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Ben Brown, Commissioner

Frank Homan, former CFEC Chair

Mary McDowell, former CFEC commissioner

Frank Glass, CFEC Adjudications Project Leader

Kurt Iverson, CFEC Research and Planning Project Leader

Ty McMichael, CFEC Information Technology Services Leader

Yvonne Fink, CFEC Licensing Project Leader

Shirley Penrose, CFEC Operations Manager

Kurt Schelle, former CFEC Research and Planning Project Leader

Cathy Tide, former CFEC Research Analyst

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Appendix A

LICENSE LIMITATION IN ALASKA'S COMMERCIAL FISHERIES

**Bruce Twomley, Chairman¹
Alaska Commercial Fisheries Entry Commission
July 2003**

Introduction and Summary

After two failed attempts to establish limited entry in its salmon fisheries,² pursuant to legislation adopted by the Alaska Legislature in 1973, Alaska placed its primary salmon fisheries under limitation by 1975. Alaska persisted in seeking limited entry largely in response to declining salmon resources coupled with increasing levels of participation. Alaska's system limited the number of gear licenses to a maximum number, which the Alaska Supreme Court has ruled³ must be equal to or greater than the highest number of units of gear present in a particular fishery during the four years prior to limitation. With all prior participants eligible to apply, the number of eligible applicants was generally far greater than the maximum number. Under an elaborate system of grandfather rights, permanent entry permits have been awarded to those fishers who demonstrated the most dependence upon a particular fishery, as measured by their past participation and economic dependence. Eligible fishers may continue to fish until there is a final determination on their applications. Permanent entry permits are, for the most part, freely transferable and inheritable, subject to some restriction (for example, permits may neither be leased nor pledged as security for a debt).

¹ The views expressed are those of the author and are not represented to be the views of the Alaska Commercial Fisheries Entry Commission or the State of Alaska.

² See *Commercial Fisheries Entry Commission v. Apokedak*, 606 P.2d 1255, 1258-1259 (Alaska 1980) [recounting successful court challenges to Alaska's prior attempts to limit entry into its salmon fisheries].

³ *Johns v. CFEC*, 758 P.2d 1256 (Alaska 1988).

Salmon fishers helped design Alaska's program for Alaska's salmon fleet, which consisted largely of individual fishers who owned and operated their own vessels. The program achieved a moratorium on new entrants and a gradual reduction of units of gear toward the maximum number as individual claims to permits were resolved.

Alaska's license limitation program contributes to limiting fishing capacity, because it is coupled with other limitations on effort such as vessel size and gear restriction. Taken together, Alaska's license limitation and other management tools allow managers to calculate with some assurance the power of the fishing fleets they seek to control. Although the program is neutral as to residency, the percentages of permits held by Alaskans have tended to remain stable from the time of initial limitation.

Alaska's 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. Although the percentage of permits held by Alaskan residents has remained stable, in some areas, the number of permits held by local, rural Alaska residents has declined. Additionally, the high cost of permits in valuable fisheries has made initial entry into some fisheries difficult.

Alaska's license limitation program is most useful in fisheries that resemble Alaska salmon fisheries. The more a fishery departs from the Alaska salmon fishery model (as a fleet of

individual owner-operators participating in a fishery managed for escapement and not by quota), Alaska's form of license limitation is less likely to be the best option.

Alaska has applied this license limitation system to some 67 fisheries, making Alaska's license limitation program one of the largest of its kind in the world. Today, international salmon farming threatens Alaska's traditional markets and world prices for salmon. The Alaska salmon industry and the State of Alaska are exploring options for restructuring Alaska's salmon industry to meet this aggressive challenge.

Background

Alaska's salmon harvests declined from the late 1930's and into the early 1970's.⁴ Despite this decline, the number of participants continued to increase, creating more demands upon the salmon resource. By 1972, a perception that traditional management measures (e.g., closures, gear and vessel size restrictions) were no longer sufficient to maintain salmon stocks led Alaska voters to approve a State constitutional amendment authorizing the limitation of entry into Alaska's commercial fisheries.

In 1973, the Alaska Legislature enacted the Limited Entry Act which established a three-member commission authorized to limit entry into commercial fisheries when doing so would promote the conservation and sustained yield management of those fisheries and the economic health and

⁴ Young (1983). *Fishing by Permit: Restricted Common Property in Practice*. p. 125 in Vol. 13, No. 2 *Ocean Development and International Law Journal*. Crane, Roussak & Co., Inc.

stability of commercial fishing.⁵ By 1975, the commission had limited the primary 19 salmon fisheries (for reference, a “fishery” consists of a region, type of gear, and fishery resource). Today, the commission has limited some 67 fisheries and issued more than 14,000 limited entry permits to fishers in these limited fisheries.

Salmon fishers helped design Alaska’s license limitation program to address Alaska’s salmon fleet in which captains of vessels, who had been required to hold gear licenses, tended to be the sole owners and operators of their vessels. This owner/operator aspect of the salmon fisheries resulted in a close correlation between the number of gear licenses held and the number of units of gear.⁶ Additionally, the Alaska Board of Fisheries has consistently imposed limits upon vessel size and the amount of gear employed from a vessel. Coupled with these additional controls, limiting the number of units of gear helps to limit overall fishing power.

Another relevant feature of Alaska’s salmon fisheries is the fact that they are not managed by harvest quota. For the most part, salmon are caught when they return to spawn and die in their rivers of origin. Fishery managers must ensure that a sufficient number of fish escape up the river to reproduce and sustain the resource, while avoiding potential damage from overescapement. In what can sometimes be a very short period, the fleet has an opportunity to catch all remaining fish not needed for escapement.

⁵ Alaska Statute (hereinafter AS) 16.43.010.

⁶ In fact, there were some unlicensed partners whose interests have been very difficult to fully accommodate within the system without undermining its purposes. *See, for example, State, CFEC v. Templeton*, 598 P. 2d 77 (Alaska 1979); *CFEC v. Apokedak*, 606 P.2d 1255 (Alaska 1980); *CFEC v. Apokedak*, 680 P.2d 486 (Alaska 1984); *CFEC v. Russo*, 833 P.2d 7 (Alaska 1992).

