUE TO THESE FACTUALLY BASED EVENTS AND THE "SALE TO BE CANCELLED"

ANY FURTHER INQUIRIES PLEASE CALL AT 907-493-2611. THIS IS A BORROWED PHONE. IF I CANNOT REACH ME PLEASE CONTACT ME AT P.O. BOX 363 NAKNEK, ALASKA 99853.

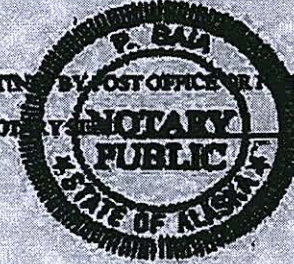
LISA WILLIAMS

PRINT LISA WILLIAMS

SIGNED [Signature]

DATE 7/23/2013

WITNESSED BY POST OFFICE CLERK [Signature]  
NOTARY PUBLIC [Signature] DATE 07-23-13



Comm 04 02-14-14

ATTACHMENT I  
(pages 16 of 32)

EXHIBIT C



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite  
PO Box 11  
Juneau, Alaska 99811-  
Main: 907.789.  
Licensing: 907.789.  
Fax: 907.789.

November 12, 2013

File# 098044

Lisa Williams  
Box 363  
Naknek, AK. 99633

Dear Ms. Williams:

On November 12, 2013, the Entry Commission received the request for permanent transfer of your Bristol Bay salmon permit, S04T 65633H, to John Roehl. Additional information is needed before I can proceed with the transfer.

The transfer request submitted was signed and notarized on July 26, 2013. Entry Commission regulation 20 AAC 05.1712(d) requires that the request be signed, notarized and filed within 90 days of being notarized.

Additionally there was not a survey page submitted nor was there a transfer processing fee of \$50.00.

I have enclosed a new form that both you (Lisa) and John will need to complete and return to our office with the \$50.00 processing fee.

Please note that we have received the bill of sale which shows that Violet Willson has paid you in full for the permit sale. This bill of sale is signed by both you and John.

Additionally our office will need to have a written agreement between John and Violet, indicating if the money is to be paid back to Violet and if so their terms.

Our records show that you do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

Please give this your immediate attention. If you have any questions or need further assistance please phone me directly at 907-790-6952.

By Direction of The  
Commercial Fisheries Entry Commission

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

Yvonne Fink  
Licensing Project Leader

cc: John Roehl, Violet Willson (VIA ADF&G in King Salmon)

ATTACHMENT I  
(pages 17 of 32)

EXHIBIT D (1 OF 2)



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

1/20/13

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite  
PO Box 110  
Juneau, Alaska 99811-0110  
Main: 907.789.4100  
Licensing: 907.789.4100  
Fax: 907.789.4100

November 12, 2013

File# 098044

Lisa Williams  
Box 363  
Naknek, AK. 99633

**2ND NOTICE**

Dear Ms. Williams:

On November 12, 2013, the Entry Commission received the request for permanent transfer of your Bristol Bay salmon permit, S04T 65633H, to John Roehl. Additional information is needed before I can proceed with the transfer.

The transfer request submitted was signed and notarized on July 26, 2013. Entry Commission regulation 20 AAC 05.1712(d) requires that the request be signed, notarized and filed within 90 days of being notarized.

Additionally there was not a survey page submitted nor was there a transfer processing fee of \$50.00.

I have enclosed a new form that both you (Lisa) and John will need to complete and return to our office with the \$50.00 processing fee.

Please note that we have received the bill of sale which shows that Violet Willson has paid you in full for the permit sale. This bill of sale is signed by both you and John.

Additionally, our office will need to have a written agreement between John and Violet, indicating if the money is to be paid back to Violet and if so their terms.

Our records show that you do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

Please give this your immediate attention. If you have any questions or need further assistance please phone me directly at 907-790-6952.

By Direction of The  
Commercial Fisheries Entry Commission

Yvonne Fink  
Licensing Project Leader

cc: John Roehl, Violet Willson (VIA ADF&G in King Salmon)

ATTACHMENT I  
(pages 18 of 32)

EXHIBIT D (2 OF 2)



THE STATE  
of **ALASKA**

GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

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

December 31, 2014

CERTIFIED RETURN RECEIPT  
7003 0500 0002 8883 2226

Mrs. Lisa M. Williams  
2603 La Honda Drive  
Anchorage, AK 99517

Re: Final Commission Decision on Administrative Review  
Lisa Williams Permanent Transfer of Limited Entry Permit  
S04T 65633 to John B. Roehl  
CFEC 14-053-P

Dear Mrs. Williams:

We are sorry to inform you that the Commission has unanimously decided to approve the requested transfer of Bristol Bay salmon set net permit S04T 65633 and to order the reissuance of the permit to John B. Roehl. Enclosed is a copy of our Final Commission Decision on Administrative Review explaining our reasons

Enclosed is a copy of 20 AAC 05.1850, the Commission regulation detailing your 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.

**ATTACHMENT I**  
(pages 19 of 32)

Also enclosed is that part of Appellate Rule 602 outlining the procedure for you to seek judicial review of this decision. Under the appellate rule, you 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



Benjamin Brown, Commissioner  
Frank Homan, Commissioner  
Bruce Twomley, Chairman

Enclosures

cc:

Brad D. De Noble, Attorney for John B. Roehl & Violet Willson (7003 0500 0002 8883 2233)  
De Noble Law Offices, LLC  
11517 Old Glenn Hwy., Suite 202  
Eagle River, AK 99577

John B. Roehl (7003 0500 0002 8883 2240)  
Box 104  
Naknek, AK 99633

Violet Willson (7003 0500 0002 8883 2257)  
Box 104  
Naknek, AK 99633

**ATTACHMENT I**  
**(pages 20 of 32)**

**STATE OF ALASKA**  
**COMMERCIAL FISHERIES ENTRY COMMISSION**

In Re the Application of

Lisa M. Williams

For Permanent Transfer of Bristol Bay Salmon  
Set Net Permit S04T 65633 to John B. Roehl

CFEC 14-053-P

**FINAL COMMISSION DECISION ON ADMINISTRATIVE REVIEW**

**Counsel**

Brad D. De Noble, De Noble Law Office LLC, 11517 Old Glenn  
Hwy., Suite 202, Eagle River, AK 99577, attorney for John B. Roehl  
and Violet Willson

I.

**Introduction and Summary**

Lisa M. Williams,<sup>1</sup> the holder of the Bristol Bay salmon set net entry permit at issue in this proceeding has in the past participated in three completed transfers of limited entry permits. She received two permits by transfer, and transferred one of the permits away.

Additionally, shortly before the transfer at issue in the current proceeding, on July 9, 2013, the transferor executed and submitted to CFEC a Notice of Intent to Permanently Transfer

---

<sup>1</sup> Hereinafter, the transferor.

Entry Permit in support of a proposed transfer of the permit.<sup>2</sup> The transferor subsequently withdrew the Notice of Intent and advised CFEC not to act on any transfer papers that CFEC might receive from the proposed transferee,<sup>3</sup> as the holder of an entry permit is entitled to do before the commission receives both parties' Request to Permanently Transfer Entry Permit. Once the parties file the Request for Permanent Transfer, the request can only be withdrawn by agreement between the transferor and transferee.

On July 23<sup>rd</sup>, 2013, the Commission received the new Notice of Intent executed by the transferor in support of her agreement to transfer the permit to John B. Roehl, the transferee in this proceeding.<sup>4</sup> The transferor did not attempt to withdraw this Notice of Intent before the commission received the parties' Request for Permanent Transfer of Entry Permit. Both transferor and transferee swore to and signed the Request for Permanent Transfer of Entry Permit. The request stated that their agreement included only the transfer of the permit and did not include the transfer of any site. The transferor accepted full payment of the \$40,000 agreed-upon purchase price prior to their contractual deadline at the end of calendar year 2013.

In the course of reviewing this proposed transfer, the Licensing Project Leader did not acknowledge receipt of the transferor's Notice of Intent<sup>5</sup> and, on November 12, 2013, requested (among other things) that the transferor file a new Notice of Intent with the commission.<sup>6</sup> The transferor did not respond to this request.

On April 1, 2014, a permit broker based in Washington State emailed the Licensing Project Leader stating that the transferor had requested his help with a sale of her S04T 65633 permit (the subject of this proceeding).

---

<sup>2</sup> Exhibit A (attached to Provisional Decision and Order).

<sup>3</sup> Exhibit C (Provisional Decision and Order).

<sup>4</sup> Exhibit B (Provisional Decision and Order).

<sup>5</sup> *Id.*

<sup>6</sup> Exhibit D (Prov. Dec. and Order).

The 2014 Bristol Bay salmon season passed without a transfer of the permit, and no one fished the permit.

The commissioners intervened, took jurisdiction of this transfer, and issued their September 2, 2014 Provisional Decision and Order for permanent transfer of the entry permit based on their finding that the record before the commission demonstrated substantial compliance with the Limited Entry Act. The commissioners have offered the transferor and the transferee two opportunities to submit affidavits and arguments in response to the commission's Provisional Decision and Order. By this decision, the commissioners incorporate by reference and give effect to their Provisional Decision and Order and the commissioners conclude that they have an affirmative duty under AS 16.43.170 to, "...approve the transfer and reissue the entry permit to the transferee...."

## II. Proceedings Following Provisional Decision and Order

Representing the transferee (and the transferee's mother who paid \$40,000 cash for the full purchase price of the entry permit), attorney Brad De Noble timely responded to the Provisional Decision and Order and met all the deadlines set forth in the order. His submission included the second and previously missing page of the Request for Permanent Transfer of Entry Permit completed by the parties. From the transferor's affidavit, the transferee's affidavit, and from the handwriting, the transferor filled out the entire Request for Permanent Transfer of Entry Permit form. Both the transferor and the transferee signed sworn statements attesting to the truth of their statements on the form.

The transferor Lisa Williams also submitted a timely response to the Provisional Decision and Order. The transferor made a request for an evidentiary hearing before the commissioners based on her claim that the transaction with Violet Willson and transferee John Roehl included the sale of two shore fishery leases in addition to the permit:

The transaction was not simply a sale of my set net entry permit for the sum of \$40,000, but rather the transaction was a sale of my permit along with two shore fishery leases for the total sum of \$80,000. Due to the fact that John Roehl and Violet Willson did not complete full payment to me in the amount of \$80,000, I do not wish to permanently transfer my set net entry permit to John Roehl.

The transferor supported her claim with her affidavit stating in part as follows:

2. Around the time of July 13, [2013] I began the negotiation with Violet Willson for the purchase of my set net entry permit and two shore leases, which would be transferred and used by her son, John Roehl. We agreed that the permit was worth \$40,000.... We eventually agreed on the price of \$20,000 for each shore lease. Together we agreed on the terms of \$80,000 for the set net entry permit and two shore leases.

3. At that time in July 2013, Violet told me that she could only pay me for the entry permit and that she would sign the paperwork and pay for the shore leases after the end of the year. I drafted the sale agreement for just the entry permit portion of the agreement at this time so that Violet and I could begin the permit transfer process.

4. I also drafted a sales agreement for the shore leases around this time in July to have ready for when Violet could pay for the leases in January. Sometime after the time I drafted this agreement, my home was burglarized and this draft agreement was taken from my home.

\* \* \*

7. Violet has not paid me the remaining \$40,000 as we had agreed upon for the two shore leases. I did file a Notice of Intent to Permanently Transfer the Entry Permit with the Alaska Commercial Fisheries Entry Commission to transfer set net permit S04T 65633 to John, but this transfer was conditioned upon the completion of the full agreement that I had with Violet and John. As

Violet and John had not completed payment to me under the full agreement and are in breach of our contract, I do not wish to transfer my set net entry permit to John.

The transferor also submitted an affidavit by Alexander Joannides stating that:

On or about May 22, 2014, give or take around 7:30 pm I went to pick up Lisa Williams at her residence...in Anchorage. I knocked and she opened the door to let me in. I walked in and Lisa was on the speaker phone with a lady she was referring to as Violet. Lisa and the woman identified as Violet were having a heated conversation which Lisa was asking for payment for her fishing site. Next thing you know, Violet yelled, "I don't have to pay for shit!! Especially now that Dinky is dead!!"

The transferor has not denied that she has been fully and timely paid the agreed upon \$40,000 purchase price for the permit before the end of 2013.

CFEC copied the transferee and his mother with the transferor's submission and vice versa and invited their responses.

On Wednesday, December 3, 2014, the transferor submitted her unsworn email response which, among other things, stated that her husband Earl Williams had been cancer stricken and "could not be left alone" before he died on February 19, 2014. She also characterized the transferee as an incapacitated alcoholic, whom she used to ask to watch over her husband in their home, when she had to leave to run errands. Additionally, the transferor alleged that the agreement to transfer the entry permit that she and the transferee swore to and signed on July 25, 2013, was kept secret from the transferee for some period of time.<sup>7</sup>

---

<sup>7</sup> The transferor's December 3, 2014 response is attached hereto as Exhibit E (continuing the letter identification sequence begun with the Commission's September 2, 2014 Provisional Decision and Order).

On Thursday, December 4, 2014, attorney Brad De Noble submitted a second affidavit from Violet Willson and a second affidavit from her son John B. Roehl. In her affidavit, Ms. Willson states as follows:

1. The statements made in the affidavit submitted by Lisa M Williams that her sale of Permit No. S04T 65633 to my son John Roehl included or was conditioned on my purchase of her two shore leases are completely false.

2. At the time I agreed to purchase Ms. Williams' permit, there was absolutely no mention whatsoever of my purchasing her lease sites. The sale agreement, which Ms.

Williams drafted herself and which she signed, accurately reflects the complete terms of our deal and makes no mention of the leases or that the sale of the permit was conditioned on anything other than the payment of \$40,000.

3. It was not until I made the final payment that Ms. Williams mentioned the leases and offered to sell them to me. I told Ms. Williams I was not interested because there were open sites on either side of hers.

4. The statements made in the affidavit submitted by Alexander Joannides concerning an alleged phone call between Lisa Williams and myself on May 22, 2014 are completely false. Not only would I never use such language, I have not spoken with Lisa Williams by telephone since in or around November 2013.

The transferee Mr. Roehl's affidavit states as follows:

1. The statements made in the affidavit submitted by Lisa Williams that her sale of Permit No. S04T 65633 to me included or was conditioned on my mother Violet Willson's purchase of Ms. Williams two shore leases are completely false.

2. Ms. Williams never mentioned the leases to me prior to me signing the sale agreement. The sale agreement, which Ms. Williams drafted herself and which she signed, accurately

reflects the complete terms of our deal and makes no mention of the leases or that the sale of the permit was conditioned on anything other than the payment of \$40,000.

### III. Discussion

The transferor has participated in three completed transfers of limited entry permits. She has received two permits by transfer, and she has transferred one of those permits away.

Additionally, shortly before entering the transaction at issue here, the transferor unilaterally withdrew the Notice of Intent she had filed with the commission in support of an earlier transfer of the permit. All permit holders are entitled to unilaterally withdraw a Notice of Intent to nullify a proposed transfer provided the withdrawal occurs before the parties file a Request for Permanent Transfer of Entry Permit. Once the Request for Permanent Transfer of Entry Permit is filed, the proposed transfer cannot be withdrawn unless both parties formally agree to withdraw it.<sup>8</sup>

The transferor did not attempt to withdraw her Notice of Intent to Transfer in support of the transfer at issue here. Instead, she allowed the Request for Permanent Transfer of the Entry Permit to be filed supported by her own sworn statement and the sworn statement of the transferee. The Request for Permanent Transfer affirmatively represented that the agreement between the parties included only the purchase of the limited entry permit and did not include the purchase of a site.

Additionally, the transferor accepted timely payment of the \$40,000 agreed upon purchase price for her entry permit.

---

<sup>8</sup> AS 16.43.170; 20 AAC 05.1710.

The transferor stated on the Request for Permanent Transfer that she was “selling permit due to my husband’s cancer need money for bills and care.”

The transferor’s sworn statements on this record (together with those of her transferee) trigger the commission’s affirmative duty to, “... approve the transfer and reissue the entry permit to the transferee...” under AS 16.43.170(b).

The transferor did not respond to the Licensing Project Leader’s November 12, 2013 requests for further information in support of this transfer.<sup>9</sup>

On April 1, 2014, a permit broker based in Washington State emailed the Licensing Project Leader stating that the transferor had requested his help with a sale of her S04T 65633 permit (the same permit at issue in this proceeding).

CFEC did not complete this transfer, and no one fished the permit during the 2014 Bristol Bay salmon season. The commissioners took jurisdiction of this matter and issued their September 2, 2014 Provisional Decision and Order.

Most recently, in her October 31, 2014 response, the transferor objected to completion of the transfer and requested an evidentiary hearing before the commission to prove the existence of a very different agreement from the one the parties swore to on their Request for Permanent Transfer of Entry Permit that called only for the sale of her set net entry permit for \$40,000.

And, as noted, the transferor has accepted timely payment of the \$40,000 agreed-upon purchase price for the permit.

In short, the transferor has requested an evidentiary hearing before the commission to provide her with an opportunity to overcome her own previously sworn statements to the

---

<sup>9</sup> Exhibit D (Provisional Decision and Order).

commission. We view the transferor's December 3<sup>rd</sup>, 2014 submission to the commission<sup>10</sup> as an offer of proof to the commission of the testimony she would provide at an evidentiary hearing, if granted.

We do not believe the transferor has offered a sound basis for the commission to grant an evidentiary hearing. Testimony that she has offered to contradict her previously sworn statements is not going to improve this record. In fact, the transferor's latest December 3<sup>rd</sup>, 2014 statement suggests her testimony will not be responsive to the issues before the commission and further suggests a willingness to say anything.<sup>11</sup>

CFEC reviews proposed transfers of entry permits primarily to ensure that the proposed transfer does not violate the Limited Entry Act. Whether or not the parties may also be transferring a shore fishery lease is consistent with the Limited Entry Act either way. The Request for Permanent Transfer of Entry Permit form asks about the value of additional items in a combined transfer (for example, sites) to allow the commission to make a sound estimate of the permit value, when other items are included in the sale.<sup>12</sup> Otherwise, the commission has no authority over the disposition of a shore fishery lease which is wholly under the jurisdiction of the Alaska Department of Natural Resources.<sup>13</sup>

There is no reason for a party to conceal or misrepresent to the commission on their transfer form the existence of a contract for transferring a shore fishery lease. Whether or not such a contract exists is not relevant to the required compliance with the Limited Entry Act in order to complete the transfer of a limited entry permit. When the parties show they have complied with the Limited Entry Act, the commission's duty under AS 16.43.170 to approve the transfer arises.

---

<sup>10</sup> Exhibit E.

<sup>11</sup> Exhibit E.

<sup>12</sup> CFEC's estimates of permit value are employed by administrators of the Commercial Fishing Revolving Loan Fund (AS 16.10.300 and following) and Officers and employees of the Alaska Commercial Fishing and Agriculture Bank (AS 44.81.010 and following).

<sup>13</sup> AS 38.05.082-38.05.105; 38.05.965(3), (4), & (5).

The parties are in disagreement over whether they entered a contract for the sale of two shore fishery leases. But the commission has no authority to enforce an agreement to purchase a shore fishery lease, even if such an agreement were to be established. At the same time, the transferor may have a civil remedy for breach of contract, if her claim is supported by the facts. We also note that there is an ongoing market for the sale of shore fishery leases.

The parties swore to the terms that apply to the transfer of the entry permit, and their terms show compliance with the Limited Entry Act. Therefore, we believe this agreement creates a statutory duty on the part of the commission to approve the transfer and reissue the permit to the transferee.

We do not believe the commission should conduct an evidentiary hearing to afford the transferor the opportunity to overcome her own previously sworn statements to the commission nor to prove the existence of a contract with respect to shore fishery leases, over which the commission has no jurisdiction. Conducting an evidentiary hearing to adjudicate the existence and effect of a contract for a transfer of two shore fishery leases would serve no statutory or useful purpose under the Limited Entry Act.

Additionally, the applicant's last submission to the commission (alleging in part that the agreement to transfer the entry permit that the transferee signed on July 26, 2013, was kept secret from the transferee and further making allegations about the transferee's health) is non-responsive at best and fails to show that a hearing would improve this record.

Therefore, we deny the transferor's request for an evidentiary hearing and leave her to her civil remedies with respect to her claims of the existence of a contract for the sale of her two shore fishery leases. The permit holder may also sell her shore fishery leases on the open market.

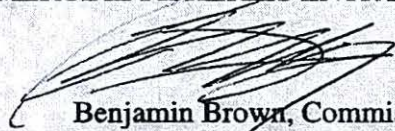
IV. Conclusion

We incorporate by reference and give effect to our September 2<sup>nd</sup>, 2014 Provisional Decision and Order.

For the reasons stated, we approve the requested transfer of Bristol Bay salmon set net permit S04T 65633 and order the reissuance of the permit to John B. Roehl.

Dated at Juneau this 31<sup>st</sup> day of December, 2014.

By Direction of the  
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner  
Frank Homan, Commissioner  
Bruce Twomley, Chairman

## **Maake, Mele (CFEC)**

---

**From:** dinky williams <dinkywilliams1960@gmail.com>  
**Sent:** Wednesday, December 03, 2014 10:18 AM  
**To:** Maake, Mele (CFEC)  
**Subject:** Fwd: Permit. Lisa williams

Mrs L Williams

----- Forwarded message -----

**From:** "dinky williams" <dinkywilliams1960@gmail.com>  
**Date:** Dec 3, 2014 9:45 AM  
**Subject:** Permit. Lisa williams  
**To:** <bruce.twomley@alaska.gov>  
**Cc:**

I am not going to send a hardcopy although I said I would.  
I have been sick an went to hospital.  
What I tell u is that the permit an sites we're to be a surprise for John Rhoele from Mother Violet.  
John knew nothing of the permit till approx 10 days after the fact.  
Violet has a large family an has never wanted anyone around when she does business due to the drama and her  
bein set in her ways.  
All her business is done one on one.  
She is a shrewd business woman.  
That is common knowledge in Naknek.  
The only other person That discussed any numbers with her was my husband Dinky. He passed on Feb 19  
2014. They talked over the phone.  
Dinky was unable to go much of anywhere and could not be left alone.  
JOHN WATCHED HIM WHILE I told him I had errands to run an asked hin to wAtcHing and he did.  
He could not be in 2 places at once.  
DUE TO THE FACT HE WAS TO KNOW NOTHING OF THE PERMIT AN SITES PER VIOLET  
BECAUSE SHE WANted TO SURPRIZE HIM.  
JOHN IS A HORRIBLE DISFUNCTIONAL ALCOHOLIC.  
HE IS at the liquor store upon openin. Buys. An 18 pack of beer half gallon of tequila an smokes. All that is  
completely gone by 2 pm. Then he passes out til  
5pm. Wakes an go's back to liquor store Buys the exact same thing and passes out til 10 pm. Wakes just before  
last call an Goes back to the liquor store an buys the exact same thing again an passes out early mornin hrs.  
Sleepstil 9 an than back to the liqueur store.  
Starts the exact same cycle over the next day.  
I have never seen John a y different the whole 8 yrs have own him. He spends 300 a day on booze.  
Puttin thAt Boy boat is goin to cost people their lives.  
Its ashame but true.  
I do not know if u made a decision yet.  
Please email me at: [lw99633@gmail.com](mailto:lw99633@gmail.com)

Mrs L Williams

**ATTACHMENT I**  
(pages 32 of 32)

EXHIBIT E

# Alaska Dispatch News

## State review triggers talk of cutting back commercial fishing commission

Zaz Hollander

February 16, 2015

[Share on email](#) [Email](#) [Print](#)

Text Size [^](#)[A](#) [+A](#)

WASILLA -- A new state review suggests the three-member state commission overseeing some of Alaska's most lucrative commercial fisheries is prone to inefficiency and ripe for overhaul, with a few employees who are paid but rarely show up at the office.

The review of Alaska's Commercial Fisheries Limited Entry Commission, conducted by the Alaska Department of Fish and Game, comes as officials struggling with a forecast \$3.5 billion shortfall look to trim state spending.

Related:

[Walker moves to drop Point Thomson suit, address future settlements](#)

The report was released in early February, about two weeks after the commission's newest member -- former Wasilla Mayor Verne Rupright -- was appointed by Gov. Bill Walker.

Created in 1974 to calm frenzied salmon harvests, the commission now administers 68 fisheries. Nearly half target salmon but the commission also regulates herring, crab, sablefish, shrimp and dive fisheries. Commissioners help decide who gets permits and rule on appeals of hearing officer decisions.

The three commissioners are all attorneys: longtime commissioner and chair Bruce Twomley; one-term member Benjamin Brown; and Rupright. The Legislature still must confirm Rupright's appointment and Brown's reappointment to four-year terms.

Each commissioner earns more than \$100,000 a year plus benefits. The commission employs 28 full-time and three part-time staffers.

Commissioners resolved just three disputed permit applications in each of the last two years, according to the review.

Some say the commission has done its job too well: The state's now-stabilized commercial fishing industry no longer needs such a well-compensated commission and large staff.

Sen. Bill Wielechowski, D-Anchorage, quizzed Brown about the review during a confirmation hearing last week.

“We could realistically save a couple million dollars,” Wielechowski said in an interview Monday. “You’ve got a commission that has 31, 32 employees. They processed three permit applications in each of the last two years, which is an unprecedented low.”

Commission chair Twomley said he couldn’t respond specifically to the review but said it contains numerous errors.

Twomley said Friday that the commission was told the report would go to them for review before it was final. He learned of its release only after a reporter called.

“It’s distressing because there are a number of inaccuracies that could have been cleared up with a conversation,” he said. “But now we’ve got to do a formal response, which we are going to do.”

He said he expected a response from commissioners this week.

Last year, Homer Republican Rep. Paul Seaton proposed repealing the commission and moving its duties to the Department of Fish and Game. He initially intended to start a conversation about potential inefficiencies, Seaton said in an interview Monday.

That was before the price of oil went into a free fall.

“Either way, I think there’s people looking at this saying, ‘Huh. Well it’s been a long time, and has the situation changed and can we do this in a better way?’ ” he said. “We want to let people know we’re not gutting the idea of permits or anything like that. It’s just how do we efficiently do those.”

Tom Lawson, a former director of administrative services for Fish and Game, conducted the commission review. The administration of former Gov. Sean Parnell authorized it in August. Lawson called his study “a snapshot in time” based on interviews with staff, commissioners and other information.

The review recommends five alternatives besides the status quo. One follows Seaton’s proposal to repeal the commission and move its duties to Fish and Game. Four call for fewer or part-time commissioners once a longstanding backlog of judgments is cleared.

By the end of 2014, the commission had whittled a historic backlog of 900 pending cases in the 1990s down to 28, according to an annual report it released last month.

But the ADFG review states that the commission takes too long to decide cases, calling it a “serious issue for a long time.”

Nearly all the 28 cases have been in process for at least 15 years, it says.

Twomley said the commission "faced down almost 23,000 applications" over time. He said the commission made fisheries in Cook Inlet and Southeast a priority until salmon runs began declining in the late 1990s, putting Bristol Bay permits at the forefront.

Today's caseload of 28 simply marks a more "rational" load, he said. "We've not run out of critical work to do."

Staffing issues also receive scrutiny in Lawson's report.

The payroll includes five state retirees eligible for Public Employee Retirement System benefits in temporary positions, according to the review.

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

It's unclear what form any proposals based on the review might take, though both legislators said they didn't have any legislation in the works. It appears the administration favors changes to the commission, Seaton said.

Sam Cotten, Walker's appointee for Fish and Game commissioner, described the review as "comprehensive and thorough" when he forwarded it Feb. 4 to Walker's chief of staff, Jim Whitaker, as well as Legislative Auditor Kris Curtis and the commission.

"I agree with the observations of others that CFEC has made valuable contributions to commercial fisheries in Alaska during its 40 years of existence, but there have also been many changes in the industry during this time period as well," Cotten wrote. "In light of the current fiscal climate facing the state, this review is timely to help ensure that CFEC is operating as efficiently as possible."



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

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

The State of Alaska faces a fiscal crisis which demands that all agencies be scrutinized for possible savings. The Alaska Commercial Fisheries Entry Commission (CFEC) has drawn no undesignated general fund dollars for almost a decade, operating solely on designated general funds from permit and vessel license renewal fees paid by fishermen. CFEC is committed to taking specific actions in the coming year to capture all available savings, while still independently providing excellent services and obeying our constitutional and statutory mandates to protect fundamental components of the livelihoods of Alaska fishing families and the Alaskan commercial fishing industry.

CFEC has had a static structure for decades; now is time to revisit how best to serve Alaskans. CFEC is both autonomous and fully exempt, which provides the ability to restructure operations to provide maximum value in the most cost-effective manner. **The CFEC commissioners commit to undertaking the following actions in the coming year to respond directly and concretely to recently expressed concerns. CFEC will:**

- With a budget for the 2016 Fiscal Year that retains CFEC's statutory autonomy and exempt status, employ this flexibility to promptly make changes to improve and streamline agency operations and reduce operating costs.
- Restore the Executive Director position by July 1, 2015 (sooner if possible) to work with the commissioners to chart an organizational structure which allows for the timely completion of all pending limited entry permit applications, and implementation of beneficial operational efficiencies as quickly as can be done.
- Implement policies and make adjustments to eliminate unnecessary functions and calibrate salaries and benefits to reflect current duties and responsibilities.
- Complete upgrades to the online permit renewal system and all other information technologies to ensure quality, cost-effective service to the public.
- Report on our progress to the Legislature and Executive Branch at the beginning of 2016, and request any legislation needed to enable CFEC to meet its mission and retain the essential independence to decide permit issuance and transfer applications, adopt regulatory changes, and decide other matters critical to Alaska's commercial fishermen in a legally defensible manner.

## **Background information.**

In 1972, Alaskans voted to amend the Alaska State Constitution to authorize limited entry. In 1973, the Alaska Legislature adopted the Limited Entry Act and created the Alaska Commercial Fisheries Entry Commission (CFEC). CFEC has limited entry into 68 commercial fisheries and fully completed adjudication of applications for permanent entry permits in 57 of these fisheries. Under the Act, a fisherman can continue to fish without obtaining a permanent entry permit as long as the applicant has an application pending before CFEC or the courts. Commission decisions represent administrative law rulings that must comport with the terms of the Act as well as a voluminous and highly specific body of case law from the Alaska Supreme Court. Each decision must be crafted with great care, given that the Alaska Supreme Court has held that a reversal of a CFEC decision can be applied retroactively to re-open denied applications and allow new applicants to apply long after the original deadlines. Success in court is critical to protecting limited Alaska fisheries, and for almost 20 years CFEC has had a better than 90% success rate on its court appeals, thereby maintaining stability for permit holders.

House Bill 112 would dismantle CFEC as an independent agency and annex its functions to the Alaska Department of Fish & Game (ADF&G). From the fees it collects, CFEC generates substantial revenues in excess of its operating costs. The proposal to eliminate CFEC and eradicate the autonomy which has been the basis for all of its functions since its inception does not survive a cost-benefit analysis.

At the request of the previous Commissioner of Fish & Game, a review of CFEC's operations was conducted over a five-month period and released to the public on February 4, 2015. CFEC responded in writing two weeks later. At the request of the sponsor of legislation in the previous Legislature (that mirrored this year's HB 112) the Division of Legislative Audit began a performance audit of CFEC on January 26, 2015. The audit is underway, and is not expected to be finally completed and released before the first regular session of the 29<sup>th</sup> Alaska Legislature adjourns.

Alaska's commercial fishing industry is well served by CFEC's independent administration and adjudication of final decisions on limited entry permits now and in the future. The permanent and emergency transfer of limited entry permits must be adjudicated independently of political agendas. The research and analysis performed by CFEC for the Alaska Legislature, the Board of Fisheries, other governmental and non-governmental entities, and individuals must be independent to ensure the provision of objective, reliable information to support sound policy choices.



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER


Commercial Fisheries Entry Commission

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

To: Representative Louise Stutes  
Chair, House Special Committee on Fisheries  
and Members of the Committee

Date: Thursday, March 19, 2015

Phone: 790-6944

From: Alaska Commercial Fisheries Entry  
Commission  
Bruce Twomley, Chair   
Benjamin Brown, Commissioner  
Verne Rupright, Commissioner

Subject: CFEC Specific Comments on  
HB 112 Repeal CFEC; Transfer  
Functions to ADF&G (29-LS0485\A)

Page 4, lines 3-5, call for "the request" for a moratorium on new entrants into a commercial fishery to be presented to the Board of Fisheries. Later on this page, line 19 states that the request can come from "the commissioner." Can only the commissioner make the request? Can the public present a request, or is the public out of this process? If the public can present the request, do they present the request to the commissioner or the Board, or somewhere else?

Page 4, lines 15-17, empower the commissioner to limit entry "of participants and vessels into the commercial fisheries..." without the approval of the Board of Fisheries. Why would the commissioner be empowered, alone, to impose an entire limited entry program but be required to seek the approval of the Board of Fisheries to establish a temporary moratorium?

Page 11, lines 21-25, establish the new commercial fisheries entry division as "regulatory and quasi-judicial" and authorize the commissioner to appoint the director of the commercial fisheries entry division. But the legislation has previously granted the power to limited entry to the commissioner. Can a commissioner delegate his power to limit entry? There is a further ambiguity in lines 27-28 where the duty to limit entry is assigned to "the department".

Page 13, lines 4-5, provide that the “**department**” is further granted authority to establish a moratorium. However, this authority was previously granted to the commissioner, who may be limited to making a request to the Board of Fisheries.

Page 13, lines 6-10, are derived from CFEC’s current statutory duty to provide its data to regional development organizations without charge. The proposed legislation substitutes “the **Department’s** data,” which is a much broader category of data than the commission’s data.

Page 13, lines 18-24, give the department the duty to “adopt regulations, consistent with due process of law, to govern practice and procedure and conduct of all investigations, hearings, and proceedings.” The next sentence provides that all adjudicatory proceedings “shall be conducted by the office of administrative hearings....” The division of authority between the department and the office of administrative hearings is not clarified.

The bill does not save CFEC’s current regulations. (Which, among other things, establish adjudication procedures, define limited fisheries, establish fees and licensing procedures).

Page 13, line 31: Page 14, lines 1-5, provide that the department and the office of administrative hearings or an employee of either agency may do all things necessary to conduct administrative hearings including the issuance of subpoenas “in [a] hearing... before the department or office of administrative hearings in any part of the state.” This provision blurs the difference between the two agencies.

Page 14, lines 5-7, authorize the office of administrative hearings to petition a court to enforce its subpoenas or other process. Our attorney has advised that they are not aware of the office of administrative hearings performing this function.

Page 14, lines 8-9, authorize the department to adopt regulations “for the correction of administrative error.” We do not know what this means.

Page 14, lines 14-17, provide that “final administrative determinations by the **office of administrative hearings or the department under this chapter**... are subject to judicial review....”

This provision gives authority to the office of administrative hearings to issue final decisions subject to judicial review. We understood that the office of administrative hearings normally issues recommended decisions to an agency head.

But the same provision gives the identical authority to the department. If the office of administrative hearings is intended to be the final decision maker, something of value to fishermen will be lost. At CFEC, the commissioners are the final decision makers and also are the rule makers (commissioners adopt regulations). Therefore, a fisherman can argue to the commissioners that a regulation is unconstitutional (or, at least, unfair), and, if the commissioners are persuaded, the commissioners can change the regulation. That form of relief for a fisherman cannot be achieved at the office of administrative hearings, which lacks the power to change an agency regulation.

Page 19, lines 27-31: Page 20, lines 1-21, authorize the **department** to establish a moratorium. (lines 27-29) Lines 8-10 then refer to a situation where “the commissioner... **imposes...**” a moratorium on new entrants into the fishery. But then, the **department** applies the standards that govern the decision to impose a moratorium.

Additionally, we note that the standards governing the department’s establishment of a moratorium appear to be ambiguous and internally inconsistent.

Page 34, lines 26-31, are part of the current CFEC statute that authorizes the CFEC to revoke a limited entry permit held by an individual who presented false information to CFEC. Originally, the legislature was not willing to entrust the decision to revoke an entry permit solely to a hearing officer. What is not clear in the proposed legislation is whether the hearing officer would make a recommended decision or a final decision.

Page 35, lines 12-21, call for judicial review of determinations made by the department. But does the department mean the division director, the commissioner, or another person? Who does the final determination? And how is this provision consistent with duties of the office of administrative hearings?

Page 39, lines 19-26, specify that the department shall prepare an annual report and notify the legislature that it is available. Is this really the department’s responsibility or that of the division director?

A series of entries on page 41 look like legislative delegation of authority to the **“commercial fisheries entry division of the Department of Fish and Game.”** Elsewhere in the bill, authority is assigned to the commissioner or to the department. The bill is thus ambiguous with respect to who will exercise what authority.

Page 46, lines 13-23, address the transition and authorize that litigation, hearings, investigations, and other proceedings pending under a law amended or repealed by this Act, or in

connection with functions transferred by this Act, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Act.

This section fails to explain how this will be done. What would be the status of existing regulations? What would become of the entire body of the administrative law developed by the commission through its decisions? What law would govern after the passage of this legislation? Do commission decisions and regulations still continue to govern daily work including issuance of licenses and transfers of permits? Often, commission decisions and regulations are developed to help fishermen solve problems.

Page 46, lines 24-28, provide that employees of the Alaska Commercial Fisheries Entry Commission are to become employees of the Commercial Fisheries Entry Division of the Department of Fish and Game on the effective date of this Act. If that is true, where would there be substantial savings through this legislation? Do the employees become part of the classified service? Will they become members of a union? Will they be subject to a probationary period?

What will become of CFEC adjudication regs? What is the status of CFEC's entire body of administrative law? Will the office of administrative hearings be bound by CFEC precedent? Will all existing CFEC regulations be maintained? What if some CFEC regulations conflict with existing regulations of the department (for example, with respect to confidentiality)?

Without further detailed analysis, there is a risk of unintended consequences.

# HB 126 Resources Report (1973)

March 5, 1973

HOUSE JOURNAL

503

March 5, 1973

The committee has had a study of the regulation and amendments it do airman, and Guy and Hartig.

to the

The committee has had Arctic Health Commission report of the Arctic Health Commission. The report was prepared in by

the Rules

The committee has had a study of the bill and amendments it be HOUSE BILL NO. 181 HOUSE BILL Beirne, Hackney, and Guy has no

committee for

The committee has had a study of the bill on Post-World War II (effective date) of the Arctic Health Commission report was prepared in by Maloney.

committee.

The committee has had a study of the bill on Post-World War II (effective date) of the Arctic Health Commission report was prepared in by Maloney.

Judiciary

The Resources Committee has had HOUSE BILL NO. 126 (relating to the regulation of entry into Alaska commercial fisheries; 126 and providing for an effective date) under consideration and majority of the members of the Committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126 (same title) and reports it back with individual recommendations. The report was signed by Mr. McGill, Chairman. McGill, Laktonen and Eliason recommend do pass; J. Miller and Gardiner recommend do pass if amended; Wilson and Guy have no recommendations, and Huber and Degnan recommend do not pass unless amended.

HOUSE BILL NO. 126 was referred to the Judiciary Committee.

The Speaker stated that without objection, the reading of the the Resources Committee Chairman's report on HOUSE BILL NO. 126 would be waived and that it would be printed in the journal. There being no objection, it was so ordered and the report appears as follows:

## "RESOURCES COMMITTEE REPORT

on

### COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126

CSHB 126 retains the basic structure and objectives of HB 126, but would require the limited entry commission to utilize a voluntary buy-back program in order to reach optimum levels of gear in the various commercial fisheries. The commission would still proceed area by area and would deal independently with each type of gear. However, instead of making an initial reduction to the optimum number of units of gear, the commission would issue entry permits at the present level of fishing effort and reduce the amount of gear to optimum levels through a voluntary buy-back program. In those fisheries where the present level of gear is acceptable, no buy-back program would be required.