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.

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."⁷

⁷ 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. 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.

Although the Alaska Supreme Court has issued some 71 decisions addressing Alaska's limited entry program, the court has upheld the program in all major respects.⁸

Once issued, most permanent entry permits are transferable for value and inheritable, but they are subject to a number of restrictions.⁹ They can be transferred only to a living individual who can demonstrate present ability to participate actively in the fishery. As a general rule, no individual may hold more than one permit in a given fishery, and no one may fish more than one permit in a fishery.¹⁰ Permits may not be held by a corporation or a partnership.¹¹ To avoid intemperate transfers, a permit holder may permanently transfer a permit only after 60-day's notice, during which time the holder can rescind any agreement to transfer. Additionally, a permit may not be leased, pledged as security for a debt (with the exception of two State-

⁸ See for example, *Crivello v. State*, CFEC, 59 P. 3d 741 (Alaska 2002).

⁹ See for example, AS 16.43.150.

¹⁰ AS 16.43.140 provides limited exceptions for the purpose of fishing an entire unit of gear or for the purpose of fleet consolidation.

¹¹ AS 16.43.450--AS 16.43.520 (2002) provide limited exceptions for the Bering Sea hair crab fishery and weathervane scallop fishery where the commission is authorized to limit the number of vessels under certain conditions and issue entry permits to vessel owners, which may be corporations and partnerships.

authorized loan programs), or be executed upon to satisfy a judgment (with some recent exceptions). Furthermore, the individual permit holder must be on board and must personally sign for each sale of fish under the permit. The Alaska Legislature declared entry permits to be use privileges subject to cancellation or modification by the state without compensation.¹²

Controversy Over Transfer of Entry Permits

The relatively free transferability of entry permits has remained controversial. On the positive side, 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 to promote investment in aquaculture to rebuild salmon stocks. With respect to aquaculture, fishers in some limited salmon fisheries have elected to tax themselves in order to develop non-profit hatcheries. The Legislature also intended free transferability to ease hardship to an individual disabled from the fishery and to fishing families intending to maintain their access to a fishery. Finally, for the sake of simplicity and economy, the Legislature intended to leave redistribution of entry permits largely to the marketplace to avoid involving the state in a system of reissuance of entry permits.¹³

¹² AS 16.43.150(e).

¹³ See generally, State v. Ostrosky, 667 P.2d 1184 (Alaska 1983) [upholding transferability of Alaska limited entry permits].

While the Limited Entry Act is neutral with respect to residency, overall transferability has tended to serve residents of the State of Alaska. Approximately 78 percent of Alaska's limited entry permits are held by Alaskan residents. As of year-end 2002, Alaskans held 11,502 of the more than fourteen thousand permanent entry permits issued. More than one-half of the Alaskans holding entry permits are rural residents living in areas where other sources of cash income are very limited.¹⁴

Depending on the perceived value of a fishery, the current costs of entry permits range from several thousand to several hundred thousand dollars. A high market value is a mixed blessing. On the one hand, it may reflect the perceived economic health of the fishery. On the other hand, the high price may present an obstacle to a local individual seeking to enter the fishery as a captain for the first time. For those individuals who borrow funds to purchase an entry permit, retiring that debt may create an incentive to fish that much harder and to make more demands on the resource.

Additionally, transferability may disadvantage some Alaskans. In some rural areas of the state, more permits have been transferred from the area than have been transferred to the area. This net rural drain of entry permits in areas where economic alternatives to commercial fishing are very limited is a serious concern. Furthermore, as the result of court decisions, child support claimants and the Internal Revenue Service assert the right to seize and force the sale of entry permits to satisfy their claims.

While transferability of entry permits remains controversial, alternatives to transferability also

¹⁴ *Commercial Fisheries Entry Commission 2002 Annual Report.*

present problems. If entry permits were to revert to the state to be reissued among applicants according to a ranking system, the process would be very expensive and time-consuming. If permits were reissued periodically through a lottery, fishers would be denied the opportunity to plan for their business. If permits were awarded periodically by competitive bid, the individual dependency on fishing protected by the current grandfathering system would be ignored, and individuals with better access to capital would benefit. Additionally, limiting the time during which an individual could hold an entry permit would eliminate the long-term stakes in a fishery believed by the legislature to be necessary to promote conservation. Finally, eliminating transferability would remove an incentive for the holder to maintain or enhance the value of the permit through conservation of the resource.¹⁵

Other sources of controversy include unhappiness among denied applicants for permits and the continuing issue whether commercial fishers pay sufficient revenues to the State of Alaska in return for their fishing privileges. Despite the controversy, Alaska's license limitation system has won general acceptance and has twice been supported by the voters. As stated, the electorate passed a constitutional amendment forming the basis for limited entry in 1972. Subsequently in 1976, the voters defeated a referendum to abolish limited entry in Alaska by a margin of almost two to one. As a further indication that support is not limited to those fishers holding entry permits, a frustrated fisher with a long-standing pending application for a permit declared to this author: "even if I don't get my entry permit, I do want the system to survive." On the other hand, with Alaska's population shifting toward urban centers and nonfishing employment, individuals have questioned whether the limited entry system would survive a referendum today.

¹⁵ See generally, *A Review of the Issue of Transferability of Limited Entry Permits*, CFEC Discussion paper 00-1N (March 2000).

Effects of Alaska's License Limitation Program and Current Stresses

Alaska's license limitation system, within its limited objectives,¹⁶ has helped to contain growth in fishing effort. However, beyond fisheries which bear close resemblance to the Alaskan salmon fisheries for which the program was designed, it may be less effective.