The only exception to this freeze at the present level of effort would be three specifically enumerated distressed fisheries, where an initial reduction to 75 per cent of present gear levels would be permitted. The distressed fisheries enumerated in CSHB 126 are the Bristol Bay drift net and set net fishery, the Cook Inlet drift net and set net fishery, and the Prince William Sound drift net fishery.

The buy-back program would be self-financing. It would be funded by assessments on the holders of entry permits based on a percentage of the value of their annual catch. Separate buy-back funds would be administered for each area and type of gear as required and assessments would be made only on catch values attributable to the entry permit for the given area and type of gear.

The Commission would adopt regulations providing for the purchase of entry permits, and vessels and gear as necessary, until the number of units of gear was reduced to optimum levels. Once the optimum gear level was reached, the buy-back program would terminate for that area and type of gear.

HB  
126

CSHB 126 also makes special provision for establishing the initial number of entry permits in the troll fishery. Rather than issue permits at the present level as with other types of gear, anyone who has licensed and fished troll gear at least one out of the last three years would receive an entry permit for troll gear at the outset of the program. After entry permits have been issued for the troll fishery, it would come back under the general program and be reduced to optimum levels through a voluntary buy-back program. An amendment to the definitions also makes it clear that the commission is to treat power troll gear and hand troll gear separately for the purpose of issuing entry permits.

A new section was added providing for the emergency transfer of entry permits. This will allow the temporary transfer of a permit when sickness, injury, or other unavoidable circumstance temporarily makes it impossible for a holder to fish his gear.

During deliberations on HB 126 the possible problems resulting from the transfer and sale of entry permits were considered at some length. Concern was expressed that the free transferability of entry permits might result in a pattern of economic coercion against fishermen holding permits. Fear was expressed that the general lack of adequate financing for fishermen, particularly in some areas of the state, might make it possible for those providing financing to indirectly control entry permits to some degree.

Certain safeguards against the abuse of the transfer provisions were contained in HB 126 and have been retained in the committee substitute. Entry permits cannot be held by corporations, and can only be fished by the holder. Entry permits cannot be pledged as security for loans or taken pursuant to judgement. To these protections, CSHB 126 has added a special protection for low-income fishermen. When a fishermen whose family income is below federal poverty guidelines receives an entry permit, he may avoid the \$50 annual fee for five years by electing to take his entry permit subject to a five-year prohibition on transfer.

These special fee provisions should help low-income fishermen in two ways. First, it will remove the opportunity for economic coercion aimed at taking their entry permits away from them. Second, it will remove the direct economic burden of the \$50 annual fee.

One more major amendment was included in CSHB 126. HB 126 applied only to the salmon fishery. The committee substitute would allow the commission to designate the specific fishery resources to be subject to limited entry. This would enable the commission to extend limited entry to other fisheries such as the crab and shrimp fisheries without additional legislation.

In addition to the major changes discussed here, CSHB 126 contains several clarifying and consolidating amendments which should improve the basic approach and procedures set forth in the initial bill.

the initial number  
permits at the  
has licensed and  
would receive  
am. After entry  
come back under  
through a voluntary  
so makes it clear  
d troll gear

transfer of entry permits,  
sickness, injury,  
impossible for a holder

sulting from the  
me length. Concern  
its might result  
ing permits. Fear  
g for fishermen,  
sible for those  
some degree.

isions were  
tee substitute.  
ly be fished  
ity for loans  
HB 126 has  
en a fishermen  
ceives an  
rs by electing  
on transfer.

men in two  
coercion  
id, it will

126 applied  
allow the  
subject  
nd limited  
es without

ontains several  
ve the basic

Joe McGill, Chairman  
House Resources Committee "

HB  
126

INTRODUCTION, FIRST READING AND REFERENCE OF  
HOUSE RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 66 by the Health, Education and Social Services Committee HCR 66

Relating to a study of the needs of children

was introduced and read the first time with the following Committee report:

The Health, Education and Social Services Committee has had HOUSE CONCURRENT RESOLUTION NO. 66 under consideration and a majority of the members of the Committee recommends it do pass with the following amendment:

Amendment No. 1 by the Health, Education and Social Services Committee:

Page 1, lines 23-25: Delete lines 23 through 25 inclusive.

The report was signed by Mrs. Beirne, Chairman, and concurred in by Fritz, Malone, Petersen and Beirne. Not concurring were Hackney and Hartig, who have no recommendations.

HOUSE CONCURRENT RESOLUTION NO. 66 was referred to the Finance Committee.

HOUSE CONCURRENT RESOLUTION NO. 67 by the Health, Education and Social Services Committee HCR 67

Relating to a study of the funding of public early childhood, elementary and secondary education

was introduced and read the first time with the following Committee report:

The Health, Education and Social Services Committee has had HOUSE CONCURRENT RESOLUTION NO. 67 under consideration and a majority of the members of the Committee recommends it do pass. The report was signed by Mrs. Beirne, Chairman, and concurred in by Malone, Fritz, Beirne, Hartig, Hackney and Petersen.

HB 126 Intent (1973)

JOURNAL  
SUPPLEMENT

April 2, 1973

SENATE

No. 15

The following is a letter of legislative intent from the Special Senate Committee on Fisheries on SENATE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 126 amended by the Senate:

March 31, 1973

The Honorable Terry Miller  
President of the Senate  
Alaska State Legislature  
Juneau, Alaska

Dear Mr. President:

During the meetings and deliberations of the Special Senate Committee on Fisheries regarding Senate Committee Substitute for House Committee Substitute for House Bill 126, the need for an indication of legislative intent became evident. There are certain provisions which this Committee felt would be appropriate, but more satisfactorily accomplished by regulations adopted by the Alaska Commercial Fisheries Commission rather than by statute.

The Special Senate Committee on Fisheries strongly feels that the Alaska Commercial Fisheries Entry Commission should place its highest priority on regulating entry into those fisheries designated as "severely impaired". This Committee also wishes to indicate that in determining "significant hardship", the Alaska Commercial Fisheries Entry Commission give serious consideration to those persons for whom continuance in the fishery provides a necessary part of their annual livelihood even though it may represent a relatively small portion of their actual income, or provide occupation for only a few weeks a year.

The Special Senate Committee on Fisheries has indicated that "present ability to participate in the fishery" is to be used to determine that an individual is actually prepared to be an active fisherman and that he is not merely a speculator in entry permits. In addition, this Committee recommends to the Alaska Commercial Fisheries Entry Commission that in making its annual report to the Legislature, serious consideration be given to the social and economic aspects of the transfer of entry permits.

Finally, this Committee feels that the Alaska Commercial Fisheries Entry Commission should provide for those persons who, because of active military service, have been unable to continue their participation in a fishery.

Respectfully,



W.I. Palmer, Chairman  
Special Senate Committee on Fisheries"

WILLIAM A. EGAN  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 10, 1973

The Honorable Terry Miller  
President of the Senate  
Alaska State Legislature  
Juneau, Alaska

Dear Mr. President:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill to regulate entry into Alaska Commercial Fisheries.

The limited entry study that I requested and the Legislature established last summer has more work yet ahead of it, but sufficient research has been completed to recommend a sound basic regulatory program, and to apply that program to the species that need it most -- salmon.

Alaska's salmon resources cannot produce a livelihood for an unlimited number of fishermen, nor can they be successfully managed for maximum sustained yield if utilized by an unlimited number of fishermen. The only alternative to the continuing loss of a healthy professional fishery is the stabilization of entry into the fishery at reasonable levels.

The makeup and traditions of the salmon fishery vary greatly from area to area, but two basic generalizations apply to the whole state:

- 1) Excessive numbers of fishermen participating in the harvest of salmon have reached acute proportions in almost every area.
- 2) Without entry limitation the commercial salmon fishery will be taken over increasingly by moonlighters, sport-commercial, and part-time hobby fishermen.

Most past efforts to limit entry have failed because they were stop-gap efforts designed to postpone the problem by creating special licensing preferences, or to offer a

The Honorable Terry Miller - 2 - January 10, 1973

solution applicable to the special problems of only one area. The results were unconstitutional programs that did not satisfy the unique conditions of different fisheries.

Our basic objective has been to develop a constitutional and practical program which can be applied flexibly with fairness to the varied needs and special problems of each fishing area throughout the State, while at the same time offering a permanent solution benefiting the entire State. I believe that this bill does so.

Its overall objective is to stabilize the number of commercial fishermen within each salmon fishing area at a level commensurate with the ability of the resource to provide an adequate livelihood for the fishermen. Its long-range goal is an economically and biologically healthy professional fishery.

#### The Initial Scope of a Limited Entry Program

Early in the study the decision was made to focus attention on the Alaska salmon fisheries, rather than to deal immediately with the problem of open access in all Alaska fisheries. This was done for several reasons, although it is acknowledged that other important Alaska fisheries, such as king crab and shrimp, are already suffering from too much fishing effort and may require their own limited entry programs in the near future.

It is the State's salmon fisheries that are the main focus of public attention. In terms of income and employment they rank far above any other fishery. Because of their complexity and the growth of fishing pressure on them, the salmon fisheries present the most urgent need for limited entry regulation. Because salmon fishing practices vary greatly from area to area, a limited entry program for salmon will require a fairly general and flexible statewide regulatory framework. Such a broad-based approach will be capable of encompassing other species later when the need arises.

#### The Problem of Growing Fishing Pressure

Even with substantially improved biological management since Statehood, the salmon fisheries are not as healthy as they can be because a steadily increasing number of fishermen are participating in the harvest. These new

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 3 -

January 10, 1973

entrants into the fishery have driven the profitability of fishing down to marginal levels for those professional fishermen who must depend upon fishing for a major share of their livelihood.

A disturbing aspect of this general trend is that a substantial number of these new entrants can afford to participate at marginal economic levels because they rely upon other employment for the major source of their livelihood. The character of these new entrants varies. In Bristol Bay it may be the school teacher from Anchorage or the Boeing worker from Seattle; in Southeastern the sport-commercial troller with a well-paid government job; in Cook Inlet, the vacationing set-netter from the lower 48. However, in almost every area these moonlighters are adding substantially to the economic distress of the vocational fishermen who must derive their primary livelihood from fishing.

The main problem with these part-time, avocational fishermen is not their multiple employment. It is that they can afford to participate in the fishery even when it is not profitable, with the effect that average incomes for all fishermen are driven to submarginal levels. If this open entry pattern is allowed to continue, it will mean the eventual economic destruction of Alaska's professional fisheries.

#### A Brief Survey of the Commercial Salmon Fishery

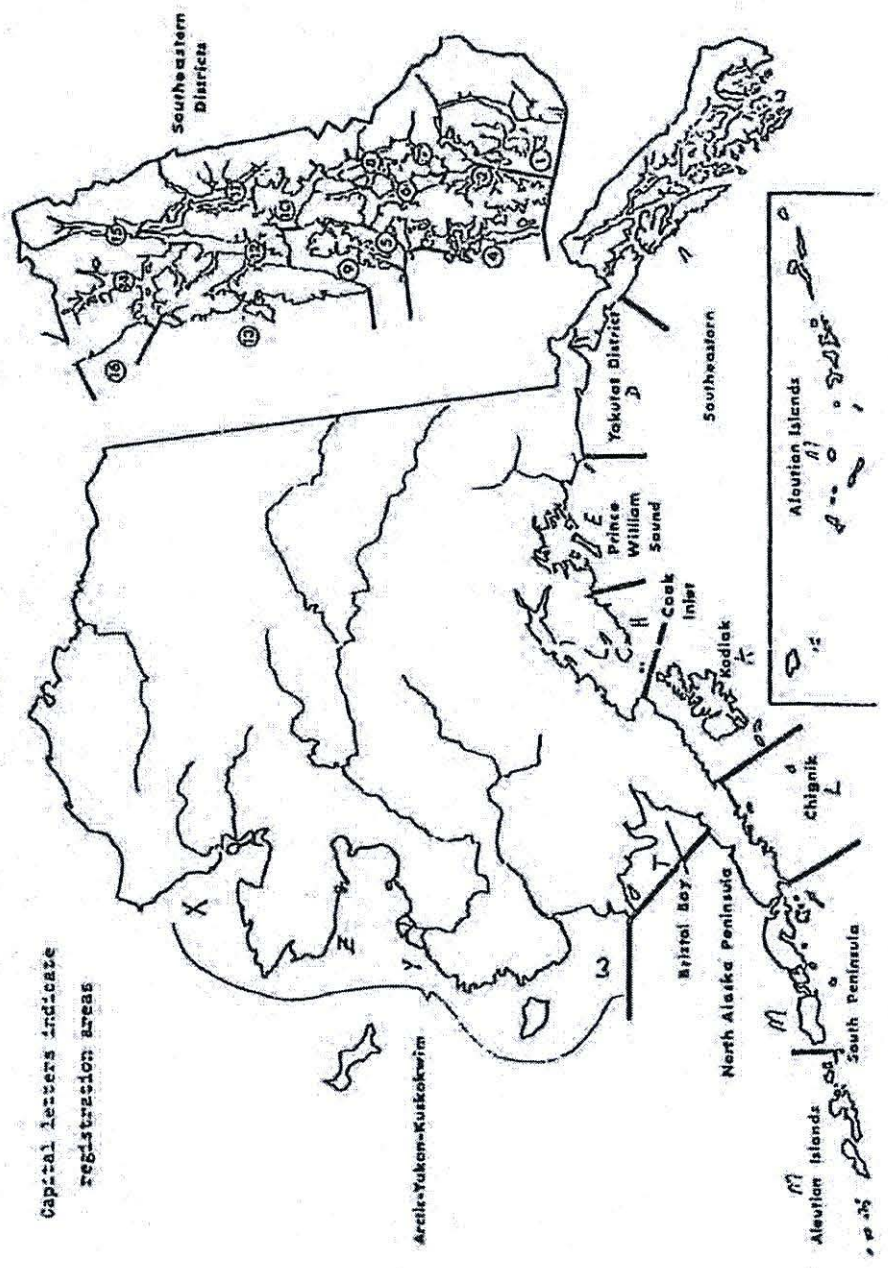
Alaska's salmon fisheries are divided into geographic regions for management purposes, as the accompanying map shows. The salmon net fisheries (purse seine vessels, drift gill net vessels, and set gill nets), are further tied to registration areas. Every fisherman desiring to fish salmon net gear must register to fish in only one registration area in any given year. The troll fishery is limited almost exclusively to southeastern Alaska, and takes primarily king and silver salmon for the fresh and frozen fish markets.

From the dual perspective of adequate economic return to the fishermen and adequate ability to fully harvest the resource, there are presently too many units of gear in almost every salmon management area in the State. As an indication of where we stand today, the Department of Fish

M. A. EGAN  
CRNDOR

The Honorable Terry Miller - 4 - January 10, 1973

FIGURE 1. Alaska Salmon Management Areas



January 10, 1973

and Game has prepared the following table which compares the numbers of units of gear registered in each area with the optimum numbers required to fully harvest the resource. These are rough estimates based on only one factor, but they fairly reflect the general magnitude of the problem. Only net gear is included in these tables; troll gear has not yet been similarly analyzed. If existing levels of gear are substantially above the optimum levels necessary for an economically healthy fishery, as this table indicates, then merely halting any further increase in gear levels will not achieve the basic objectives of a limited entry program -- a moratorium alone will not work.

ALASKA SALMON NET GEAR REGISTRATION  
CURRENT AND OPTIMUM LEVELS

	UNITS REGISTERED IN 1970			UNITS REGISTERED IN 1971			OPTIMUM UNITS REQUIRED		
	Purse Seines	Drift Gillnets	Set Gillnets	Purse Seines	Drift Gillnets	Set Gillnets	Purse Seines	Drift Gillnets	Set Gillnets
SOUTHEASTERN	422	426	11	358	475	7	300	250	
YAKUTAT	-	-	173	-	-	175	-	-	
PRINCE WILLIAM SOUND	221	555	39	265	651	14	150	250	
COOK INLET	98	761	769	98	710	731	75	100	
KODIAK	401	-	276	143	-	152	100	-	50
CHITONIK	69	-	-	73	-	-	40	-	-
PENINSULA-ALUTIAN	118	172	130	131	158	130	95	95	50
BRISTOL BAY	-	1913	929	-	1888	859	-	1015	385
KUSKOKWIM	-	446	76	-	501	71	-	375	50
KOTZEBUE	-	-	82	-	-	71	-	-	50
YUKON	-	258	490	-	275	571	-	125	330
BORTON SOUND	-	-	128	-	-	150	-	-	110

There are also a growing number of instances where too much concentrated fishing pressure makes sound management of the fishery impossible. This happens in the following way. The salmon net fisheries typically occur near the mouths of the spawning streams where salmon concentrate just prior to their spawning runs upstream. In such situations, allowing for adequate escapement is critical. If excessive amounts of gear are concentrated in the fishing areas, a mistake of only a few hours in the length of a fishing period could make the optimum escapement needed

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 6 - January 10, 1973

for an entire run of fish unobtainable and perhaps even wipe out the run. With too much gear in the fishery, fisheries managers have no margin for error in setting their field regulations. This has sometimes resulted in total closures where a manageable harvest by a reasonable number of vessels would otherwise have been acceptable.

Recent figures on license growth and catch data give a general picture of the excessive amount of gear and its distribution throughout the State. An analysis of average annual gross earnings per vessel by registration area and gear type for two recent years gives an approximate idea of income to fishermen. This and other statistical information is still being developed and refined by the limited entry study group.

There are three kinds of license issued for the salmon fishery: First, every person who intends to fish commercially must obtain a personal commercial fishing license; even crewmen must obtain these. Second, all vessels must be licensed by their operators. Third, a gear license must be purchased for every type of gear to be fished (e.g., drift net, purse seine, troll set net, long line, shellfish pots, trawl, etc.)

The following table shows the increase in all types of licenses used in the salmon fishery from 1961-1971:

	<u>1961</u>	<u>1971</u>
Commercial (personal)	15,697	20,564
Vessel	7,926	10,710
Drift Net	3,022	4,779
Set Net	2,064	3,062
Purse Seine	1,182	1,323
Troll	1,497	2,353

Here is a resident, non-resident breakout on commercial licenses:

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 7 - January 10, 1973

	<u>total</u>	<u>resident</u>	<u>non-resident</u>
1961	15,697	10,106	5,591
1971	20,564	14,276	6,388

It is worth noting that the percentage increase in resident licenses is greater than that for non-resident.

Here is a summary breakdown of catch and gear registration information by management area for the last four years. These tables include a resident, non-resident breakout for each type of gear and also show the percentage of the total salmon catch for each area which was taken by each type of gear.

<u>Southeastern</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch* (millions of fish)	30.2	6.9	14.7	12.9
purse seines (total units registered)	498	407	422	358
- resident	241	223	216	192
- non-resident	257	184	206	166
- Percentage of total catch	90%	74%	83%	81%
drift gill nets (units registered)	527	395	420	475
- resident	286	251	266	320
- non-resident	241	134	154	155
- Percentage of total catch	5%	15%	12%	12%
troll gear registered**	2,103	2,303	2,567	2,353
- Percentage of catch***	4%	10%	4%	6%

\*A majority of salmon caught in southeastern are pink salmon which fluctuate widely on a two year cycle.

\*\*These troll figures are totals statewide and include the nominal troll fishery in Yakutat and Price William Sound.

\*\*\*The value of troll catch is much higher than this figure would indicate. In 1971, value to fishermen of troll caught fish was \$5.8 million, value to fishermen of all other fish was only \$25.6 million.

The Honorable Terry Miller - 8 -

January 10, 1973

<u>Yakutat</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (million of fish)	.22	.26	.17	.26
set gill nets (units registered)	184	182	173	175
- Percentage of total catch	85%	88%	90%	96%
troll (units Regis- tered)	?	?	?	?
- Percentage of total catch	15%	12%	10%	4%

<u>Prince William Sound*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.8	6.3	4.5	8.9
purse seines (units registered)	182	217	221	270
- resident	?	170	178	211
- non-resident	?	47	43	59
- %age of total catch	74%	84%	67%	87%
drift gill nets (units registered)	423	510	556	654
- resident	?	384	420	481
- non-resident	?	126	136	173
- %age of total catch	25%	15%	32%	11%

\*There is a negligible troll and set net fishery.

<u>Cook Inlet</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.7	1.5	3.4	1.7
purse seines (units registered)	92	80	99	84
- resident	?	76	95	81
- non-resident	?	4	4	3
- %age of total catch	12%	18%	24%	32%
drift gill nets (units registered)	575	695	761	706
- resident	?	483	537	515
- non-resident	?	212	224	191
- %age of total catch	47%	50%	46%	44%
set gill nets (units registered)	655	736	769	729
- resident	?	683	704	686
- non-resident	?	53	65	43
- %age of total catch	41	32%	30%	24%
<u>Kodiak*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	10.3	13.7	13.9	6.4
purse seines (units registered)	326	319	365	385
- resident	?	225	253	277
- non-resident	?	94	112	108
- %age of total catch	90%	95%	92%	92%
set gill nets (units registered)	192	202	226	193
- resident	?	152	166	142
- non-resident	?	50	60	51
- %age of total catch	8%	5%	7%	7%

\*There is a negligible beach seine fishery.

The Honorable Terry Miller - 10 - January 10, 1973

<u>Chignik</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	2.4	2.2	3.1	2.0
purse seines (units registered)	68	70	69	76
- resident	?	57	57	62
- non-resident	?	13	12	14
- %age of total catch	100%	100%	100%	100%
<u>Alaska Peninsula Aleutians*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	3.6	3.2	5.5	4.0
purse seines (units registered)	107	112	118	143
- residents	?	105	102	126
- non-residents	?	7	16	17
- %age of total	76%	60%	71%	66%
drift gill nets (units registered)	123	136	172	169
- residents	?	102	105	116
- non-residents	?	34	67	53
- %age of total catch	17%	35%	25%	30%
	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
set gill nets (units registered)	120	134	130	132
- residents	?	124	108	117
- non-residents	?	10	22	15
- %age of total catch	7%	4%	4%	4%

\*There is a negligible beach seine fishery.

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 11 - January 10, 1973

<u>Bristol Bay</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	5.3	7.2	22.1	10.4
drift gill nets (units registered)	1,684	1,751	1,913	1,938
- residents	973	1,005	1,083	1,073
- non-residents	711	746	830	865
- %age of total catch	90%	88%	93%	90%
set gill nets (units registered)	839	924	924	891
- residents	722	759	765	745
- non-residents	117	165	159	146
- %age of total catch	10%	12%	7%	10%
<u>Arctic-Yukon-Kuskokwim*</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
total salmon catch (millions of fish)	.6	.8	1.0	.9
drift gill nets (units registered)	572	702	708	810
- residents	?	699	706	797
- non-residents	?	3	2	13
- %age of total catch	54%	34%	30%	29%
set gill nets (units registered)	598	727	783	902
- residents	?	721	781	889
- non-residents	?	6	2	13
- %age of total catch	45%	65%	69%	70%

\*There is a negligible commercial take from fishwheels.

The following table gives some indication of the magnitude of depressed fishermen incomes in different areas of the State. This table shows average gross earnings per boat for two recent years. These figures represent gross earnings before expenses and must provide income for the entire crew required to operate a certain type of gear.

**VALUE TO FISHERMEN OF 1970 SALMON CATCH  
BY REGISTRATION AREA AND GEAR**

<u>SOUTHEASTERN</u>	<u>VALUE (a)</u>	<u>VESSELS FISHING (b)</u>	<u>AVERAGE EARNING PER VESSEL</u>
Trap	\$ 70,842	4	\$17,710
Purse Seine	7,706,866	405	19,029
Drift Gillnet	2,526,472	336	7,519
Set Gillnet	19,844	10	1,984
Troll	4,465,162	1,894	2,358
<b>TOTAL</b>	<b>\$14,789,186</b>	<b>2,649</b>	<b>\$5,583</b>
(c) Using 1971 percentages where 50% of the Trollers caught only 4% of the total pounds of troll fish in Yakutat and S.E. This adjustment would also increase the S.E. total, average earnings per vessel to about \$9,000.			
	\$4,383,786	961	\$4,562
<u>YAKUTAT</u>			
Set Gillnet	\$ 250,074	(d) 143	\$1,749
Troll	108,019	27	4,000
<b>TOTAL</b>	<b>\$358,193</b>	<b>170</b>	<b>\$2,107</b>
<u>PRINCE WILLIAM S.</u>			
Purse Seine	\$2,106,223	(e) 221	\$9,530
Drift Gillnet	2,930,957	(e) 556	5,393
Set Gillnet	68,298	(e) 39	1,751
Troll	18,871	10	1,309
<b>TOTAL</b>	<b>\$5,185,571</b>	<b>826</b>	<b>\$6,279</b>
<u>COOK INLET</u>			
Purse Seine	\$ 529,560	(e) 39	\$5,352
Drift Gillnet	1,764,014	637	2,769
Set Gillnet	1,176,444	522	2,254
Troll	2,574	7	368
<b>TOTAL</b>	<b>\$3,472,892</b>	<b>1205</b>	<b>\$2,745</b>
<u>KODIAK</u>			
Purse Seine	\$7,106,563	(e) 365	\$19,470
Beach Seine	74,420	17	5,735
Set Gillnet	575,275	147	3,913
<b>TOTAL</b>	<b>\$7,756,258</b>	<b>529</b>	<b>\$14,774</b>
<u>CHIGNIK</u>			
Purse Seine	\$3,228,566	(e) 69	\$46,797
<b>TOTAL</b>	<b>\$3,228,566</b>	<b>69</b>	<b>\$46,797</b>
<u>PENINSULA-ALEUTIANS</u>			
Purse Seine	\$2,707,351	(e) 118	\$22,946
Drift Gillnet	1,526,979	(e) 172	8,878
Set Gillnet	258,270	(a) 130	1,987
<b>TOTAL</b>	<b>\$4,492,600</b>	<b>420</b>	<b>\$10,697</b>
<u>BRISTOL BAY</u>			
Drift Gillnet	\$5,225,894	(e) 1,913	\$13,187
Set Gillnet	1,802,131	924	1,951
<b>TOTAL</b>	<b>\$7,028,025</b>	<b>2,837</b>	<b>\$9,527</b>
<u>ARCTIC-YUKON-KUSKOKWIM</u>			
Drift Gillnet	\$ 497,656	672	\$ 741
Set Gillnet	156,036	783	838
Fish Wheel	1,534	9	170
<b>TOTAL</b>	<b>\$1,155,226</b>	<b>1,464</b>	<b>\$ 789</b>

**FOOTNOTES**

- (a) The value figures generally omit bonuses paid to skipper after pack is sold. However, Prince William Sound and Chignik values include bonuses.
- (b) Vessels or traps or set net sites.
- (c) Estimated.
- (d) Units of gear licensed. Number of units actually fished according to ADP&O records appears too high, so licensing figures were used. In the case of Bristol Bay and Aleutians-Peninsula, the units fished were not yet available from fish ticket printouts. In other words we do not yet have a truly reliable count of the number of vessels fishing each type of gear in each area.
- (e) Total average earning per vessel column is the number of vessels fishing divided into the value column.

**VALUE TO FISHERMEN OF 1971 SALMON CATCH  
BY REGISTRATION AREA AND GEAR**

<u>SOUTHEASTERN</u>	<u>VALUE (a)</u>	<u>VESSELS FISHING (b)</u>	<u>AVERAGE EARNING PER VESSEL</u>
Furse Seine	\$7,210,450	306	\$23,564
Drift Gillnet	2,568,286	347	7,401
Set Gillnet	8,560		951
Troll	3,737,581	1,640	2,279
<b>TOTAL</b>	<b>\$13,524,877</b>	<b>2,302</b>	<b>\$ 5,875</b>
Sport-Commercial Fishery removed from totals. Includes Southeastern and Yakutat catches and vessels. In 1971, 50% of the trollers caught only 4% of the total pounds of troll fish. This adjustment also increases the Southeastern total, average earnings per vessel, to about			
\$9000	\$3,656,878	831	\$ 4,401
<b>YAKUTAT</b>			
Set Gillnet	\$ 361,900	131	\$ 2,762
Troll	71,667	22	3,258
<b>TOTAL</b>	<b>\$ 433,567</b>	<b>153</b>	<b>\$ 2,854</b>
<b>PRINCE WILLIAM S.</b>			
Furse Seine	\$5,183,683	251	\$20,652
Drift Gillnet	2,233,711	551	4,054
Troll	17,259	7	2,466
<b>TOTAL</b>	<b>\$7,434,653</b>	<b>809</b>	<b>\$ 9,190</b>
<b>COOK INLET</b>			
Furse Seine	\$ 420,513	49	\$ 8,582
Drift Gillnet	1,090,545	463	2,355
Set Gillnet	762,142	439	1,736
Troll	11,518	4	1,150
<b>TOTAL</b>	<b>\$2,277,802</b>	<b>955</b>	<b>\$ 2,385</b>
<b>KODIAK</b>			
Furse Seine	\$4,654,488	417	\$11,162
Hand Furse Seine	47,943	16	2,996
Set Gillnet	390,240	132	2,956
<b>TOTAL</b>	<b>\$5,092,671</b>	<b>565</b>	<b>\$ 9,014</b>
<b>CHIONIK</b>			
Furse Seine	\$2,169,205	77	\$28,171
<b>TOTAL</b>	<b>\$2,169,205</b>	<b>77</b>	<b>\$28,171</b>
<b>PENINSULA-ALEUTIAN</b>			
Furse Seine	\$1,656,176	125	\$13,249
Drift Gillnet	1,285,918	141	\$ 9,129
Set Gillnet	176,349	52	3,391
<b>TOTAL</b>	<b>\$3,118,443</b>	<b>318</b>	<b>\$ 9,806</b>
<b>BRISTOL BAY</b>			
Drift Gillnet	\$14,557,610	(c)1,938	\$ 7,512
Set Gillnet	1,577,210	618	2,552
<b>TOTAL</b>	<b>\$16,134,820</b>	<b>2,556</b>	<b>\$ 6,313</b>
<b>ARCTIC-YUKON-KUSKOKWIN</b>			
Drift Gillnet	\$ 447,874	709	\$ 632
Set Gillnet	935,053	790	1,184
Fish Wheel	4,594	15	306
<b>TOTAL</b>	<b>\$1,387,521</b>	<b>1,514</b>	<b>\$ 916</b>

**FOOTNOTES**

(a) Same as 1970 table.

(b) Same as 1970 table.

(c) Units of gear licensed. The number of units of gear actually fished, according to ADPAO records appears too high, so licensing figures are used.

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 13 - January 10, 1973

Our conclusions from this and other data are that the State's salmon fisheries have too much gear, resulting in depressed and sometimes sub-marginal income for professional fishermen and in impositions on sound management practices. In addition, this and other data suggest strongly that a limited entry program aimed primarily at eliminating "moonlighters" and other part-time fishermen from the salmon fisheries can result in a level of fishing pressure that allows improved management and the development of a professional fishery. Such a program, properly established and implemented, will also work constitutionally to reduce the number of outside participants in the fishery.

#### Legal and Constitutional Constraints

Neither the State nor the Federal Constitution prohibits a state statutory program regulating access to the commercial fishery, so long as the regulatory classifications established to permit some people to fish and to exclude others are reasonably related to a valid legislative purpose and are fairly applied. The recently adopted amendment to Article VIII, Section 17 of the Alaska Constitution, clearly establishes as a valid legislative purpose the regulation of entry to "prevent economic distress among fishermen."

The Alaska Constitution does not confer on its citizens a constitutional right to fish commercially for salmon. Article VIII, Section 3 reserves the "fish, wildlife and waters" to the people for "common use", but this in no way prohibits legislative regulation of that use. Limiting entry to the salmon fishery is no different in principle than the State's regulation through a permit system of the private appropriation of State waters.

The Federal Constitution will not permit a regulatory program which discriminates unreasonably against non-residents. Particular attention must be paid to the constraint imposed by the commerce clause of the Federal Constitution, under which a legally sound limited entry program cannot unreasonably burden or discriminate against interstate commerce. Any regulatory program which disqualifies non-residents from the fishery solely because they are non-residents, merely to secure an economic advantage for residents, will almost certainly fail in

the courts, as will any clear discrimination in favor of local (intrastate) economic interests at the expense of outside (interstate) economic interests.

The interpretation of the commerce clause in a given situation is primarily a matter of degree and of sufficient justification, in which the courts will be guided by the notion of reasonableness. The prevention of economic distress among fishermen is almost certainly a valid legislative purpose in this situation, and if the same standards for qualification, (for example, degree of dependence on the fishery or past participation in the fishery) are applied equally to resident and non-resident alike, they stand an excellent chance of being upheld in the courts, even though in some instances they may fall more harshly on the non-resident.

The courts will also look unfavorably upon any regulatory system which creates a completely closed class of fishermen. Some new entry must be permitted. Therefore, I am proposing the administratively controlled transfer or sale of entry rights, which will permit new entry while allowing fishing effort to be held at constant levels.

#### Other Limited Entry Proposals

Before discussing the reasoning that underlies this bill, it may be useful to outline some of the other types of limited entry proposals that concerned Alaskans have been considering. The State's limited entry study group has examined these and other ideas, and it has concluded that most of these approaches bear some of the marks of unsuccessful past efforts in that they seek an immediate solution for just one area rather than a permanent solution for the entire State. In addition, most of these proposals contain serious constitutional defects.

Here are the basic elements of one type of proposal:

- 1) Freeze the issuance of new gear licenses.
- 2) Establish optimum amounts of gear for each area necessary to harvest all species (salmon, king crab, halibut, etc.)
- 3) Allow everyone who ever owned a gear license in under the freeze.

- 4) Rely on attrition of license holders to eventually reach optimum levels.
- 5) When optimum levels are reached, make gear license a property right with a 12% royalty to the State.
- 6) Levy a buy-back assessment on gear licenses to encourage attrition.

There are some sound concepts in this proposal, but also some basic practical and legal defects. Any license freeze will probably be struck down in the courts because the effect is to create a completely closed class of fishermen for a substantial period of time. Letting anyone who had ever held a gear license in at the outset while excluding all new entry is probably constitutionally unacceptable, and also will considerably worsen the very problem it is designed to solve. Creating "grandfather rights" for paper registrants who have never actually fished and for those who have already dropped out of the fishery or are no longer dependent upon it, would greatly inflate participation in the already seriously overcrowded fishery. It would have the effect of penalizing the professional fishermen at the outset. Finally, the notion of a royalty is defective since the State does not own its salmon resource in the same way that it owns its oil or timber.

Another type of proposal is for a sliding scale gear quota in Bristol Bay. By its nature it is aimed at solving the problem for one area only, and in all likelihood, the solution would only be partial and temporary. Here are its basic features:

- 1) The Fish and Game Board would establish a total gear quota for the area in terms of total fathoms of net required to adequately and safely harvest the resource.
- 2) Following the close of area registration for a given year, the Board would apportion the total quota among the actual registrants with the effect that larger numbers of registrants will mean each registrant can fish fewer fathoms of net.

- 3) Local families would be specially benefitted by a provision that gear registrants may jointly operate their individual quotas of gear.

This proposal would improve fishermen incomes only if low net length quotas for a given year discouraged outsiders from coming to Bristol Bay. This is an uncertain assumption for two reasons. First, many of the outsiders are moonlighters who might continue to fish Bristol Bay even without the prospect of high income in a given year. Second, if everyone was operating with the same handicap, the number of fish caught and the efficiency of the fishing effort may not be that well controlled by merely varying the length of the nets. The result may still be too many participants in the fishery. While solutions such as this are of questionable long-term value for Bristol Bay and would be unworkable on a Statewide basis, they are not inconsistent with this bill's goals for the fishery and they may provide a degree of short-term relief for the serious problem of over-fishing in the Bay.

Another limited entry proposal for Bristol Bay contains the following basic provisions:

- 1) A permanent gear license freeze for Bristol Bay at the level of the previous year.
- 2) If fishermen's incomes are anticipated to be below the national poverty level for a given year, the Fish and Game Board shall designate such an area a "distressed fishery."
- 3) In a "distressed fishery" special gear license fees would be levied on the basis of 1% of the value of the salmon sold by a resident, and 3% of the value of the salmon sold by a non-resident.
- 4) A fisherman who derived more than 75% of his gross income from fishing during the previous year, or who had a gross income of less than \$5,000 during the previous year, would be exempted from the special fees.

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 17 - January 10, 1973

This proposal has the constitutional liabilities of any license freeze as discussed above. Furthermore, a freeze at the present level would not offer much of a practical solution for Bristol Bay, because that area, particularly, suffers presently from a great excess of gear. The proposed license fees almost certainly would be held by the courts to discriminate unconstitutionally against interstate commerce.

One final type of proposal which has been discussed recently would create a gear licensing preference for watershed or registration area residents. Even though such a preference would not discriminate directly against non-residents of the State, the overall effect would be the total exclusion of non-residents of the State from the fishery. Such a regulation would have virtually no chance of survival in the courts. Furthermore, such a proposal would not really solve the limited entry problem. There might soon be too many fishermen drawn solely from residents of the watershed or area, particularly in areas like Cook Inlet and Southeastern. Even more important, this approach does not address the problem of the moonlighters and part-time fishermen who threaten the future of the professional fishery.

I am heartened by the strong spirit of good faith and concern that has prompted various Alaskans to bend their efforts toward thinking of limited entry programs for our State's fisheries. My motive in noting shortcomings in some of these proposals is simply to indicate pitfalls that must be avoided in developing a legally sound, workable limited entry program for all the fisheries of our State. To do so, we must work together, and these proposals for limited entry indicate that Alaskans are in important agreement on the basic objectives.

#### Proposal for Limited Entry Program

The bill I am submitting today embodies my recommendation for a limited entry program. The reasoning behind the basic features of it is as follows:

The bill establishes a regulatory and quasi-judicial commission which would administer an entry permit system for the State's salmon fisheries. The basic problem of

too much gear varies widely in its dimensions at particular areas from area to area. Trying to decide directly in the language of a statute which particular individuals will be permitted to fish, and which individuals will be excluded, is hopelessly inadequate, both legal and practically. A full-time regulatory commission is the only way to apply general legislative standards to each area and type of gear with fairness to all areas.

The commission approach has the added advantage of being easier to defend legally. As long as the statutory purpose and standards are valid, the point of legal attack would be a particular regulation or application of a statutory standard by the commission. Such specific points are far easier to defend and a loss on a particular commission action would not jeopardize the validity of the basic regulatory program, even though it may initially require minor readjustments in regulatory strategy.

The bill's legislative standards of preference for entry permits will require findings of fact regarding an applicant's degree of economic dependence upon the fishery and his extent of past participation in the fishery. Such facts must be established fairly and sufficiently in order to avoid abuses of the system that would be unfair to all fishermen. Provisions concerning hearings and appeals will safeguard the rights of individual applicants for entry permits.

The commission approach also has the advantage of permitting the Legislature to add other species such as king crab or shrimp to the entry limitation program when the need is shown.

The commission will be made up of a fisheries management specialist, a lawyer, a commercial fisherman, plus the staff for necessary research and for the implementation of the program as it applies to salmon. Because of the complexity of the fishery and the potential economic impacts of various decisions, I feel this would require an initial appropriation of approximately \$400,000. Provision has been made for the work of the commission to be self-supporting, through the assessment of permit fees, once the permit system is functioning. After limited entry programs are established in the State's principal fisheries, some of the permit revenue would then go to the general fund.