The primary objective of Alaska's license limitation system is to limit growth in the numbers of participants in its fisheries. Prior to limitation, the number of participants in Alaska's salmon fisheries continued to grow despite the decline of salmon harvests. Having observed more and more participants crowding into once declining salmon fisheries, Alaska's record salmon harvests, during the 1980's and early 1990's, would likely have attracted many new participants. Despite downward pressure on salmon prices due to increased worldwide supply of farmed and wild salmon, Alaska's salmon fisheries have remained attractive to salmon fishers. And there would likely have been other sources of pressure. For example, the construction of the Alaska pipeline during the 1970's drew a large work force into Alaska. Upon completion of the pipeline, displaced former pipeline workers who wished to remain in Alaska could well have sought to enter Alaska's salmon fisheries.

¹⁶ In addition to containing growth in fishing effort, legislation establishing Alaska's license limitation program originally included fisher-financed fleet reduction through buy-out of limited entry permits, vessels and gear. AS 16.43.290 and following. The program has not been implemented because the Attorney General issued an opinion concluding the funding method for the program violated the State Constitution. 1985 Op. Att'y Gen. No. 2 (May 23). Very recent legislation has repaired the funding mechanism. Chapter 135 SLA 2002. However, before this legislative repair of the funding mechanism, the Alaska Supreme Court further inhibited fleet reduction by declaring, under the State Constitution, a limited fishery can become too exclusive requiring the introduction of additional limited entry permits. Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988).

Additionally, the troubles that have befallen West Coast salmon fisheries beginning in the 1970's would likely have spawned additional interest in Alaska's salmon fisheries by displaced West Coast salmon fishers. Alaska's system of limitation was barely in place when the *Boldt* case was decided in 1974.¹⁷ The *Boldt* decision required a substantial portion of the salmon harvests in the northwestern United States be reserved for certain Native American tribes. That decision dislocated large numbers of northwest salmon fishers, who would likely have looked to Alaska to offset their losses. In short, had Alaska's license limitation system not stood as a bulwark, these various pressures likely would have caused growth in the numbers of participants in Alaska's fisheries and even greater pressure upon the resources.

Alaska's limited entry system does more than simply limit the number of participants, because it does not operate by itself. The State Board of Fisheries has consistently provided gear and vessel restrictions applicable to commercial salmon fishers. These restrictions, when coupled with license limitation, result in a limitation of overall fishing capacity and further allow fishery managers to calculate with some assurance the amount of fishing power to be managed.

An example of the utility of the program can be taken from the Southeast Alaska roe herring purse seine fishery, which is subject to limitation resulting to date in 52 units of gear. Absent the limitation on the number of fishing operations, this fishery likely would not have opened in years of low stock assessment.

¹⁷ United States v. Washington, 394 F.Supp. 312 (1974).

Despite limitation, the relatively small Southeast Alaska roe herring seine fleet has been so efficient and powerful that, during some seasons, fishery managers would not have risked an opening for as little as one-half hour, for fear of exceeding the quota and damaging the stocks. Although license limitation failed to facilitate a traditional fishery under these circumstances, it may have contributed to a practical solution. More than once, when the fishery otherwise would not have opened, permit holders gathered in the same room and agreed to fish cooperatively and to share the limited quota. This might not have been possible had limited entry not clearly defined the limited group of stakeholders.

As noted, however, the effectiveness of Alaska's license limitation program becomes questionable with respect to fisheries which depart from the Alaska salmon fishery model. An example has been the Southeast Alaska dungeness crab pot fishery. For the most part, the fishery consisted of a small boat fleet fishing fewer than 100 pots each. The only inseason gear limit placed upon the fishery by the Board of Fisheries is a limit of 300 pots per vessel. License limitation applied to this fishery would limit the number of fishing operations, but might have little effect upon the growth of fishing effort or capacity. Each entry permit holder could have moved to a larger vessel and fished up to 300 pots thereby substantially increasing pressure upon this fishery despite license limitation. This situation initially discouraged application of Alaska's license limitation system to the Southeast Alaska dungeness crab fishery.

In 1995, the Alaska Legislature addressed this problem by granting CFEC authority to restrict the individual fishing capacity employed under an entry permit (for example, quantity of fishing gear or vessel size).¹⁸ Under this new authority, CFEC limited entry into the Southeast dungeness crab pot fishery and assigned pot restrictions to groups of individual entry permits, based on each applicant's past catch. As the result, permits are placed to one of four tiers, each representing a portion of the 300 pot upper limit of gear established by the Board of Fisheries, as follows:

TIER	NUMBER OF POTS
A (100%)	300
B (75%)	225
C (50%)	150
D (25%)	75

Other departures from the salmon fishery model are fisheries where the number of licensed skippers is not closely related to the number of units of gear. Examples are the Bering Sea hair crab fishery and the weathervane scallop fishery. A few relatively large vessels had participated in these fisheries throughout the year.¹⁹ In part because of the length of the seasons, owners of vessels may rely on alternating relief skippers. In some cases, owners may not personally operate their vessels at all. Alaska's license limitation system, if applied to these fisheries, would fail to protect the interest of a vessel owner who was not a skipper. The system could also grant entry permits to a series of relief skippers currently operating the same vessel.

¹⁸ AS 16.43.270(d) (§3 ch 82, SLA 1995).

¹⁹ Decline in stocks has required closure of the hair crab fishery in recent years.

Subsequently, under license limitation, each of those skippers might be entitled to operate his or her separate vessel. In such fisheries, the application of Alaska's system could entail a risk of multiplying the number of fishing operations following license limitation.

In response, the Alaska Legislature established temporary moratoria on the entrance of new vessels into the Bering Sea hair crab fishery²⁰ and the weathervane scallop fishery.²¹ Subsequently, during the 2002 session, the legislature passed AS 16.43.450 authorizing the Commission to implement a vessel-based limited entry program for the Bering Sea hair crab and weathervane scallop fisheries under certain conditions. Permits would be issued to owners of the vessels rather than operators of the vessels, and the vessel entry permits would expire on December 31, 2008, unless future legislation extends or eliminates the expiration date. In 2003, the commission adopted a vessel permit limited entry system for the Bering Sea hair crab pot fishery²²

A more practical tool for limiting entry into fisheries managed by quota would be authority to assign individual transferable quota shares. However, the issue of individual transferable quotas has been controversial in Alaska.²³ In part, controversy in Alaska over individual transferable quotas prompted Alaska's Congressional Delegation to support the 5-year moratorium on implementation of any new individual transferable quota programs in federally managed

²⁰ A 16.43.901 (1996)

²¹ AS 16.43.906. (1997)

²² Commission Order (June 6, 2003); 20 AAC 05.1400 *and following*.