The Honorable Terry Miller - 19 - January 10, 1973

This bill does not require a license freeze or license moratorium. Such a feature would be on extremely weak legal grounds and there is no practical necessity for it. The commission is charged with issuing a limited number of entry permits according to preferences among applicants based primarily upon past participation and economic dependence. No new entrant would be able to put himself in a more preferred position than a presently established fisherman under such standards. Therefore, pending the issuance of permanent entry permits the commission is authorized to issue interim entry permits to any bona fide applicant. Such interim permits will confer no special claim on a permanent entry permit; they will not amount to a "grandfather right." For this reason, the rush of speculative applicants wanting to be "grandfathered in" should be avoided. The standard that applicants be ready, willing and able to fish will also help to quell any rush of applicants, and it will eliminate the holders of "paper licenses."

There are several reasons for not implementing an entry permit program through the existing licensing system. To begin with, the commercial fishing license system serves all species, not just salmon. Certain types of gear licenses are peculiar to salmon, but using gear licenses as a basis for entry limitation would mean breaking part of the licensing system away from the whole, and would be cumbersome to administer. Furthermore, licensing is an annual event for revenue purposes, and the legal assumptions underlying a license differ substantially from the entry permit, which carries with it the permanent right of renewal.

The desire to protect any "grandfather rights" which might be subsequently conferred by the Legislature has made a bad situation worse in many areas by encouraging some people to fish who might otherwise sit a season out or fish for different species during low run years. The entry permit program will alleviate this particular problem. It does not require a permit holder to fish every year in order to maintain his right to fish, although after five years of abstention his permit would revert to the commission. The result will be a benefit to those actually fishing during low run years.

M. A. EGAN  
VERNON

The Honorable Terry Miller - 20 - January 10, 1973

The bill also allows a fisherman to hold more than one entry permit so that he may fish different types of gear and different species. However, it imposes a practical limit on the holding of multiple permits since a fisherman may fish only one legal unit of gear at any given time, and he may not delegate his right to fish a unit of gear to another person.

One last feature of the bill which requires explanation is the transferability of entry permits. Initially, entry permits to a given fishery will not "cost" anything other than the permit fee, but since the number of permits will be limited, they will acquire a value. Transferability allows entry permits to be bought and sold on the market, but it will not permit a speculative market to develop. An entry permit will confer upon the holder a personal right to operate a unit of gear in the salmon fishery. Individuals may sell and transfer permits, but a permit would have no real value to one not using it to fish. Transferability will allow some individuals to change location or fish more types of gear by acquiring more than one permit. This feature is aimed at encouraging a flexible growth and professionalization of the fishery and will have more application as additional species come under the jurisdiction of the commission. A permit-holder cannot hire an agent to fish his permit, therefore the processors cannot control the fishery through such a permit system and monopoly tendencies by processors or fishermen are avoided. Transferability will also allow permits to be passed on within a family, and can be used to allow a fisherman to sell out of one area and move into another without upsetting the total amount of gear in each area.

The bill calls for a January 1, 1974 deadline by which the commission must issue interim entry permits. Since these are available to anyone ready, willing and able to fish, this step in the permit procedure should cause no significant disturbance to the 1974 commercial fishing season. It simply allows the commission to establish a system for issuing permits, and it eliminates "paper license" holders prior to the 1974 fishing season. The commission's principal work for some time will be to gather and analyze the data necessary for establishing regulations to determine priority categories for the

reissuance of permanent entry permits. After that it must receive applications, and gather and evaluate evidence of qualifications before actually issuing permanent entry permits. Recognizing the size and complexity of the salmon fishery, it is my optimistic hope that, at the soonest, the commission may be able to make final decisions regarding the issuance of permanent entry permits for at least some areas in early 1975.

Effect Upon the Fishermen and the Processing Industry

The proposal presented here would result in the exclusion over a few years time of some resident and non-resident fishermen presently fishing in some areas of the State. The individuals excluded would be those least dependent upon the fishery for their livelihood, and those with the shortest history of participation in the fishery, as determined by the commission. The commission's task would be complex and difficult, but the only alternative is the economic destitution of a much larger number of fishermen. The burden of exclusion should fall mostly upon the part-time fishermen with alternative primary sources of livelihood.

Another class of fishermen who would probably fail to qualify for entry permits are those who have not paid State income tax during recent years. Income tax records will be a prime source of evidence for use in the commission's determination of an applicant's qualifications. Tax records should accurately reflect one measure of economic dependence, and verify active participation in the fishery. Preliminary research indicates that in 1969 almost 30% of those individuals holding vessel operators licenses for that year either failed to file a tax return at all (more than 20%) or failed to report any income (profit and loss statement) from fishing. It seems reasonable to expect that individuals in present violation of State tax laws will either fail to make application for an entry permit, or if applying will have great difficulty in qualifying for one.

A statewide entry limitation program for the salmon fishery will also have a noticeable impact upon the salmon processing industry. The primary reason for this is that the bargaining position of fishermen, both individually and collectively, will be greatly improved in the long run. However, there is no reason why this

The Honorable Terry Miller - 22 - January 10, 1973

limited entry program should disrupt the established patterns for the 1973 and 1974 fishing seasons. Canneries will continue to stake individual fishermen in return for their share of the catch. Once permanent entry permits are issued, though, the processors will be limited to those fishermen holding permits, plus their crews, and since an entry permit can only be held by a fisherman, it cannot fall under the legal control of a processing company or its agents.

#### Report to the Legislature

The limited entry study group is now preparing a comprehensive report to be presented to the Legislature in the next few weeks on the results of its work so far. The group will also continue over the next six months to develop and refine the proposals and analysis discussed here, building on the sound concepts already established. One example of work underway is an extensive survey of the present and potential involvement of Alaska natives in the commercial salmon fishery. This study will take until late spring to complete and is important to any sound evaluation of the human impacts of limited entry.

In addition to the establishment of the commission, I recommend continuing the work of this limited entry study group beyond fiscal 1973. The work regarding salmon which has been started should be completed; there is much basic information that has never been collected and organized regarding this fishery that would be extremely important for the implementation of any limited entry program. There is also a longer-range need to study the desirability of limited entry in other Alaskan fisheries, such as king crab and shrimp, where a pattern of excessive participation has developed.

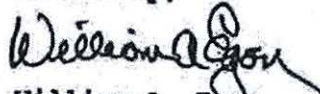
To summarize, this bill provides a means for regulating entry into Alaska's commercial fisheries. While it has been designed to have broad applicability, it is directed initially at limiting entry into the State's salmon fisheries because the need for effective action there is greatest. Implementation of the bill will allow better management of the fisheries, and it will allow the opportunity for growth, diversification and modernization of

WILLIAM A. EGAN  
GOVERNOR

The Honorable Terry Miller - 23 - January 10, 1973

the fishing fleet. Most important, it will improve the lot of the fisherman, allowing him stable livelihood from commercial fishing.

Sincerely,



William A. Egan  
Governor

# STATE OF ALASKA

## COMMERCIAL FISHERIES ENTRY COMMISSION

FRANK H. MURKOWSKI, GOVERNOR

8800 GLACIER HWY, #109  
JUNEAU, AK 99801

(907) 789-6150 Licensing Calls  
(907) 789-6160 Other Business  
(907) 789-6170 FAX  
(907) 789-6180 BBS

INTERNET: [www.cfec.state.ak.us](http://www.cfec.state.ak.us)

November 13, 2003

### CERTIFIED—RETURN RECEIPT (7002 3150 0001 6823 9788)

Ron L. Sayer  
Gatti, Gatti, Maier, Krueger, Sayer & Associates  
1001 SW 5th, Suite 1100  
Portland, OR 97204

Re: FINAL COMMISSION DECISION ON ADMINISTRATIVE REVIEW  
Gene Bruno  
Application for a Southeastern Alaska Shrimp Pot Entry Permit (P91A)  
CFEC 98-061-A

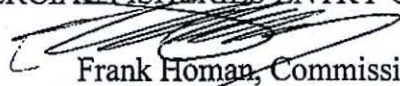
Dear Mr. Sayer:

We regret to inform you we have finally denied Mr. Bruno's application for a Southeastern Alaska shrimp pot entry permit (P91A). Enclosed is a copy of our final commission decision on administrative review explaining our reasons for this denial. For your reference, we have also enclosed copies of the exhibits prepared by the hearing officer and copies of the two transcripts of the two evidentiary hearings conducted on behalf of Mr. Bruno.

Enclosed is a copy of 20 AAC 05.1850, the Commission regulation detailing the applicant's 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 applicant to seek judicial review of this decision. Under the appellate rule, the applicant has only 30 days from the date of this letter to file an appeal in Superior Court.

By Direction of the  
COMMERCIAL FISHERIES ENTRY COMMISSION

  
Frank Homan, Commissioner  
Mary McDowell, Commissioner  
Bruce Twomley, Chairman

Enclosures

cc: Gene Bruno, 1880 Lancaster Dr. NE 111, Salem, OR 97305 (7002 3150 0001 6823 9771)

**STATE OF ALASKA  
COMMERCIAL FISHERIES ENTRY COMMISSION**

In Re Application:

GENE BRUNO

for a Southeastern Alaska Shrimp Pot Entry Permit  
(P91A)

CFEC 98-061-A

**FINAL COMMISSION DECISION ON ADMINISTRATIVE REVIEW**

**COUNSEL**

Ron L. Sayer, Gatti, Gatti, Maier, Krueger, Sayer & Associates, 1001 SW  
5th, Suite 1100, Portland, OR 97204, attorney for the applicant.

**OUTLINE OF DECISION**

I.	<u>Summary</u> .....	2
II.	<u>Factual and Procedural Summary</u> .....	2
	A. <u>Summary of Facts</u> .....	2
	B. <u>Procedure and Hearings</u> .....	5
III.	<u>Discussion</u> .....	10
	A. <u>Failure to Prove Consistent Participation and Economic Dependence</u> .....	10
	1. <u>1994 Consistent Participation and Economic Dependence</u> .....	10
	2. <u>1995 Video Landing</u> .....	13
	a. <u>Introduction</u> .....	13
	b. <u>The Videotape</u> .....	14
	c. <u>Discussion</u> .....	15
	B. <u>Failure to Prove Commercial Sale</u> .....	17
	C. <u>Applicant's Failure to Comply with Basic Application and Reporting Duties Undermines his Application</u> .....	20
IV.	<u>Conclusion</u> .....	22

I. Summary

We reverse the decision of the hearing officer to award this applicant a transferable Southeastern Alaska shrimp pot entry permit (P91A). Among other issues addressed, we found the applicant failed to comply with the law governing a fisherman's commercial harvest and sale of the resource, and, therefore, his catch may not be credited toward a limited entry permit.

II. Factual and Procedural Summary

A. Summary of Facts

In 1993, the applicant and his family bought a cabin in Alaska about 20 miles south of Petersburg. During 1994 and 1995, the applicant spent part of each summer in Alaska sport fishing and entertaining visiting friends and relatives from Oregon.

Additionally, during 1994 and 1995, the applicant obtained an interim-use permit<sup>1</sup> for the Southeastern Alaska shrimp pot fishery and caught shrimp with 6 or 7 shrimp pots.<sup>2</sup> However, during these 2 years, the applicant did not apply to the Alaska Department of Fish and Game for issuance of fish tickets, and the applicant did not execute any fish tickets nor file any fish tickets with the Department.

Additionally, in 1994, the applicant began fishing for shrimp before he applied for his interim-use permit and vessel license. The applicant set his string of pots on July 2, 1994.<sup>3</sup> He pulled his pots and landed shrimp on July 6, 1994. Although the applicant testified he mailed in his permit application

---

<sup>1</sup> Once before, in 1989, the applicant held an interim-use permit for the Dungeness crab fishery, and there is a record of a single fish ticket documenting a sale to a processor. As of 1995, the applicant had held no other interim-use permits in Alaska.

<sup>2</sup> Exh. 16 [Exh. 18 allows for 8 or 9 pots].

<sup>3</sup> Exh. 8.

much earlier,<sup>4</sup> in fact, he completed his application on July 4, 1994, and the commission received the application on July 7, 1994.<sup>5</sup>

The applicant delivered his fish caught in sport fishing (halibut and salmon) to Coastal Cold Storage for processing along with small quantities of shrimp: one delivery was as small as 3 or 4 shrimp.<sup>6</sup> The applicant did not sell his shrimp to the processor. Instead, the applicant testified he had the shrimp processed so that he could later sell the shrimp to friends in Oregon. Nonetheless, the applicant requested his processor provide him with fish tickets to document the shrimp he delivered for processing, and the processor complied with this request.

A Coastal Cold Storage employee testified:<sup>7</sup>

We were doing business with [the applicant]. We were custom processing sport and we were also, uh . . . custom processing some shrimp for him.

\* \* \*

[I]t was kind of incidental. I'd. . . come [to the dock] and pickup halibut or salmon and a zip lock bag of shrimp here and there . . . .

\* \* \*

He also at times bought other commercial shrimp, uh . . . I'm not sure what it was used for, I was just under the recollection, or understanding, that it was winter fish and taken down to Oregon, and everything custom processed was of course at uh . . . the custom processed price. The others were at a commercial price or resale price.

During 1994, the applicant claimed to have fished during 7 statistical weeks to produce a total commercial onboard catch of 20 ½ pounds. The only documentation submitted by the applicant in support of this claim is his copies of selected logbook entries.<sup>8</sup> There is no evidence in the record as to how the applicant determined the poundage he entered in his logbook.

A logbook entry dated August 22, 1994, appears to mark the end of the applicant's first season of shrimping: the applicant recorded his final landing plus his total catch for the season of 20 ½ pounds in

---

<sup>4</sup> Tr. 1, 7-8.

<sup>5</sup> Exh. 3.

<sup>6</sup> Exh. 23.

<sup>7</sup> Transcript of first hearing [hereinafter Tr. 1] at 18, 21-22, 31.

<sup>8</sup> Exh. 8.

his logbook.<sup>9</sup> With each recorded landing, the applicant's log entries provide a running total poundage, that accumulates from the first entry to the last, and which accounts for all of the applicant's reported catch.

On the 1994 fish ticket which the applicant asked his processor to provide, the processor recorded 12 pounds of processed shrimp tails. Subsequently, the Alaska Department of Fish and Game converted tail weight to whole weight for all shrimp species (and all size classes) by multiplying the tail weight by a conversion factor of 1.67. The department then entered this whole weight on its fish ticket and fish ticket database, reporting a whole weight of 20 pounds for this applicant in 1994.<sup>10</sup>

During 1995, the applicant again claimed to have fished during seven statistical weeks to produce a total harvest onboard for the season of 31 pounds. The applicant's last log entry, dated July 29, 1995, shows the accumulated total of 31 pounds following his last landing of the season.<sup>11</sup> Again, on the fish ticket the applicant asked his processor to produce, the processor recorded 19.7 pounds of processed tails.<sup>12</sup> The Alaska Department of Fish and Game, after converting the tail weights back to 31 pounds of whole weight shrimp, credited the applicant with a catch of 31 pounds for 1995.<sup>13</sup>

Although the applicant's processor advised fishermen to check their shrimp pots twice a day,<sup>14</sup> the applicant apparently checked his pots about twice per week.<sup>15</sup>

Following the limitation of this fishery, when the commission sent the applicant an application form for a permanent limited entry permit in this fishery, the commission also included a data sheet<sup>16</sup> which reported to the applicant the whole shrimp weights credited to the applicant on the Alaska Department of Fish and Game's database as follows:

---

<sup>9</sup> Exh. 8.

<sup>10</sup> CFEC Southeast Shrimp Pot Fishery Point System Rationale (1997 at 12); Exh. 22 (2 of 6); *see also* 20 AAC 05.776(5).

<sup>11</sup> Exh. 9.

<sup>12</sup> Exh. 22.

<sup>13</sup> Exh. 5.

<sup>14</sup> 12/7/98 file memo.

<sup>15</sup> Exh's. 8 and 9.

<sup>16</sup> Exh. 5 (1 of 4).

YEAR	TOTAL POUNDS
1994	20
1995	31

Subsequently, in support of his application to prove his commercial sales in 1994 and 1995, for each year, the applicant offered two form receipts made out by himself.<sup>17</sup> When he presented these receipts to the commission, the applicant stated<sup>18</sup>:

Enclosed you will also find copies of sales receipts for the shrimp that I sold in 1994 and 1995. This is the shrimp that was processed by Coastal Cold Storage.

The applicant also submitted a similar sworn statement with the receipts.<sup>19</sup>

The applicant's two 1994 receipts show his total sales of 20 pounds of product. In contrast, however, the applicant obtained only 12 pounds of processed product (tail weight shrimp) from Coastal Cold Storage for sale during 1994.<sup>20</sup>

As proof of his commercial sales in 1995, the applicant provided two similar receipts made out by the applicant for a total sale of 31 pounds. However, again, this amount exceeds the 19.7 pounds of processed product (tail weight) the applicant obtained for sale from Coastal Cold Storage.<sup>21</sup>

B. Procedure and Hearings

The applicant timely applied for his Southeastern Alaskan shrimp pot fishery entry permit (P91A). As would normally be true in the vast majority of the cases where fishermen sell their catch to a processor, commission paralegals accepted the fish tickets completed by Coastal Cold Storage as proof of commercial harvest and sale in 1994 and 1995 leading to an award of eight participation points (four

---

<sup>17</sup> Exh. 13.

<sup>18</sup> Exh. 12, see also Exh. 13.

<sup>19</sup> Exh. 13.

<sup>20</sup> Exh. 22.

<sup>21</sup> Exh. 22.

each year) toward the applicant's permanent entry permit. Eight points would have entitled the applicant to a non-transferable entry permit.

The applicant appealed and requested a hearing claiming an additional ten points for consistent participation and economic dependence for each year (1994 and 1995) based on his claim he landed shrimp during seven statistical weeks each year.

A commission hearing officer granted the hearing and conducted the first hearing in Juneau on November 13, 1998. The applicant appeared with his attorney. In addition to the applicant, two employees from Coastal Cold Storage testified by phone. At the request of the applicant, the hearing officer conducted a supplemental hearing by telephone on January 26, 1999.

Throughout most of the hearing, the hearing officer seems to have been under the impression the applicant sold his shrimp catch to Coastal Cold Storage,<sup>22</sup> despite repeated testimony the applicant delivered the shrimp to the processor for processing and paid the processor for processing the shrimp. In fact, the applicant stated<sup>23</sup> when he submitted evidence to the commission:

Please note that Coastal Cold Storage processed my shrimp and I resold it myself.

The applicant further testified<sup>24</sup>:

And in 94 and 95, I did not sell Coastal Cold any shrimp.

The hearing officer's stated impression the applicant sold his shrimp to Coastal Cold Storage seems to have led the hearing officer to accept applicant's fish tickets issued by Coastal Cold Storage as proof of a commercial sale. In turn, this may have led the hearing officer to neglect to examine evidence submitted to prove actual sale in the form of sales receipts created and submitted by the applicant.

---

<sup>22</sup> See, for example, Tr. I, 32.

<sup>23</sup> Exh. 7, see also Tr. I, 5.

<sup>24</sup> Tr. I, 5.

Similarly, the hearing officer failed to consider the Alaska Department of Fish and Game's basic application and reporting requirements under 5 AAC 39.130. Failure to meet these requirements would disqualify an applicant's catch from consideration in support of an application for an entry permit. *See for example Peterson*, CFEC 98-007-A (1998); 20 AAC 05.776.

Prior to the hearing, the applicant's processor made allegations to the commission the applicant brought shrimp to the processor which the applicant had purchased from another fisherman and tried to sell the shrimp to the processor in return for the processor's issuance of a fish ticket; the processor also alleged the applicant called the processor and asked the processor to issue fish tickets on personal use shrimp the processor had processed for the applicant.<sup>25</sup> Additionally, the processor alleged he felt pressured by a phone call he received from the applicant's attorney; the applicant wanted 21 fish tickets for 26 pounds of shrimp; some of the applicant's shrimp were processed for "home pack"; and, on one occasion, the processor alleged the applicant came in with a species of shrimp the processor did not believe would have likely been landed in a pot.<sup>26</sup> Finally, the processor alleged the applicant appeared to have altered his original logbook.<sup>27</sup>

The hearing officer placed the processor's statements in the record and shared this information with the applicant and the applicant's attorney. Although the hearing officer called the processor as a witness to testify under oath at the hearing,<sup>28</sup> the hearing officer neglected to inquire into any of the witness' allegations.<sup>29</sup> The hearing officer also made no request to see the complete original of the applicant's logbooks from which the applicant introduced copies of selected entries into evidence. Following the first hearing, the witness called the hearing officer to complain.<sup>30</sup>

As noted, during the hearings, the applicant introduced copies of selected entries from his 1994 and 1995 logbooks to establish the dates of his shrimp landings. The applicant testified these log entries

---

<sup>25</sup> Exh. 14.