²³ Nonetheless, within its existing statutory authority to impose uniform inseason harvest limits, the Alaska Board of Fisheries has established individual annual limits based on an equal division of the annual quota among the participants in the Northern Southeast inside sablefish fishery. 5 AAC 28.170. These individual limits are not transferable.

fisheries imposed by the 1996 amendments to the Magnuson-Stevens Act.²⁴

The rise in world salmon production and resulting decline in salmon prices have caused Alaska's salmon industry to suffer a significant loss of earnings. As salmon fishermen struggle financially, many have expressed interest in exploring ways of reducing harvesting costs to make the harvesting sector more viable.²⁵ To aid discussion of the future of Alaska's salmon industry, CFEC published the *Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries* (CFEC 1998), which critically examined a variety of remedies under consideration ranging from changes of law to private actions individuals could take. One such idea resulted in legislation: Chapter 134 SLA 2002 provided a new means for fleet reduction to occur through private initiative by authorizing an individual to hold up to two salmon permits for a fishery²⁶ for the purpose of fleet reduction. However, the individual cannot engage in fishing under the second permit. The new law provides a means whereby permit holders in a salmon fishery can form a qualified salmon fishery association and vote to assess themselves for the purpose of promoting the consolidation of the fishing fleet. The provisions in the law are similar to provisions in Alaska law providing for the formation of Regional Agriculture Associations.

Additionally, in response to the crisis in the salmon industry, the Bristol Bay Economic Development Corporation commissioned a study, *An Analysis of Options to Restructure the Bristol Bay Salmon Fishery* (2003), which, among other things, seriously examined the possibility of individual shares in the salmon harvest as a means of slowing the fishery and

²⁴ 16 USC 1853, §303(d).

²⁵ *Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries* (CFEC 1998).

²⁶ This fleet reduction provision is an exception to the general principle an individual may hold only one permit per fishery. AS 16.43.140.

capturing more wealth for the individual participants. Finally, CFEC is in the process of completing a study to determine the optimum number of permits for the Bristol Bay drift gillnet fishery. An optimum number determination is the statutory and constitutional requirement for considering the extent to which permits could be retired from the fishery without violating the Alaska Constitution.²⁷

Conclusion

In short, while license limitation alone may not fully contain growth in fishing capacity, it can do so when coupled with other limits upon fishing power. However, Alaska's license limitation system, while serving its objectives in its salmon fisheries, may be ineffective with respect to fisheries which depart from the Alaska salmon fishery model.

Competition from farmed salmon has prompted the state and fishery participants to examine ways to restructure the salmon industry and may lead to further modifications of Alaska's license limitation system.

²⁷ Johns v. CFEC, 758 P.2d 1256, 1266 (Alaska 1988)

Appendix B

**Alaska Supreme Court Cases Affecting
Practices of the Commercial Fisheries Entry Commission (CFEC)**

1. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976)
Reversed the commission and despite the terms of the Limited Entry Act (LEA) granted eligibility to apply to those who held gear licenses for the first time during 1973 and 1974. First time gear license holders in 1973 and 1974 might be able to demonstrate significant hardship by exclusion from the fishery.
2. State, CFEC v. Templeton, 598 P.2d 77 (Alaska 1979)
Reversed the commission and granted income dependence points to the equal partner of a gear license holder as a matter of special circumstances.
3. Younker v. CFEC, 598 P.2d 917 (Alaska 1979)
Upheld the constitutionality of the income dependence point scheme as well as the commission's denial of income dependence and past participation points.
4. CFEC v. Apokedak, 606 P.2d 1255 (Alaska 1980)
Upheld constitutionality of the gear license holder requirement for eligibility to apply but remanded for determination whether the applicant could be considered a gear license holder by virtue of having been a partner with a gear license holder. See 1984 Apokedak II.
5. CFEC v. Eide, 608 P.2d 769 (Alaska 1980)
Application of Apokedak to uphold the commission.
6. Estate of Smith v. State, 635 P.2d 465 (Alaska 1981)
Commission upheld where appellants did not pursue remedies in a timely fashion.
7. Estate of Miner v. CFEC, State, 635 P.2d 827 (Alaska 1981)
Found the claim to a permit to be akin to a property right but held that neither due process nor equal protection requires CFEC to grant an exception to the filing deadline to an applicant shown to have been under disability during the application period. Also held a hearing is not required if there is no genuine issue, no disputed questions of fact, law, or discretion.
8. Vik v. CFEC, 636 P.2d 597 (Alaska 1981)
Filing deadline upheld. An applicant eligible during the original application period was not permitted to file an application during the later Isakson application period.

9. Rose v. CFEC, 647 P.2d 154 (Alaska 1982)
Upheld the commission's interpretation of universal or special circumstances as unique and non-universal situations and held specifically that administrative closure of a fishery is not unique to the applicant and, therefore, not a basis for an award of unavoidable or special circumstances points. Found the commission properly recognized that strict application of the point system would not always fairly gauge "hardship" and so correctly authorized the award of discretionary points.
10. Jones v. CFEC, 649 P.2d 247 (Alaska 1982)
Found substantial evidence to uphold CFEC's determination re vessel ownership, but remanded for CFEC to consider additional claims by the applicant.
11. Anderson v. State, CFEC, 654 P.2d 1320 (Alaska 1982)
Held that the Superior Court should have exercised its discretion to permit an appeal which was seventeen days late.
12. State v. Ostrosky, 667 P.2d 1184 (Alaska 1983), appeal dismissed, 467 US 1201, 104 S. Ct. 2379, 81 L.Ed.2d 339 (1984).
Upheld the constitutionality of the Limited Entry Act and in particular those provisions authorizing free transferability of limited entry permits.
13. Rutter v. State, 668 P.2d 1343 (Alaska 1983)
Reversed Judge Stewart's decision upholding the hand troll point scheme and found elements of the point system for salmon hand troll to be inconsistent with CFEC's statutory authorization.
14. Timperley v. Jeffries, Op. No. 2765 (Alaska 1983)
A majority of the Supreme Court reversed the Superior Court and held that those protections from creditors found in AS 16.43.150(g) survive the death of the permit holder and continue while the permit is in the deceased permit holder's estate. Subsequently, one justice in the Supreme Court's majority disqualified himself, leaving the Supreme Court evenly split, and thereby reinstating the Superior Court decision.
15. Spagnola v. State, CFEC, M.O.J. Op. NO. 153 (Alaska 1984)
Upheld the commission's denial of an unavoidable circumstances claim. The substantial closure of the fishery did not affect Spagnola any differently than it did the other seiners.
16. Forquer v. State, CFEC, 677 P.2d 1236 (Alaska 1984)
Struck down the commission regulation and practice of not granting a hearing in response to evidence submitted during the 1978 supplementary evidence period. Upheld the commission's interpretation of "harvest" to exclude tendering.
17. Ostman v. State, CFEC, 678 P.2d 1323 (Alaska 1984)
Application of Forquer to reverse commission decision and remand for reconsideration on the merits.

18. White v. CFEC, 678 P.2d 1319 (Alaska 1984)
Reversed and remanded to the commission for a hearing and the determination of adequate findings to support the decision with respect to economic dependence.
19. CFEC v. Apokedak, 680 P.2d 486 (Alaska 1984)
Known as Apokedak II, the court finally concluded that the legislature meant what it said when it defined eligibility to apply for an entry permit in terms of having held a gear license, and rejected a claim that having been a partner to a gear license holder could satisfy the terms of the statute.
20. Nash v. State, CFEC, 679 P.2d 477 (Alaska 1984)
Application of Apokedak II to uphold the commission's finding of ineligibility and the constitutionality of AS 16.43.250(d).
21. Wickersham v. State, CFEC, 680 P.2d 1135 (Alaska 1984)
While rejecting certain claims against the commission, the court nonetheless held that the commission, as a matter of due process, was required to attempt direct notification by mail to all potential applicants for entry permits.
22. Noden v. CFEC, 680 P.2d 493 (Alaska 1984)
Upheld the commission regulation and practice to require an appeal at the time of point determination (as opposed to the final determination of entitlement) and found the commission procedure and practice to reflect a compelling state interest.
23. Pete v. CFEC, M.O.J. Op. No. 159 (Alaska 1984)
Upheld the commission's application deadline.
24. Wik v. Wik, 681 P.2d 336 (Alaska 1984)
Relieved the commission of any responsibility to resolve issues arising in the context of the inheritance of permits (except where specified in the LEA) and left those issues to the probate court.
25. Anderson v. State, CFEC, M.O.J. Op. No. 166 (Alaska 1984)
Upheld the commission's rejection of a late application and refusal to acknowledge a claim of constructive possession of a gear license.
26. CFEC v. Byayuk, 684 P.2d 114 (Alaska 1984)
Templeton applies retroactively and not just to those applicants who continued to press their claims before the commission and in the courts.
27. Bavilla v. State, CFEC, M.O.J. Op. No. 170 (Alaska 1984)
Remand pursuant to Byayuk.
28. Lucido v. State, M.O.J. Op. No. 171 (Alaska 1984)
Remand pursuant to Byayuk.

29. Roehl v. CFEC, 684 P.2d 130 (Alaska 1984)
Reversed CFEC and held that CFEC in its adjudications could not strictly apply a one year rule to limit awards of points for unavoidable circumstances.
30. Cashen v. State, CFEC, 686 P.2d 1219 (Alaska 1984)
Application of Byayuk to hold that some individuals who applied during the original application period, but who failed to apply during the Isakson application period, nonetheless could now apply and claim points under Templeton.
31. Moore v. State, CFEC, 688 P.2d 582 (Alaska 1984)
Commission decision to deny reconsideration pursuant to its regulations upheld.
32. Gursli v. State, CFEC, M.O.J. Op. No. 182 (Alaska 1984)
Affirmed commission findings in support of its denial of an unavoidable circumstances claim.
33. Brown v. Baker, 688 P.2d 943 (Alaska 1984)
Held that a contract to reconvey an entry permit contrary to the terms of AS 16.43.150(g) could not be enforced by the courts.
34. Deubelbeiss v. CFEC, 689 P.2d 487 (Alaska 1984)
Struck down commission regulation which awarded points for availability of alternative occupations premised almost entirely upon census districts.
35. Kalmakoff v. State, CFEC, 693 P.2d 844 (Alaska 1985)
Affirmed commission regulation which granted income dependence points to gear license holders and not to crewman.
36. Chocknok v. State, CFEC, 696 P.2d 669 (Alaska 1985)
Struck down commission test for determining partnerships between spouses. Upheld commission discretion to change its policy of allowing spouses to allocate investment points between them. Footnote 10 discusses due process not violated by substitution of hearing officers, commission need not consider crew member's income dependence points, and apportionment of vessel and gear points in a partnership.
37. Kalmakoff v. State, CFEC, 697 P.2d 650 (Alaksa 1985)
Struck down a commission regulation regarding issuance of interim-use permits. Held that once an interim-use permit is issued pursuant to AS 16.43.210, that permit, if properly renewed, remains valid until a final determination is made by the Supreme Court.
38. Johns v. CFEC, 699 P.2d 334 (Alaska 1985)
Appellants had standing to challenge CFEC maximum numbers regulations and commission's refusal to hear their challenge was judicially reviewable.