<sup>26</sup> December 4, 1998 file memo.

<sup>27</sup> December 7, 1998 file memo.

<sup>28</sup> Tr. I.

<sup>29</sup> If there are further proceedings on this application before the Entry Commission, we reserve the right to examine these allegations in detail.

<sup>30</sup> December 19, 1998 Hearing Officer notes to file.

introduced into evidence represented all of the landings he made of shrimp<sup>31</sup> during the years in question:

Hearing Officer: [M]y understanding is that, from the 94 and 95 logs that you provided, that that's a complete record of all of your, uh ... shrimping activities and of all the, uh ... all the landings that you made and sales that you made of the shrimp. Is that correct?

Applicant: Right.

At the conclusion of the first hearing, based on the logs and without further review, the hearing officer found the applicant had landed shrimp in seven statistical weeks during 1994 and awarded the applicant an additional ten points.<sup>32</sup> This brought the applicant's point total to 18, which still qualified the applicant for a non-transferable permit.

The hearing officer also noted he could find only six statistical weeks of participation during 1995 from the log entries.<sup>33</sup> In response, the applicant offered to look through his home videotapes to see if he could find additional shrimp landings.

At the applicant's supplemental hearing, where the applicant and his attorney appeared by phone, the applicant presented an undated copy of a portion of a videotape<sup>34</sup> to establish a seventh statistical week with a shrimp landing in 1995.<sup>35</sup> In response to a question from the hearing officer, the applicant now testified his logbooks were not a complete record of his shrimp harvest.<sup>36</sup> The applicant testified he delivered the particular catch recorded on videotape to Coastal Cold Storage for processing.<sup>37</sup>

When the hearing officer asked how many shrimp he delivered, the applicant testified<sup>38</sup>

[T]he only think (sic) I have to go on in terms of helping me recollect, is seeing what was in the pots that I pulled, that are in the video. And I can

---

<sup>31</sup> Tr. I, 34.

<sup>32</sup> Tr. I, 41.

<sup>33</sup> Tr. I, 41.

<sup>34</sup> Exh. 23.

<sup>35</sup> Tr. II, 2.

<sup>36</sup> Tr. II, 4.

<sup>37</sup> Tr. II, 6-7.

<sup>38</sup> Tr. II, 7.

see in one pot ... I can actually see about three or four shrimp and I ... in the other pot I can see, I think, at least two, you know, so all I can do is conjecture six or seven, or something like that.

\* \* \*

Maybe, you know, five, six, seven.

In addition, the applicant's attorney<sup>39</sup> commented:

[I]f you listen very carefully to that video tape, you can hear [the applicant] call Coastal Cold Storage to report that he's going to deliver some sport fish and some shrimp, which is further evidence that there was shrimp harvested and delivered, which is what the statute requires. And I think with the evidence that you'll find on the video tape ... you have to listen carefully, you'll find that he did harvest and deliver, albeit's only a couple shrimp ... some shrimp ... therefore, he should get that seventh week in 95.

The hearing officer did not ask to examine the entire original of the videotape. Instead, the hearing officer offered his observation that an unsworn statement by Richard Younts helped to corroborate the additional 1995 landing date.<sup>40</sup> In response, the applicant's attorney was quick to complement the hearing officer<sup>41</sup> on his acuity:

[Y]ou were correct in your pointing out about what Mr. Younts has to say, uh .... I think you've handled yourself very professional . . . .

\* \* \*

I want the record to reflect that I really think you've done a good job in the way you've handled yourself.

We note, however, Mr. Yount's unsworn statement referred to fishing he observed at a different location during 1994.<sup>42</sup> Mr. Younts made no statement with respect to the year in question: 1995.

---

<sup>39</sup> Tr. II, 2.

<sup>40</sup> Tr. II, 7.

<sup>41</sup> Tr. II, 7, 9.

<sup>42</sup> Exh. 20.

In his decision, the hearing officer awarded the applicant an additional ten points for consistent participation and economic dependence in 1995 for a total of 28 points which entitled the applicant to a fully transferable<sup>43</sup> Southeastern Alaska shrimp pot fishery entry permit.

We ordered administrative review of the hearing officer's decision. This decision follows our review. We note, we have addressed this application outside of our normal order for taking up cases on administrative review, under which we would normally address older cases first. On the basis of first-in-time, there are some 151 cases in line ahead of this applicant's case. However, preparing a response to correspondence from the applicant's attorney required the commissioners to circulate this file, which, in turn, prompted the commissioners to believe we could address the issues in this case without unduly dislocating other applicants in line for a decision.

### III. Discussion

#### A. Failure to Prove Consistent Participation and Economic Dependence

##### 1. 1994 Consistent Participation and Economic Dependence

The final outcome for this application is determined by the following Sections III., B., and III, C. However, the state of the record with respect to the applicant's 1994 participation claims requires us to address this issue.

The hearing officer found the applicant entitled to 10 points for consistent participation and economic dependence premised on the applicant's claim to have landed shrimp in seven statistical weeks. Essential to the success of this claim is the applicant's proof he made a lawful landing of shrimp on Saturday, July 9, 1994. If the applicant failed to prove the July 9th landing should be credited, the applicant has failed to prove more than six statistical weeks with landings under 20 AAC 05.774(b).

---

<sup>43</sup> Transferable entry permits are awarded to applicants who prove more than 22 points.

Without having obtained his interim-use permit or vessel license, the applicant began shrimping on Saturday, July 2, 1994, when he placed his pots in the water. The applicant testified he had applied for his interim-use permit in May or June of 1994.<sup>44</sup> In fact, the applicant did not complete and sign his applications for his interim-use permit and vessel license until Monday, July 4, 1994.

Without having received his interim-use permit or vessel license, the applicant pulled his pots and harvested shrimp on Wednesday, July 6, 1994. In Juneau, CFEC received the applicant's applications for an interim-use permit and vessel license the following day, Thursday, July 7th.<sup>45</sup> On his applications, the applicant indicated he wanted his interim-use permit and vessel license sent by mail to his Petersburg post office box address.<sup>46</sup> CFEC records show CFEC issued the applicant's licenses on Thursday, July 7th. The records do not show whether the licenses were mailed back to the applicant on that day or the following day.

The applicant has offered no testimony or other evidence with respect to when he received his licenses and had them in his possession on his vessel. Although the applicant had both the incentive and the opportunity to introduce such evidence, the applicant's attorney offered no such evidence and urged summary treatment of this issue<sup>47</sup> as follows:

Hearing Officer:           And I do want to note that the applications, uh... was completed on July 4th, 1994, which was, uh...actually two days after Mr. Bruno had, uh...at first participated, uh...in the fishery, and...and I...I want to note also that, uh...although Mr. Bruno asserted earlier that he had, uh...submitted an application in May or June of 94, uh...the evidence here indicates it was not until July 4th. And also, uh...that...that since the application was not sent in to, uh...the Lim...to the Commercial Fisheries Entry Commission til July 4th, that it seems quite reasonable, based on that, that it was not until July 7th, 1994 that, uh...that the permit actually was issued. There's no indicated to me here that there was any delay on the part of the Commission in

---

<sup>44</sup> Tr. 1, 8.

<sup>45</sup> Exh. 3.

<sup>46</sup> *Id.*

<sup>47</sup> Tr. 1, 40-41.

issuing a permit, uh....I'm looking at just a three-day turnaround from the time the application was, uh...was sent in. Uh....Do you have any objection, Mr. Sayer, to my, uh...having, uh...this two-page application form admitted?

Applicant: ...(Indiscernible -- simultaneous voices)...four, five, six, seven...

Attorney: Well, I...all the...

Applicant: Yeah.

Attorney: I don't think it matters, uh...obviously it speaks for itself and...and it may, uh...may affect the first delivery of July 6th, 1994, because that's a day before he had the...the permit. But it wouldn't affect the delivery of July 9th, 1994.

Without further review of the evidence, the hearing officer provided a favorable ruling that the applicant was entitled to credit for a July 9th harvest and delivery leading the hearing officer to conclude the applicant had commercially harvested shrimp during 7 statistical weeks in 1994 and, thereby, was entitled to an additional 10 points for consistent participation.<sup>48</sup> And the applicant's attorney responded, "I think that you've reached a correct conclusion, uh . . . insofar as 94 is concerned . . . ."49

We have a different view. Taking into account that Monday, July 4, was a holiday, transmission of the applicant's forms to Juneau appears to have taken two days. This record provides no basis for us to infer return mail to the applicant's post office address in Petersburg would take any less time than the original transmission. We take official notice that such transmission can take more than 2 days. Additionally, we note the applicant lived 20 miles south of Petersburg and did his shrimping in the vicinity of his cabin during 1994. According to his log entry, on Saturday, July 9th, the applicant pulled his pots, harvested shrimp and made a delivery to Petersburg.

The hearing officer apparently inferred the July 9th landing was a "valid landing"<sup>50</sup> because CFEC issued the permits at our Juneau offices on July 7th.<sup>51</sup> However, the applicant was not authorized

<sup>48</sup> Tr. I, 41.

<sup>49</sup> Tr. I, 42.

<sup>50</sup> H.O. Dec. at 3, n.5.

<sup>51</sup> Tr. I, 40-41.

to operate his gear without having his permits in his possession on his vessel.<sup>52</sup> There is no evidence of record the applicant had his licenses on his vessel at the time he made his landings on Saturday, July 9th.<sup>53</sup> But the applicant has established he was willing to harvest shrimp during 1994 without being properly licensed.

In short, the applicant has failed to prove he held an interim-use permit or had obtained his vessel licenses at the time he harvested shrimp on July 9, 1994. Therefore, the applicant has failed to establish his July 9th catch is entitled to credit toward the applicant's claim to consistent participation and economic dependence points for 1994. Simpler v. CFEC, 728 P.2d 227 (Alaska 1986); Robinson, CFEC 75-749 (1983). Under 20 AAC 05.774(b), the applicant has failed to prove seven statistical weeks in which the applicant commercially harvested the shrimp resource during 1994. For these reasons, we reverse the hearing officer's award of 10 points for consistent participation and economic dependence for 1994. The applicant's point total is reduced to 18.

## 2. 1995 Video Landing

### a. Introduction

As we point out under our later Sections III., B. and C., the final outcome of this application does not depend on resolution of this video landing issue alone. However, the evidence requires the commission to address this issue.

---

<sup>52</sup> AS 16.43.140(a); AS 16.43.150(b); 20 AAC 05.100.

<sup>53</sup> We are not inviting further testimony from the applicant, because the applicant had the opportunity and the incentive to offer this testimony at his first hearing, the final outcome on this application does not depend on the resolution of this issue, and we have found we cannot rely on the applicant's testimony. For example, the applicant testified he applied for his 1994 interim-use and vessel permits "much earlier" than July 7th, in May or June [Tr. I, 7-8], when, in fact, he completed his applications on July 4th. [Exh. 3] The applicant testified he didn't sport fish and shrimp at the same time [Tr. I, 4], but his videotape [Exh. 23] shows the contrary. The applicant testified the log entries he selected and submitted to the commission represented the complete record of all of his shrimping activities [Tr. I, 34], and then, subsequently, the applicant testified the log entries he submitted were not a complete record of his shrimp harvests. [Tr. II, 4] The applicant testified he did not make log entries for small amounts of shrimp caught [Tr. II, 4], yet he made entries at times when he caught no shrimp. [Exh's. 8 and 9] Finally, the applicant submitted sales receipts purporting to show he sold more product than the applicant had processed and available for sale. [Exh. 13]

b. The Videotape

We reviewed and listened to the videotape.<sup>54</sup> This narrative accounts for what we heard and saw.

There is a portion of the tape dated 7/10/95, which is followed by an undated portion. During the following undated portion, a male voice says:

Do a little halibut fishing.

Following a change of scene, we saw a man wearing a cap and holding a bent fishing rod and reel with a taut line going out. We heard:

Female: Reel going out on a big fish, and I have to get gun.  
Male: Yes, gun.

After a change of scene, we see the man pulling a single, small pot. From the tape, we cannot identify any shrimp in the pot.

Following a change of scene, the male voice says:

I gotta call Coastal Cold to pick up the halibut and 3 or 4 commercial shrimp.

\* \* \*

It's only a handful of shrimp, but I might as well turn 'em in--I'm taken the fish in anyway.

After another change of scene, we hear the same male voice apparently making a phone call as follows:

Coastal Cold Storage: I got some halibut and a handful of shrimp at the dock. I'll be at the harbormaster in about 4 minutes.

Later on the tape, there is a change of scene, and the date 7/16/95 appears on the tape.

---

<sup>54</sup> Exh. 23.

c. Discussion

The applicant's claim his video recorded landing of 3 or 4 shrimp represents a commercial harvest stretches our credulity to the breaking point.<sup>55</sup> Well before this landing, in April 1995, more than 70 commercial shrimp fishermen petitioned CFEC to limit entry to this fishery. However, for purposes of analyzing this claim, we will suspend our disbelief, and assume the claim is true: that is, the applicant delivered these 3 or 4 shrimp for processing and later commercial sale.

First, we note the reliability of the videotape has not been determined. There has been no examination of the original of the tape. The relevant portion of the tape is undated. There has been no effort to determine the dated portions (from which the applicant asserts a favorable inference should be drawn) accurately reflect actual dates. However, under our ruling, it is not necessary to attempt to evaluate the tape. We would, however, reserve the right to do so, if there are further proceedings on this application before the commission.

This applicant's alleged commercial catch has already been fully accounted for by the log entries he introduced in evidence and the fish tickets issued by Coastal Cold Storage. The video landing is outside of and in addition to the catch reported through the log items and fish tickets. Therefore, this video landing would be an unreported catch and not entitled to credit toward the applicant's limited entry permit. Peterson, CFEC 98-007-A (1998); Holton, CFEC 98-103-A (1998); Knight, CFEC 98-128-A (1999).

The videotape presents another problem.

---

<sup>55</sup> If there are further proceedings on this application before the commission, we reserve the right to thoroughly examine all aspects of the applicant's 1994 and 1995 shrimping activities to be satisfied the applicant's shrimping activities demonstrate his genuine commercial intent under AS 16.05.940(5), AS 16.43, and 20 AAC 05.776(1), as distinguished from token activities for some other purpose (such as, for example, obtaining a tax advantage or an Alaska limited entry permit). Bendixen, CFEC 75-531 (1985); Allan, CFEC 88-002-A (1988).

In 1995, 50 CFR part 301.21(n)<sup>56</sup> prohibited all fishermen from having sport-caught halibut onboard a vessel with any commercial catch in the following terms:

No halibut caught in sport fishing shall be possessed onboard a vessel when other fish or shellfish onboard the said vessel are destined for commercial use, sale, trade, or barter.

The applicant first testified<sup>57</sup>:

No, we didn't sport fish and shrimp at the same time.

The applicant's sworn statement is consistent with the law but inconsistent with his videotaped activities. With halibut caught in sport fishing onboard, the applicant proceeded to take and deliver shrimp as a commercial catch.

For the purpose of any point award under 20 AAC 05.774, a commercial harvest is restricted to "the lawful taking . . . of shrimp . . . ." <sup>58</sup> Clearly, the applicant did not lawfully take shrimp while he had halibut caught in sport fishing onboard.

Additionally, the applicant cannot be credited with a commercial harvest unless "the shrimp sales were in accordance with regulations governing the sale or use of commercially caught shrimp applicable at the time of sale, including regulations regarding proper completion of reports required of . . . fishers . . . ." <sup>59</sup> There is no showing the landing recorded on the videotape is reported on a fish ticket, and, as examined in our later Section, III., C., this applicant failed to comply with his reporting requirements under 5 AAC 39.130..

---

<sup>56</sup> 50 CFR 301.21(l) (in place during 1994) contains the identical prohibition against sport-caught halibut onboard the same vessel as commercially caught fish or shellfish.

<sup>57</sup> Tr. I, 4.

<sup>58</sup> 20 AAC 05.776(1).

<sup>59</sup> 20 AAC 05.776(1).

Consequently, the applicant's videotape documenting (according to the applicant) the commercial harvest of three or four shrimp is not entitled to credit toward a point award.<sup>60</sup> Therefore, during 1995, the applicant has failed to prove 7 statistical weeks with shrimp landings under 20 AAC 05.774. For these reasons, we reverse the hearing officer's award of ten points for consistent participation and economic dependence for 1995. The applicant's point total is reduced to 8.

B. Failure to Prove Commercial Sale

In 1997, the Entry Commission mailed to the applicant a Southeastern Alaska Shrimp Pot Permit application form<sup>61</sup> and along with the form the applicant's individual data sheet titled **List of fish ticket items from G.E. File.**<sup>62</sup> CFEC developed the data sheet from Alaska Department of Fish and Game's database, where the Alaska Department of Fish and Game calculated and entered whole weights for shrimp from the processed (tail) weights provided by processors. The applicant's data sheet showed as follows:

YEAR	TOTAL POUNDS
1994	20
1995	31

On May 3, 1997, the applicant submitted his application with a cover letter<sup>63</sup> discussing the data sheet and stating:

Please note that Coastal Cold Storage processed my shrimp and I resold it myself. I have receipts for those sales.

<sup>60</sup> More than this particular landing of three or four shrimp is at issue. As witness Larson described deliveries from the applicant: "I'd come down [to the dock] and pickup halibut or salmon and a zip lock bag of shrimp here and there . . . ." [Tr. I, 31]. Any landings of shrimp by the applicant while he had sport-caught halibut aboard should not be credited toward a point award or eligibility to apply for an entry permit under 20 AAC 05.772(a). We reserve the right to examine this issue in detail, in the event there are further proceedings on this application before the commission.

<sup>61</sup> Exh. 1.

<sup>62</sup> Exh. 5 (1 of 4).

<sup>63</sup> Exh. 7.

Following further correspondence with the commission, the applicant submitted four receipts made out by himself to demonstrate his commercial sales of shrimp.<sup>64</sup> There are two receipts for 1994 and two similar receipts for 1995. The applicant's cover letter which accompanied the receipts<sup>65</sup> stated:

This is the shrimp that was processed by Coastal Cold Storage. You have not requested these receipts, but in anticipation of your need to have this information for the file and for a possible upcoming hearing, I am including them now.

Following the applicant's two evidentiary hearings, the evidence of record with respect to pounds of shrimp caught and sold by the applicant during 1994 and 1995 is summarized as follows:

<b>Summary of Applicant's Shrimp Poundage Caught and Sold</b>				
	Applicant's	Fish Ticket Weights		Applicant's
	Log Weight of Shrimp Caught	Processor's processed (tail) weight	Alaska Department of Fish and Game's restored whole weight reported on CFEC's data sheet sent to the applicant	Pounds sold according to applicant's receipts
1994	20 ½ pounds	12 pounds	20 pounds	20 pounds
1995	31 pounds	19.7 pounds	31 pounds	31 pounds

For 1994, the applicant produced two receipts showing total commercial sales of 20 pounds, which conforms exactly to the 20 pounds credited to the applicant by the Alaska Department of Fish and Game on fish tickets (when it restored the fish ticket weights from his processor to whole shrimp weights) and reported to the applicant on CFEC's data sheet. In contrast, however, the applicant received from his processor only 12 pounds of processed tails representing the amount applicant had available for sale in 1994.

Similarly, for 1995, the applicant produced two receipts showing total commercial sales of 31 pounds, which amount conforms exactly to the 31 whole shrimp pounds credited to the applicant by the

<sup>64</sup> Exh. 13.

<sup>65</sup> Exh. 12.

Alaska Department of Fish and Game on fish tickets and reported to the applicant on CFEC's data sheet. Again, however, the applicant received from his processor only 19.7 pounds of processed tails representing the amount the applicant had available for sale in 1995.

There are several possible explanations for this discrepancy.

First, in creating the receipts, the applicant may have conveniently taken the whole shrimp pound weights reported to him on CFEC's data sheet. If this were done, the receipts would be a false representation to the commission.

Second, the receipts may reflect the applicant's sale of shrimp in addition to those shrimp caught by the applicant and processed at his request. The receipts may include other shrimp purchased by the applicant, consistent with testimony the applicant did purchase shrimp caught by others from his processor.<sup>66</sup> Again, if this were the case, the receipts would not be sound evidence of commercial sale of the applicant's catch.

Finally, if the applicant's claim that his receipts represent sales of shrimp entirely from his catch is true, then there is another possibility: the receipts reflect the sale of additional shrimp caught by the applicant but not reported on any fish tickets.<sup>67</sup> This explanation would be consistent with the videotape presented by the applicant<sup>68</sup> and the applicant's testimony he did not record all of his shrimp landings in his logbooks.<sup>69</sup>

Whatever may have gone on with the receipts created by the applicant, the receipts cannot be relied upon as evidence of commercial sale of the applicant's catch. Given the information we have in the record, we would not give the receipts weight as evidentiary support of a commercial sale. We do not believe the applicant has met his burden of proving a commercial sale of the shrimp he caught during 1994 and 1995. Absent proof of a commercial sale, the applicant's participation claims fail and

---

<sup>66</sup> Tr. I, 21-22.

<sup>67</sup> Exh. 12 and 13.

<sup>68</sup> Exh. 23.

<sup>69</sup> Tr. II, 4-6.

his point total is reduced to zero. Additionally, the applicant has failed to establish his eligibility to apply for the entry permit. 20 AAC 05.772(a); 20 AAC 05.774; 20 AAC 05.776(1).

C. Applicant's Failure to Comply with Basic Application and Reporting Duties Undermines his Application

This applicant has testified he landed shrimp under an interim-use permit and delivered those shrimp to a processor for processing. He further testified he later sold the shrimp to friends from Oregon.<sup>70</sup>

In relevant part (as the regulation read in 1994 and 1995), 5 AAC 39.130 placed the following requirements on the applicant:

(a) Each person . . . who catches and . . . has processed his own fish . . . shall

(1) furnish to the department each calendar year before operating a written statement of intent to operate with a description of the nature, extent and location of the operation on forms available from the department; forms will not be processed and fish tickets will not be issued without certification that surety bonds as required by AS 16.10.290 -- 16.10.296 have been posted with the Commissioner of Labor and that a valid Alaska Business License or Fisheries Business License has been issued by the Department of Revenue;

(2) submit, no later than April 1, an operator's accurate and complete summary of activity for each Intent to Operate form filed for the previous year or a signed statement of nonactivity on forms available from the department . . . .

\* \* \*

(b) Each . . . fisherman selling to a buyer not licensed to process fish (a catcher/seller), and each person . . . who catches and . . . 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

---

<sup>70</sup> Tr. I., 32.

as otherwise specified by the department for each particular area and fishery.

The applicant has admitted he did not apply to the Alaska Department of Fish and Game for fish tickets and did not complete any fish tickets himself.<sup>71</sup> The applicant has made no offer to prove he completed an intent to operate or made an effort to comply with 5 AAC 39.130. State records fail to show the applicant completed an intent to operate form. State records also fail to show the applicant obtained a business license nor undertook any of the other measures required by 5 AAC 39.130.

Under 20 AAC 05.772(a), in order to be eligible to apply for an entry permit in the Southeastern Alaska shrimp pot fishery, an applicant must establish a qualified commercial harvest of the fishery resource. In turn, under 20 AAC 05.774, any points awarded toward an entry permit in this fishery must be premised on a qualified commercial harvest. To be qualified, a commercial harvest must meet the terms of the commercial harvest definition in 20 AAC 05.776(1) as follows:

"commercially harvested" means the lawful taking and selling of shrimp caught with pot gear by an interim-use permit holder from a vessel registered for the Southeastern Alaska shrimp pot fishery under 5 ACC 31.020 and licensed for commercial fishing under AS 16.05.490, where the shrimp sales were in accordance with regulations governing the sale or use of commercially caught shrimp applicable at the time of sale, including regulations regarding proper completion of reports required of . . . fishers . . . .

The applicant's failure to meet the requirements of 5 AAC 39.130 results in the applicant having failed to meet the commission's requirements for a commercial harvest under 20 AAC 05.776(1). In turn, this failure renders the applicant ineligible to apply for the entry permit he seeks. *See for example Harmon*, CFEC 98-062-A (2000); 20 AAC 05.772(a). Likewise, his shrimp catches during 1994 and 1995 cannot be credited for a point award toward a limited entry permit. *Knight*, CFEC 98-128-A (1999); *Holton*, CFEC 98-103-A (1998); 20 AAC 05.774.

Because the applicant has failed to establish his eligibility or his entitlement to any points, this application must be denied in its entirety and dismissed.

---

<sup>71</sup> TR. I., 32. In fact, in 1994, the applicant began his shrimp fishing before he held an interim-use permit. Tr. I., 7-8, 40.

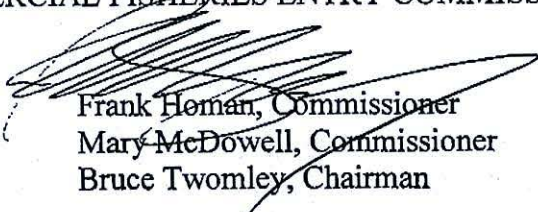
IV. Conclusion

We find the applicant has failed to establish his eligibility to apply for a Southeastern Alaska shrimp pot fishery entry permit. Even if the applicant were to establish his eligibility, we find the applicant has failed to prove his entitlement to any points toward such an entry permit. For the reasons stated in this decision, this application is finally denied.

DATED at Juneau this 13th day of November, 2003.

By Direction of the

COMMERCIAL FISHERIES ENTRY COMMISSION



Frank Homan, Commissioner  
Mary McDowell, Commissioner  
Bruce Twomley, Chairman

# STATE OF ALASKA

## COMMERCIAL FISHERIES ENTRY COMMISSION

TONY KNOWLES, GOVERNOR

8800 GLACIER HWY, #109  
JUNEAU, AK 99801

(907) 789-6150 Licensing Calls  
(907) 789-6160 Other Business  
(907) 789-6170 FAX  
(907) 789-6180 BBS

INTERNET: [www.cfec.state.ak.us](http://www.cfec.state.ak.us)

March 24, 1999

Sent Via Certified Mail - Return Receipt  
(Z 129 924 420)

Gene C. Bruno  
1880 Lancaster Dr. NE 111  
Salem, OR 97305

Re: Gene C. Bruno Application for Southeastern Alaska Shrimp Pot Fishery  
Entry Permit (P91A)  
CFEC No. 98-61-A

Dear Mr. Bruno:

Enclosed please find my decision regarding your application for the above-referenced permit, which I have classified at 28 points. This decision may be adopted by the commissioners as a final commission decision in 60 days unless you request or the commissioners order administrative review. The deadline for filing a petition for administrative review is 60 days from the date of this letter. A copy of the pertinent regulation, 20 AAC 05.1845, is enclosed.

By Direction of the  
Commercial Fisheries Entry Commission

J-115L  
Jonathan E. Sperber  
Hearing Officer

cc: Ron L. Sayer

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

In re Application of: )  
 )  
GENE C. BRUNO )  
 )  
For a Southeastern Alaska Shrimp Pot )  
Fishery Entry Permit (P91A) )  
\_\_\_\_\_ )

CFEC 98-61-A

DECISION

Summary. On March 17, 1997, Gene C. Bruno applied to the Commercial Fisheries Entry Commission ("Commission") for an entry permit ("permit") for the Southeastern Alaska Shrimp Pot Fishery ("fishery"). Ex. 1.<sup>1</sup> He is awarded all of the 28 points claimed, which is sufficient to qualify for a transferable permit in the fishery.<sup>2</sup>

Statement of appearances. Mr. Bruno is represented by attorney Ron L. Sayer, of Gatti, Gatti, Maier, Krueger and Associates.

Procedural background. Mr. Bruno requested an administrative hearing on June 3, 1998. Notice of hearing was issued on November 13, 1998, a hearing was held in Juneau on December 11, 1998<sup>3</sup>, a telephonic supplemental hearing was held on January 26, 1999, and the record was closed at the conclusion of the supplemental hearing. Mr. Bruno has been provided an adequate opportunity to review and respond to all of the evidence.

Statement of the case. Mr. Bruno claimed a total of 28 points on his application. On May 18, 1998, the Commission issued a final classification notice and point determination that verified

---

<sup>1</sup> A list of exhibits is attached as an appendix to the decision.

<sup>2</sup> Transferable entry permits are currently issued to applicants who are awarded 23 points or more.

<sup>3</sup> Mr. Bruno waived his right to 30 days notice of the hearing.

only eight of the 28 points claimed. Ex. 2. The points claimed and verified are indicated in the following table:

Points Claimed	Points Verified	Year	Basis for Claim
4	4	1995	Past participation & economic dependence
4	4	1994	Past participation & economic dependence
10	0	1995	Consistent participation & economic dependence
<u>10</u>	<u>0</u>	1994	Consistent participation & economic dependence
28	8		

### Findings of Fact

Consistent participation and economic dependence. Points for consistent participation and economic dependence are "based on the number of statistical weeks of the year in which the applicant commercially harvested the resource as a gear operator or based on the total poundage the applicant commercially harvested in a year . . . ." 20 AAC 05.774(b). The qualifying thresholds under this regulation are at least seven statistical weeks or 3,250 pounds for 1995 and at least seven statistical weeks or 3,950 pounds for 1994. *Id.*

Commission regulations define "statistical week" as "a time period used by the Department of Fish and Game for statistical comparisons and summaries . . . ." 20 AAC 05.776(6).

"Commercially harvested" is defined as:

[T]he lawful taking and selling of shrimp caught with pot gear by an interim-use permit holder . . . where the shrimp sales were in accordance with regulations governing the sale or use of commercially caught shrimp applicable at the time of sale, including regulations regarding proper completion of reports required of processor, buyers, and fishers . . . .

20 AAC 05.776(1). Under Alaska Department of Fish and Game (ADF&G) regulations, "[f]ish tickets must be submitted to a local representative of the department within seven days after

landing . . . ." 5 AAC 39.130(c).

Commission records indicate that Mr. Bruno commercially harvested 20 pounds of shrimp in one statistical week in 1994 and that he commercially harvested 31 pounds of shrimp in two statistical weeks in 1995. Ex. 5 at 1. Mr. Bruno subsequently proved by a preponderance of the evidence that he commercially harvested shrimp during seven statistical weeks in both 1994 and 1995. He also proved that his processor, Coastal Cold Storage, consolidated multiple landings on shrimp shellfish tickets without indicating on which dates the shrimp were landed and that Coastal Cold Storage submitted the fish tickets to ADF&G more than seven days after the shrimp were landed.

Mr. Bruno's logbooks indicate that he commercially harvested shrimp during the following statistical weeks in 1994:

Date	Statistical Week	Pounds <sup>4</sup>
7/06/94 <sup>5</sup>	28	2.0
7/09/94	28	3.0
7/12/94	29	3.0
7/20/94	30	4.5
7/30/94	31	2.0
8/08/94	33	1.5
8/11/94	33	1.5
8/16/94	34	2.0
8/22/94	35	1.0

---

<sup>4</sup> Mr. Bruno recorded poundage in his 1994 logbook based on tail shrimp weight, whereas he recorded poundage in his 1995 logbook based on whole shrimp weight.

<sup>5</sup> The July 6, 1994 landing does not constitute a commercial harvest, because Mr. Bruno was not licensed to participate in the fishery as of that date. Ex. 3-4. Excluding this landing does not materially affect the number of statistical weeks that he commercially harvested shrimp, because on July 9, 1994 he had a valid landing during statistical week 28.

Ex. 6 & 8.

Mr. Bruno's logbooks also indicate that he commercially harvested shrimp during the following statistical weeks in 1995:

Date	Statistical Week	Pounds
6/11	24	3.0
6/15	24	3.0
6/20	25	4.0
6/25	26	0.5
7/04	27	2.5
7/21	29	5.0
7/25	30	8.0
7/29	30	5.0

Ex. 6 & 9. Additionally, Mr. Bruno submitted a videotape which shows that he commercially harvested shrimp during statistical week 28.<sup>6</sup>

Coastal Cold Storage employees Gregory Einerson and Douglas Larson testified that it was their practice in 1994 and 1995 to consolidate several landings of small amounts of shrimp onto a single shellfish ticket. Although Mr. Bruno agreed to their request that deliveries be consolidated, he believed that the consolidated shellfish tickets would reflect the landing dates and that the company's actions would be in compliance with ADF&G reporting requirements. This claim was confirmed by Mr. Larson, who testified that it was his understanding that reporting the landings in this manner "would make everything legal."

For the reasons stated above, a complete record of the statistical weeks in which Mr.

---

<sup>6</sup> The videotape and Mr. Bruno's testimony show that he delivered about five shrimp to Coastal Cold Storage on one occasion during the period of July 10 to 15, 1995. Ex. 23. Although the exact date of the delivery is unknown, all dates during this time period are within statistical week 28. Ex. 6.

Bruno commercially harvested shrimp does not appear in the Commission's database. Nonetheless, he fully complied with applicable regulations and he met the statistical weeks thresholds for 1994 and 1995 consistent participation and economic dependence. Accordingly, Mr. Bruno is granted 10 points for each of these claims.

#### Conclusions of Law

Mr. Bruno is entitled to 28 points, which are comprised of 10 points for 1994 consistent participation, 10 points for 1995 consistent participation, and the points previously verified by the Commission. This is a sufficient number of points to qualify for a transferable permit in the fishery.

#### Order

Mr. Bruno is awarded 28 points toward receiving a permit in the fishery.

Dated at Juneau, Alaska this 24th day of March, 1999.

By Direction of the  
Commercial Fisheries Entry Commission

J-1151  
Jonathan E. Sferber  
Hearing Officer

## APPENDIX

## EXHIBITS - GENE C. BRUNO

1. Application for Southeastern Alaska Shrimp Pot Fishery Permit (3/17/97) (2 pp.)
2. Final Classification Notice and Point Determination (5/18/98) (2 pp.)
3. Vessel License & Commercial Fishing Permit Applications (7/4/94) (2 pp.)
4. Licensing Record for 1989-95 (12/11/98)
5. List of Fish Ticket Item Records From G.E. File for 1989-95 (12/14/98 & undated) (4 pp.)
6. Statistical Weeks Table for 1994-95 (undated)
7. Letter from Gene Bruno to CFEC (5/3/97) (2 pp.)
8. Excerpts From 1994 Logbook (7/2/94 - 8/22/94) (8 pp.)
9. Excerpts from 1995 Logbook (6/7/95 - 7/29/95) (8 pp.)
10. Memorandum from Susan Shirley to Dorothy Frary, et al. (1/12/96)
11. Letter from Jackie Audap to Gene Bruno (4/16/98)
12. Letter from Gene Bruno to Jackie Audap (5/7/98)
13. Affidavit of Gene C. Bruno, with Attached Receipts (5/8/98) (2 pp.)
14. Memorandum from Jackie Audap to File of Gene Bruno (3/18/98)
15. Letter from Jackie Audap to Mr. Einerson (3/19/98)
16. Letter from Dr. Vernon J. Golay to Jonathon [sic] Sperber (11/10/98)
17. Letter from R. R. Bruno to Jonathan Sperber (11/13/98)
18. Letter from Peter Godon to Jonathan Sperber (11/12/98)
19. Letter from James H. Conley to Jonathan Sperber (11/9/98)
20. Letter from Richard E. Younts to Jonathan Sperber (11/13/98) (2 pp.)
21. Letter from Charles H. Vance to Jon Sperber (11/12/98) (2 pp.)

22. Fish Tickets, with Cover Page and ADF&G Memoranda (6 pp.)
23. Videotape (1995)



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER


Commercial Fisheries Entry Commission

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

To: Representative Louise Stutes  
Chair, House Special Committee on Fisheries

Date: March 20, 2015

Phone: 790-6944

From: Alaska Commercial Fisheries Entry  
Commission  
Bruce Twomley, Chair   
Benjamin Brown, Commissioner  
Verne Rupright, Commissioner

Subject: Breakdown of CFEC Adjudicatory  
Decisions During 2014

As you requested, Madame Chair, following is the breakdown of CFEC's adjudicatory decisions during 2014.

CFEC's adjudicatory 2014 decisions

	Limited Entry Permit Application	Emergency Transfers	Permanent Transfers	Miscellaneous**	Total
Adjudications Staff		39	5	8	52
Commissioners	2*	69	6	14	91
<b>Total</b>	<b>2*</b>	<b>108</b>	<b>11</b>	<b>22</b>	<b>143</b>

\* The Commission produced  
an additional final decision on  
an application in early January of 2015.

\*\* Miscellaneous includes requests for  
refunds, demerit points, and qualifications for  
*Carlson* damages.

# Adjudications

## OVERVIEW

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

Adjudication functions are performed by two paralegals, two hearing officers and the Commissioners. The paralegals evaluate entry permit applications and make the initial determination on accepting, denying and classifying them. 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 held and decided by paralegals. Permanent transfer hearings are held and decided by hearing officers.

The 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, and may take formal action to modify, reverse or affirm the decisions.

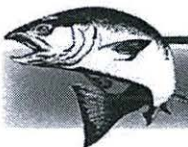
Commission hearing officers also preside over hearings arising from enforcement (notice to show cause) proceedings, where the Commission may impose fines, or revoke or suspend the permits of those who attempt to mislead the Commission with false information. These hearings are held in the presence of the Commissioners.

*COMMISSION HEARING OFFICERS CONDUCT ADMINISTRATIVE HEARINGS AND ISSUE DECISIONS BASED ON THE RECORD.*

## ADMINISTRATIVE PROCEEDINGS AND DECISIONS

The Adjudications staff issued 45 decisions in 2007. Twenty-seven decisions were issued on permit applications, 16 on permit transfers and 2 on notices to show cause, fines and miscellaneous matters such as refunds and demerit points. At the end of the year, 43 entry permit application cases were pending before hearing officers.