39. Johns v. CFEC, M.O. J. Op. No. 241 (Alaska 1985)
Affirmed commission's findings and interpretation of .664(a)(2) in denial of claim for unavoidable circumstances points.
40. Kjarstad v. State, 703 P.2d 1167 (Alaska 1985)
Reversed the commission and held that while the information supplied by applicant was not complete, neither was it false and thus was not basis for revocation of his entry permit under AS 16.43.960.
41. Vincent v. State, CFEC, 717 P.2d 391 (Alaska 1986)
Supreme Court held that failure of applicant to serve Attorney General with notice of his appeal from denial of his entry permit application did not deprive Superior Court of jurisdiction over applicant's appeal. Reversed and remanded to Superior Court.
42. Simpler v. State, CFEC, 728 P.2d 227 (Alaska 1986)
Upheld the commission regulation requiring applicants to have been interim-use permit holders in order to be eligible to apply (20 AAC 05.664). Legislature intended to establish eligibility based on lawful participation.
43. Grunert v. State, CFEC, 735 P.2d 118 (Alaska 1987)
Upheld CFEC's interpretation of former AS 16.05.670(c) that a radio communication, without the written statement of the licensee, was not sufficient to transfer a gear license and participation points were denied.
44. Anderson v. Anderson, 736 P.2d 320 (Alaska 1987)
Held that a limited entry permit was subject to execution for past due child support claims notwithstanding its otherwise exempt status.
45. Galeano v. State, CFEC, M.O.J. No. 375 (Alaska 1987)
Upheld commission's application of its "clean break rule." Held applicant was not denied due process by changes in commissioners or hearing officers nor did the time it took to process his application cause him prejudice.
46. Haynes v. State, CFEC, 746 P.2d 892 (Alaska 1987)
Court held applicant's claim for injunctive relief which was functionally an administrative appeal was not timely, being almost three years late; court would not give retroactive effect to its prior decision where legislature amended underlying statute, effectively overruling decision; and applicant lacked standing to seek declaratory relief.

47. Johns v. CFEC, 758 P.2d 1256 (Alaska 1988)
Affirmed commission had authority under the act to adopt maximum number regulation; that a decisional statement was not required in promulgating regulation; that regulation was constitutional and that commission did not abuse its discretion in excluding factors of income dependence and consistency of participation. Held that although commission erred in setting maximum number lower than the historic high, reversal was not required since the historically high number had been exceeded anyway; also held that commission's failure to set optimum number until all applications had been finally adjudicated was error.
48. Arkanakyak v. CFEC, 759 P.2d 513 (Alaska 1988)
Remanded to commission for explicit determination as to whether non-English speaking applicant's factual circumstances warranted exception to commission policy against awarding crew points to unlicensed applicants.
49. Lorentzen v. State, CFEC, M.O. J. No. 442 (Alaska 1989)
Affirmed commission decision to deny appellant a hearing. Claims based on Deubelbeiss, Templeton, Byayuk, and Cashen.
50. Wilson v. CFEC, 770 P.2d 1126 (Alaska 1989)
Affirmed commission, holding Deubelbeiss does not apply where the applicant was not originally injured by the unconstitutional provisions.
51. Sublett v. CFEC, 773 P.2d 952 (Alaska 1989)
Applicant's appeal from commission was untimely. Commission refusal to credit applicant with past participation points for year he was a partner of the named gear license holder was affirmed.
52. Matson v. CFEC, 785 P.2d 1200 (Alaska 1990)
Affirmed commission's application of ninety percent income dependence for both setnetters and gillnetters in the gillnet fishery point system. Remanded to commission for hearing on applicant's income dependence.
53. Riley v. Simon, 790 P.2d 1339 (Alaska 1990)
Held any error occurring when settlement agreement was entered without first notifying potential Wassillie class members and obtaining court approval of its terms was harmless as to appellant who no longer fell within class affected by agreement as he had not timely filed response form which came with rejection of application and was harmless to appellants who had not applied for applications due to personal reasons, as opposed to inability to apply.

54. Carlson v. State, 798 P.2d 1269 (Alaska 1990)
Whether State's 3:1 (nonresident:resident) fee differential violates privileges and immunities clause or commerce clause depends on whether all fees and taxes which must be paid to State by nonresident to enjoy the state-provided benefits were substantially equal to those which must be paid by similarly situated residents when the residents' pro rata shares of state revenues to which nonresidents made no contribution were taken into account. 3:1 fee differential was authorized prior to 1983. Assuming class members prevailed on their claim, they would be entitled to seek a refund provided that the protest requirement of applicable refund statute was waived. Remanded to Superior Court.
55. CFEC, State v. Baxter, 806 P.2d 1373 (Alaska 1991)
Held that substantial evidence supported the commission's decision to deny the applicant vessel points for ownership and use of his skiff in the fishery during the relevant period.
56. CFEC v. Russo, 833 P.2d 7 (Alaska 1992)
Held that Templeton does not extend to participation points. Court also approved commission's definition of the "unavoidable circumstances" provision.
57. CFEC, State v. Schefers, M.O. J. No. 627 (Alaska 1992)
Affirmed Superior Court's substitution of judgment for the commission's apportionment of earnings between two gear license holders to determine applicant's income dependence percentage.
58. Jones v. CFEC, State, M.O.J. No. 637 (Alaska 1992)
Affirmed the commission's decision to deny points for special circumstances and affirmed that the appellant did not have standing to challenge the constitutionality of the point pooling statute.
59. Essex v. State, CFEC, M.O. J. No. 681 (Alaska 1993)
Affirmed the commission's decision to deny appellant a hearing on the grounds the claims were untimely except for the claim of additional points for AAO under Deublebeiss and when those points were awarded no genuine issue remained in contention for a hearing.
60. Walder v. State, CFEC, M.O. J. No. 684 (Alaska 1993)
Upheld the commission's rejection of a late application.
61. Baker v. State, 878 P.2d 642 (Alaska App. 1994)
Affirmed the constitutionality of 5 AAC 39.107(b), the regulation requiring a permit holder be present when commercial fishing gear is operated. In finding an important governmental interest the court emphasized the importance of the prohibition against leasing permits (pps 645-6).