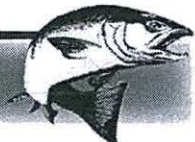
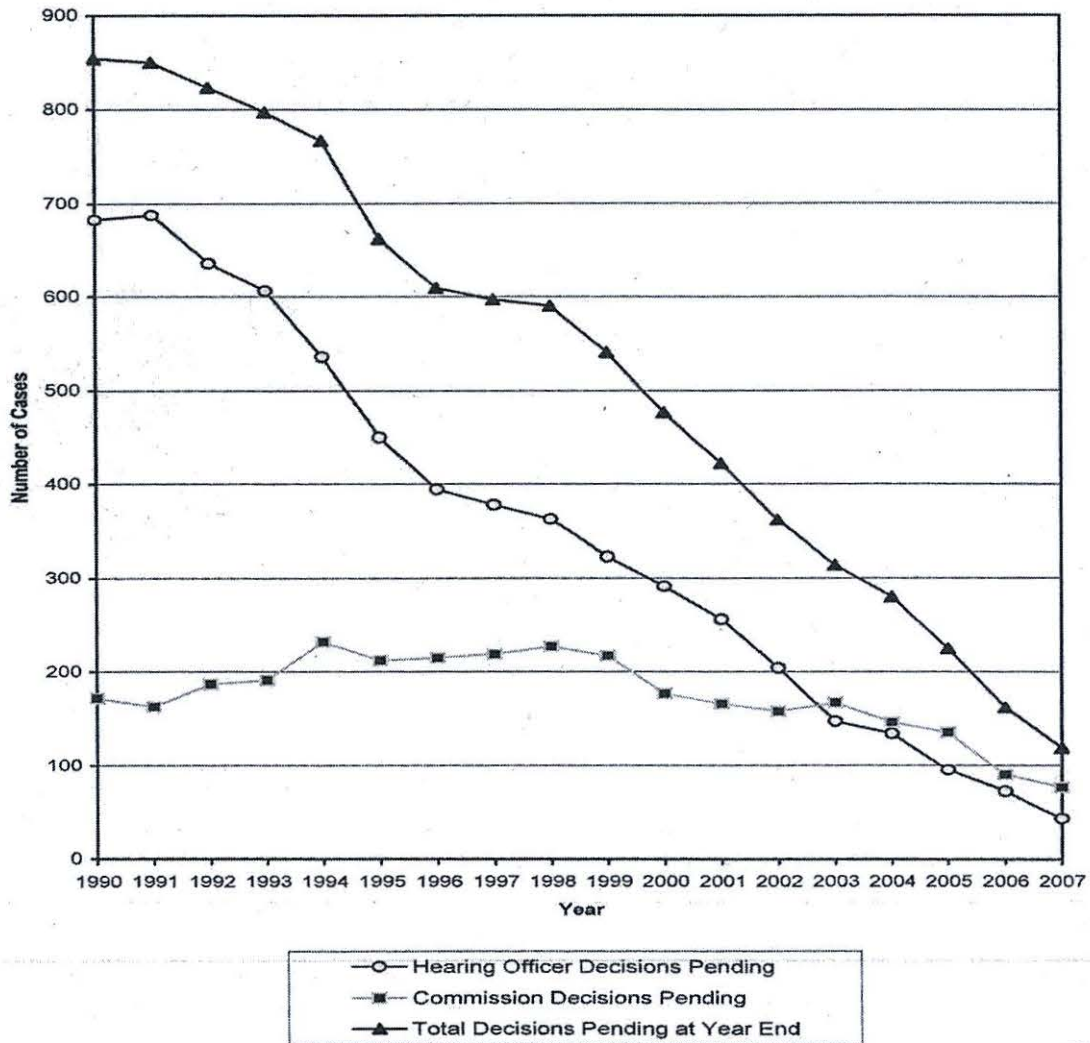
The Commissioners adjudicated a total of 80 cases during 2007. Fifty-one cases were adjudicated on permit applications, 27 on permit transfers and 2 on notices to show cause, fines and

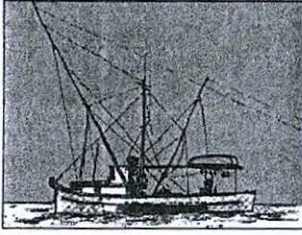


miscellaneous matters. At the end of the year, 76 entry permit application cases were pending before the Commissioners.

By the end of 2007, Commissioners and Hearing Officers made substantial progress through the Commission's adjudication caseload. Looking back to 1990, as the result of the Wassilie settlement (authorizing hundreds of new applications in the salmon fisheries) and a series of Alaska Supreme Court cases during the 1980's, the Commission's caseload had risen to nearly 900 cases. 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 2007, the Commission issued over 1,800 final decisions, thereby deciding cases at a rate faster than applicants filed new appeals and reducing its caseload to 119.

**Commission's Overall Adjudication Caseload**





## Alaska Trollers Association

130 Seward St., No. 205  
Juneau, Alaska 99801  
(907) 586-9400  
(907) 586-4473 Fax

March 25, 2015

Representative Louise Stutes, Chairman  
House Fisheries Committee  
Alaska Legislature  
Juneau, AK 99811

### **RE: HB 112 Repeal CFEC**

Dear Representative Stutes and Committee Members:

The Alaska Trollers Association (ATA) is concerned about HB 112, which would repeal the Commercial Fisheries Entry Commission (CFEC) and divide its duties and functions between Department of Fish and Game (ADFG) and the Office of Administrative Hearings. We question the efficacy of dismantling CFEC, and are concerned about potential, negative ramifications for Alaska fishermen and their communities. The information available for review on this issue is multi-layered and raises more questions than it answers.

At first blush, ATA opposes HB 112 because it is likely to create inefficiencies; increase costs overtime; make CFEC vulnerable to added political pressure, which could erode public trust; and threatens to degrade services to permit holders and their families. Ironically, just going through the motions of this bill diverts CFEC's attention from its work. **At minimum, we suggest the committee postpone action on HB 112 until it can be more carefully analyzed through legislative audit and other means, and then fully vetted with the affected public.**

The Lawson Report appears to include a variety of factual errors that CFEC was not allowed to respond to prior to publication of the report. This is unfortunate and creates confusion for those of us who are trying to understand what, if any problems exist within CFEC and how best to resolve them. Nearly all of Lawson's negative findings and recommendations are administrative and can be taken care of in relatively short order. These items certainly shouldn't force closure of the commission. CFEC freely admits that that some administrative functions could be improved, and have presented you with an action plan to begin that process. That should be taken seriously. The legislative audit that is slated for completion this summer should provide additional information on the matter and provide a more realistic view of costs associated with HB 112.

The savings touted in the fiscal note don't seem realistic, particularly if you consider a potential loss in efficiency that could result from the new structure. When adjudicating cases - from permit transfers to new fishery applications - CFEC must maneuver the large body of obscure law and regulation that underpins the limited entry program; this demands a seasoned familiarity with the issues by those making rulings or creating new regulation. It is difficult to believe that this work can be efficiently dealt with under ADFG's structure or on an occasional basis by hearing officers who may be unfamiliar with limited entry law and regulation. Hearing officers are bound by the Administrative Procedures Act (APA) and its lengthy process. For instance, CFEC currently adjudicates emergency permit transfers in a matter of days. In contrast, if a fisherman had a poorly timed emergency and had to seek a license transfer, the APA's 120 day process could very well cause the permit holder or transferee to miss the entire fishing season.

A more thorough legal opinion seems advisable, particularly in light of recent bill changes. The previous legal memo from Department of Law posed questions about things like the legislature's legal authority to create a division within an agency, and changing employment status of CFEC staff. Fishermen will be concerned to know how new regulations would be developed, and by whom. It would also be concerning to lose the three commissioner deciding body on cases that involve potential permit loss, etc.

ATA represents commercial salmon trollers who operate in state and federal waters from Dixon Entrance to Cape Suckling. In 2013, there were 1,963 active troll permits, 85% of them owned by Alaskans primarily living and working in Southeast communities. Trollers and their deckhands paid about \$280K in permit fees and licensing alone. These fishermen landed about 28 million pounds of salmon valued at over \$41 million, which put another \$837K in fisheries business tax into the general fund and communities. Many trollers also harvest halibut, cod, and shellfish and taxes are paid on those species. In addition to the many other state, local, and federal taxes and fees, trollers paid \$837K to help finance the region's hatchery programs, which provide salmon for all user groups.

The seafood industry is Alaska's largest private sector employer - fishing jobs are essential for the health of coastal Alaska and are a catalyst for the creation of processing and support sector jobs throughout the state.

CFEC has a long history of establishing and safeguarding our fishing privileges and assisting fishing fleets and families. Recently CFEC's efforts were key to distributing a portion of the Southeast Alaska Chinook Salmon Mitigation Fund, which was established to help mitigate troll and sport losses under the Pacific Salmon Treaty. CFEC staff went out of their way to make the program a success. Their data was spot on and they were professional, prompt, and helpful. This is business as usual when working with the CFEC crew.

Governor Egan and former legislatures wisely chose to insulate CFEC from undue political influence and grant it quasi-judicial status. This allows the commissioner's to affect change through nimble problem-solving and the creation of regulations to fit unique situations. While this provides a degree of flexibility to resolve some issues in a timely way, it is crucial that CFEC develop deliberative standards and rules, to ensure legal defensibility and consistent application amongst all permit holders. That can take lots of time, particularly when large distractions get thrown in the path of those who already have a hefty volume of work on their hands.

ATA would like nothing better than to see HB 112 dropped and CFEC staff head back to work on their most important tasks. The commissioners have suggested a plan to you that seems reasonable for quickly ameliorating the administrative issues in need of attention.

If you can't vote no on HB 112 today, then I urge you to at least wait until you have more information on which to base a decision. Some of that work is already in progress, like the legislative audit. In the meantime, there is no budget or legal crisis in need of a fix at CFEC this year, and they bring in far more money than they spend; the additional revenues are already utilized to assist ADFG. Therefore, it should not create hardships for the state and agencies if you were to postpone action on HB 112.

Thank you for considering ATA's point of view. If I can answer questions or otherwise assist you on issues of concern to the fishing industry, please do not hesitate to contact me.

Best regards,



Dale Kelley  
Executive Director



# UNITED FISHERMEN OF ALASKA

**Mailing Address:** PO Box 20229, Juneau AK 99802-0229  
**Physical Address:** 410 Calhoun Ave Ste 101, Juneau AK 99801  
**Phone:** (907)586-2820 **Fax:** (907) 463-2545  
**Email:** [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org) **Website:** [www.ufa-fish.org](http://www.ufa-fish.org)

March 25, 2015

Representative Louise Stutes  
Chair, House Fisheries Committee  
State Capitol Room 416  
Juneau AK, 99801  
[Rep.Louise.Stutes@akleg.gov](mailto:Rep.Louise.Stutes@akleg.gov)

**RE: HB 112 REPEAL CFEC; TRANSFER FUNCTIONS TO ADFG.**

Representative Stutes,

United Fishermen of Alaska (UFA) is the statewide commercial fishing trade association, representing 36 Alaska commercial fishing organizations participating in fisheries throughout the state and its offshore federal waters. Every UFA member is impacted by HB 112, the action to repeal CFEC and transfer functions to ADF&G.

**UFA is urging the legislature to take no action at this time on HB 112.** Although we have a completed review from ADF&G, commonly known as the Lawson report, we do not yet have the critical legislative audit regarding HB 112. It is our understanding that the legislative audit will not be complete until June of this year.

UFA is unable to take a position on HB 112 until we are able to analyze and understand the results of the legislative audit. The legislative audit of HB 112 will reveal important details regarding the impacts of absorbing CFEC into ADF&G. Our organization has a number of concerns regarding the effects of dissolving CFEC; however we are willing to wait until the legislative audit answers our questions prior to taking a position on this bill.

We provided input to CFEC regarding their timeline to implement specific recommendations of the Lawson report and to make changes within the Commission. We are supportive of CFEC's efforts, and we are standing by to assist in any way.

Please let us know if we can answer any questions or provide additional detail on this important matter.

Sincerely,

Julianne Curry  
Executive Director

March 4, 2015

The Honorable Louse Stutes  
State Capitol Room 416  
Juneau AK, 99801-1185

Dear Representative Stutes,

I would like to comment on your bill HB112. I own a Northern and Southern Spawn on Kelp Permit. I can attest to you and many other Northern SOK permit holders as well, we were sweating bullets listening to Board of Fish and ADF&G talking about taking away from us what we rightfully own and give it to another group. We were so close to losing our area. The issue is, a few of the Sitka Sac Roe Herring fisherman would like to be able to use their Sac Roe Permit to fish for Spawn on Kelp here in Sitka Sound (I own a Northern SOK that includes this area if it were ever to open a Spawn on Kelp fishery). However, during the Board meetings, a few guys from Sitka Sac Roe wined and dined (as we were told) the Board and convinced them that they have done extensive study and found a new market for SOK. I did some due diligence of my own and found out that there was not any "new market," it was the same market we already sell to and is constantly having too much on the market already and is dropping our prices down dramatically. They just lied to the board and the board bought into it completely. All I could do during the meeting was to watch and hear the Board and ADF&G try to give these guys our area. The board was really pushing for this to happen and Fish and Game agreed they could carve out an area in the Sitka Sac Roe and make it into a Spawn on Kelp Fishery for them. Thankfully, in the end, they check with legal and legal told them they would have to go to CFEC for this. So the board decided to hold off for a year and write a letter of recommendation to CFEC requesting that they give the Sitka Sac Roe guys an area for Spawn on Kelp.

I know there is some talk about doing away with CFEC and have ADF&G take the responsibility, but I have to tell you that CFEC is more legalistic than what ADF&G would be. Watching them here at the meetings, Fish and Game tried to do whatever the Board wants and not take too much of a stand. I feel, with our issue, ADF&G wouldn't care if we already own the permit; if the board wanted to change it and give to another group, ADF&G would do it. This is scary for all fishermen. It is important to the fishermen to keep CFEC in place. With CFEC at least we can rest assure that they will do what is right and legal and not give in to emotions. Fishermen *need* CFEC's protection.

Sincerely,



Mike Svenson  
104 Sharon Dr.  
Sitka, AK 99835  
907-747-7429

**Alaska Scallop Association**

PO Box 8989

Kodiak, AK 99615

907-512-7018

Jim@AlaskaScallop.net



**March 26, 2015**

**House Fisheries Committee Representative Louise Stutes, Chair**

Alaska State Legislature,  
House Fisheries Committee State Capitol,  
Room 416 Juneau,  
AK 99801

**RE: HB 112 – Repeal CFEC and Transfer Functions to ADF&G**

Dear Representative Stutes and House Fisheries Committee Members,

Alaska Scallop Association does not support the advancement of this bill at this time.

We believe that action should be delayed until the legislative audit requested last year is available for review and a thorough impact study is done. CFEC for decades has ensured commercial fishermen's rights are not taken away unjustly, without any political bias. To dismantle them because of a few perceived internal organizational issues without a full study of the impacts does an injustice to the Commission as well as to Alaska's fishermen they are charged to protect.

Allowing CFEC time to reorganize as they presented in their response to the Lawson audit, will give us all time for a fair assessment. Reorganization seems to us to be the logical first step rather than immediately jumping to the draconian action of dissolving the whole commission.

We believe there is some balance and benefits when CFEC is an autonomous division that would be lost with transferring the functions to ADF&G.

CFEC is funded 100% by fishermen's permit fee and operates with a surplus. These are the fishermen's funds paid directly by us. Please give us fishermen time to assess what is at stake if the CFEC's important function was to be moved to a more politically charged agency such as ADF&G.

No hurry, let's make sure any corrective action is done in a logical manner and most importantly that the rights of Alaska's fishermen will be properly protected.

Sincerely, Jim Stone- President

A handwritten signature in black ink, appearing to read 'Jim Stone', written over a horizontal line.

## Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

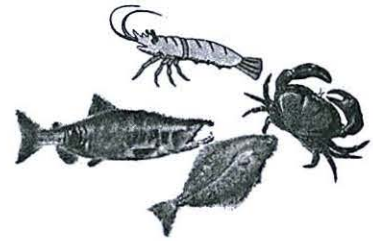
Juneau, AK 99801

Phone: 907-586-6652

Fax: 907-523-1168

Email: [seafa@gci.net](mailto:seafa@gci.net)

Website: <http://www.seafa.org>



March 24, 2015

House Fisheries Committee  
Representative Louise Stutes, Chair  
Alaska State Legislature, House Fisheries Committee  
State Capitol, Room 416  
Juneau, AK 99801

RE: HB 112 - Repeal CFEC and Transfer Functions to ADF&G

Dear Representative Stutes and House Fisheries Committee Members,

Southeast Alaska Fishermen's Alliance (SEAFA) does not support the advancement of this bill at this time. We believe that action should be delayed until the legislative audit requested last year is available for review. SEAFA supports allowing CFEC time to reorganize as they presented in their response to the Lawson audit.

We believe there is some balance and benefits when CFEC is an autonomous division that would be lost with transferring the functions to ADF&G. For example, comments submitted by CFEC to Board of Fish proposals are completely different than the comments on the same proposal by ADF&G because the functions and responsibilities are different. We believe that there are additional changes that could be made such as two commissioners as they operated recently and hire on a consultant basis when a third administrative judge is necessary for the process.

Sincerely,

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

Kathy Hansen  
Executive Director

# UNITED SOUTHEAST ALASKA GILLNETTERS

PO Box 20538, Juneau, AK 99802 (253) 237-3099 Google Voice usag.alaska@gmail.com  
www.akgillnet.org

March 10, 2015

Representative Louise Stutes  
Chair  
House Fisheries Committee  
State Capitol Room 416  
Juneau AK, 99801

Dear Representative Stutes,

Re: HB 112 Repeal CFEC; Transfer Functions To ADFG

We request you defer further action on HB 112 until the Administration has had time to review the results of both the Lawson Audit and the pending Legislative Audit.

We believe the Administration's proposal to hire an Executive Director, prepare a reorganization plan, and report back to the Legislature in 2016 is a worthwhile plan.

United Southeast Alaska Gillnetters Association has 170 members and represents the common interests of 473 gillnet permit holders in the fishery. 82 percent of SE gillnet permits are held by Alaska Residents.

We appreciate you taking the time to consider our comments.

Sincerely,



Thomas M Gemmell  
Executive Director

Copy: Senator Bert Stedman  
Senator Dennis Egan  
Representative Sam Kito III  
Representative Dan Ortiz  
Representative Cathy Munoz  
Representative Jonathan Kreiss-Tomkins  
Commissioner Sam Cotten ADFG  
Commissioner Bruce Twomley, CFEC  
Commissioner Ben Brown, CFEC  
Commissioner Vern Rupright, CFEC



Cordova District Fishermen United  
PO Box 939 | 509 First Street | Cordova, AK 99574  
phone. (907) 424 3447 | fax. (907) 424 3430  
web. www.cdfu.org

March 24, 2015

Special Committee House Fisheries  
Representative Louise Stutes  
State Capitol, Rm 416  
Juneau, AK 99801-1182  
Representative.Louise.Stutes@akleg.gov

Chairman Stutes and Committee Members;

On behalf of the Cordova District Fishermen United (CDFU) Board of Directors, we urge the legislature to take no action on HB 112, moving CFEC to Fish & Game. We need to be well informed on this move and suggest this Committee wait for the Legislative Audit, scheduled for release in June.

CDFU has been the voice of commercial fishermen since 1935 and currently represents over 800 fishing families in the Prince William Sound and Copper River region of Alaska. It is our mission to preserve, promote and perpetuate the commercial fishing industry and fishing resources of our region for the mutual benefit of both current and future generations of fishermen.

CFEC is a separate division that has provided a solid service to the commercial fishing industry over the years. Recognizing the need to streamline operations in the current fiscal climate, CFEC has identified efficiencies and written a plan for implementation. We ask that they be given the time and opportunity to do so.

We will be following the process closely and thank you for bringing these issues to our attention.

Sincerely,

Alexis Cooper, Executive Director  
Cordova District Fishermen United  
Director@cdfu.org



House Fisheries Committee  
Representative Louise Stutes, Chair  
Alaska State Legislature  
State Capitol, Room 416  
Juneau, AK 99801

24 March 2015

**OPPOSE HB 112**

Dear Madame Chair and House Fisheries Committee Members,

The Southeast Alaska Seiners Association (SEAS) is a commercial fishing gear group comprised of more than 150 paying skipper and crew memberships, as well as over 75 paying business members. SEAS represents the interests of roughly 1,500 fishermen in the S01A fishery, and their families and communities throughout SE Alaska and beyond.

The combined permitting fees paid by the S01A permit holders in our limited entry fishery contributed nearly \$400,000 to the CFEC budget this past year alone. SEAS is very happy with the way in which CFEC has and continues to be run by the current Commissioners and staff at the agency. In addition to the economic impact our permit holders bring to the table, SEAS has the unique ability to judge the longstanding work of the agency, due to our involvement in the S01A permit buyback – the only buyback of its kind. Through the enduring hard work of the people at CFEC and Representative Millett, who carried the required bill through the State Legislature, the S01A fishery is more stable and properly amended to the needs of our current times. We believe CFEC has been improperly demonized by some and point to our fantastic decade-long interaction with the agency on this issue (which continues to this day in the multi-phase buyback). It was the due diligence and day-in and day-out work that CFEC performed which allowed the buyback not simply to go forward, but to carry on in a most effective manner.

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



We are some of the many fishermen who contribute directly to the CFEC budget, we therefore believe we should and do have the right to help determine the future of this agency. We are unequivocally opposed to HB 112 and any outside attempts to configure the agency according to the whims of others.

Oppose HB 112 and keep CFEC as it was intended to be from the beginning: an independent agency, out of the direct political winds of the day.

Respectfully,

Daniel Castle

Southeast Alaska Seiners Association, President