62. Lewis v. State, CFEC, 892 P.2d 175 (Alaska 1995)
Upheld the interpretation of “harvest” as “the bringing of the resource under physical control” to establish eligibility to apply for an entry permit. Reversed the commission on the Cook Inlet application and awarded gear investment points. Evidence provided was sufficient to prove ownership despite inconsistencies found in testimony and supporting documents (title to personal property passes to the buyer at the time and place the seller completes performance and delivers goods).
63. Dominish v. State, CFEC, 907 P.2d 487 (Alaska 1995)
Found due process not violated where appellant received a written hearing and then waived an opportunity for a second hearing. The court distinguished Jones, finding CFEC did consider claims of unavoidable circumstances and rejected them. A reply brief may not raise issues not raised in the appellant’s opening brief or appellee’s brief.
64. Baghdanoff v. State, CFEC, M.O.J. No. 0814 (Alaska 1996)
CFEC did not violate due process, oral appearances satisfied hearing requirement.
65. Carlson v. State, CFEC, 919 P.2d 1337 (Alaska 1996)
The second appeal contesting the constitutionality of the 3:1 fee differential. Court found the appeal does not implicate the commerce clause, but reversed the superior court’s approval of the state’s prop rata formula of calculating and comparing the taxation burden on resident and nonresident commercial fishers and remanded for application of the class’s per capita formula.
66. Bartlett v. State, CFEC, 948 P.2d 987 (Alaska 1997)
The court upheld 20 AAC 05.515, the regulation barring the acceptance of late entry permit applications after the classification level for qualifying for permits had been lowered or the maximum number of permits for the fishery had been issued.
67. Suydam v. CFEC, 957 P.2d 318 (Alaska 1998)
Substantial evidence supported the denial of AAO point, however, commission reversed on denial of past participation points. The court interpreted 20 AAC 05.664(a)(3)(B), to require presence on the grounds coupled with an intention to take the resource and found Suydam met these requirements. Commission authorized to re-evaluate the merits of a prior determination at any time until the time for reconsideration of a final decision has passed.
68. Leuthe v. CFEC, 20 P.3d 547 (Alaska 2001)
The court upheld the CFEC's refusal to accept a permit application that Leuthe attempted to file three years after the application deadline.

69. Estate of Basargin v. State, CFEC, 31 P.3d 796 (Alaska 2001)
The court affirmed CFEC's denial of Basargin's point claims for unavoidable circumstances, investment in vessel and gear and income dependence. The court also rejected Basargin's claim that he was not given a meaningful opportunity to be heard because he presented his case, with counsel, to a hearing officer and again in oral appearances before the commissioners.
70. Cleaver v. State, CFEC, 48 P.3d 464 (Alaska 2002)
The court upheld CFEC's denial of Cleaver's claim that extraordinary circumstances prevented him from qualifying for participation credit for 1983. Cleaver's attempt to participate in the fishery failed because he used unsuitable equipment, lacked experience and abandoned his intention to participate after some initial difficulties. The court agreed that Cleaver did not encounter an "extensive mechanical breakdown" as required under CFEC's extraordinary circumstances regulation.
71. Crivello v. State, 59 P.3d 741 (Alaska 2002)
The court upheld CFEC's decision to give Crivello only three of the six points available for owning a vessel and gear because he shared ownership of the vessel and gear with a partner. The court rejected Crivello's claim that his partner should be able to donate the additional points to him. It also rejected his claim that he owned some of his own gear separate from the partnership and used this gear when his partner was absent. The court noted that he did not even assert this claim until after CFEC issued a decision in his case and that if he had used the gear when his partner (the license holder) was absent, he would have been fishing illegally. The court rejected Crivello's claim that the Commission should have granted him a new hearing after he raised the separate gear ownership claim for the first time in his petition to the CFEC for reconsideration and submitted new evidence which the Commission evaluated.
72. State, CFEC v. Carlson, 65 P.3d 851 (Alaska 2003)
The third appeal centering on whether Alaska can charge nonresidents more for commercial fishing licenses than it charges residents. Court found that direct and indirect costs associated with the fisheries budget and costs associated with the hatcheries loan fund can be included in the calculation of allowable fee differentials. Court clarified that refund is due only if the difference between the fees charged to resident and nonresident fishers is "substantially in excess" of the allowable fee differential. Court further held State conceded protest requirement for recovery of overpayment of taxes and that class could recover prejudgment interest on any refund that would be due. Court remanded to determine whether substantiality exists and whether capital costs are already included in the direct operating budget.

73. Kuzmin v. State, CFEC, M.O.J. No. 1165 (Alaska 2004)
Affirmed the denial of point claims. Kuzmin failed to prove his eligibility for 1972 past participation points based on unavoidable circumstances and investment in vessel and gear. Kuzmin did not participate in the fishery in any capacity in 1971 and is therefore not eligible for income dependence points on the basis of special circumstances.
74. Simpson v. State, CFEC, 101 P.3d 605 (Alaska 2004)
Affirmed maximum number for non-distressed fishery as the level that is no lower than the highest number of units of gear fished in any one year of the four years prior to limitation. Affirmed optimum number as reasonable and not arbitrary. Affirmed denial of past participation points; to be a skipper, an applicant must have held a valid interim-use permit.
75. Johnson v. State, CFEC, M.O.J. No. 1199 (Alaska 2005)
Affirmed commission's denial of skipper participation points based on extraordinary circumstances citing *Cleaver*. His challenge to the maximum number and optimum number fail due to *Simpson*.
76. Brandal v. State, CFEC, 128 P.3d 732 (Alaska 2006)
Affirmed commission's denial of income dependence points based on special circumstances. Isakson does not require the commission to consider participation in 1973 and 1974 when evaluating income dependence. The Limited Entry Act contemplates that hardship will be determined as of January 1, 1973. The court criticized the time taken by the commission in issuing its final decision in *Brandal*, but found the length of time did not violate his right to due process and provided him with a benefit in the form of his continuing right to fish.
77. Pasternak v. Commercial Fisheries Entry, 166 P.3d 904 (Alaska 2007)
Affirmed the maximum number established for the Northern Southeast Inside sablefish fishery citing *Simpson*. The court affirmed the commission's denial of skipper participation based on extraordinary circumstances citing *Cleaver*.
78. Copeland v. State, CFEC, 167 P.3d 682 (Alaska 2007)
Affirmed the commission's denial of crew participation points, finding Copeland was not prevented by fishing from circumstances beyond his control.
79. May, v. State, CFEC, 168 P.3d 873 (Alaska 2007)
Affirmed the commission, finding May was not eligible to apply for a Southeastern herring purse seine permit because he did not participate in the geographic area that defined the fishery. His participation in the waters of the Annette Island Reserve cannot count towards participation in the state's limited entry fishery.

80. May v. State, CFEC, 175 P.3d 1211 (Alaska 2007)
Affirmed the Commission's decision that May was not eligible to apply for a Southern SE Inside sablefish pot permit. The court reversed the Commission's finding May did not prove he participated in the 1980 Southern SE Inside sablefish longline fishery. His 1980 participation established his eligibility to apply for a longline entry permit, but did not result in any points. The court upheld the commission's denial of points based on extraordinary circumstances.
- May also challenged the maximum number of permits for the two fisheries. The court held that May lacked standing to challenge the maximum number in the pot fishery because he was not an eligible applicant. But the court allowed him to challenge the maximum number for the longline fishery and remanded his application to the Commission for consideration of his maximum number arguments.
81. Wilber v. Commercial Fisheries Entry Com'n, 187 P.3d 460 (Alaska 2008)
Upheld the Commission's point system for the Southeast Alaska geoduck dive fishery where points were awarded for four different periods: 1992, 1993, 1994 and 1995 to July 1, 1996. Court found the Commission had broad discretion to create a point system and needed to use this discretion because the mid-year moratorium implemented by the legislature was unusual.
82. Nelson v. Commercial Fisheries Entry Com'n, 186 P.3d 582 (Alaska 2008)
Affirmed Commission's denial of skipper participation points based on estoppel. The Court found substantial evidence supported the finding that a staff person did not misinform the Nelsons as to whether they could hold more than one interim-use permit. Affirmed Commission's denial of skipper participation points based on extraordinary circumstances where inappropriate gear and not gear failure prevented participation.
83. State, CFEC v. Carlson, 191 P.3d 137 (Alaska 2008). ("*Carlson IV*")
In its fourth decision in this case, the Alaska Supreme Court ruled that (1) its previous decisions in *Carlson II & III* require an individual, rather than collective, accounting of permit fees paid by nonresidents; (2) the 3:1 fee ratio violates the Privileges and Immunities Clause, but "incidental inequality" in the permissible differential is allowed (an allowable margin of error may be found in the range of up to 50%).
84. Fedor Kuzmin v. State, CFEC, 223 P.3d 86 (Alaska 2009)
Affirmed Commission denial of participation points claim for 2001 Kodiak Tanner crab harvest based on partnership. Substantial evidence supported finding that Kuzmin was not in joint control of fishing operation, and Kuzmin failed to prove that CFEC regulation defining partner as one in joint control was invalid.
85. Doubleday v. State, CFEC, 238 P.3d 100 (Alaska 2010)
The Alaska Supreme Court affirmed (1) the Commission denial of claim that State was at fault for destruction of records that might have proved additional participation points in applicant's NSEI and SSEI sablefish cases, and (2) the Superior Court award of attorney

fees. The Court refused to consider argument regarding maximum number of permits because the applicant failed to raise the issue at the Commission level.

Appendix C

Commercial Fisheries Entry Commission Decisions and Activities, 1993 - 2011

CALENDAR YEAR 1993

- Completed optimum number study for the Southeastern Alaska roe herring purse seine fishery.
- Conducted workshops related to getting and keeping limited entry permits in local communities.
- Continued to defend state against elimination of nonresident fee differential. Carlson v. CFEC.

CALENDAR YEAR 1994

- Commission and the Attorney General successfully defended against a lawsuit (based on the Johns case) seeking to eliminate limited entry in the Bristol Bay drift gill net fishery.
- Adopted optimum number regulation for the Southeastern Alaska roe herring purse seine fishery. (Johns v. State, CFEC)
- Conducted research, held public hearings, and adopted regulations limiting the Cook Inlet dungeness crab fishery.
- Conducted research and prepared a report on the Southeastern Alaska dungeness crab fishery to assist in determining if some form of limited entry is warranted for the fishery following the moratorium.
- Participated in the AFN Task Force concerning the IRS and Alaska commercial fishers.
- The legislature adopted SB 251 (Ch 62, SLA 1994), which authorized the existing Commercial Fishing Loan Program to make loans of up to \$30,000 to fishers in danger of IRS seizure and forced sale of their entry permits.
- Developed new licensing system to run on the Commission's local area network (LAN) rather than the state mainframe computer.
- Continued to defend state against elimination of nonresident fee differential. Carlson v. CFEC.

CALENDAR YEAR 1995

- Conducted research, held public meetings and adopted regulations limiting the Northern and Southern Southeast herring spawn-on-kelp pound fisheries, the Prince William Sound sablefish fisheries, and the Southeastern Alaska dungeness crab fisheries.
- Held public meetings in Southeast Alaska to discuss the future of the moratorium in the Southeastern Dungeness crab fisheries.
- Received petitions to limit additional fisheries and began required analysis.
- Served on an Alaska Federation of Natives (AFN) Task Force concerning the IRS and Alaska fishers.
- Served on a Bristol Bay Native Association Commission to address issues concerning limited entry.
- Participated in the Governor's Salmon Strategy Task Force.

- The Commission, together with the Division of Investments and the AFN, persuaded the IRS not to implement its new electronic levy program against those fishers eligible for the new loan program.
- The Commission, together with the Division of Investments, the IRS, and AFN, developed and began outreach to implement the new Commercial Fishing Tax Obligation Loan Program.
- The Commission's Bulletin Board System became available to Internet.
- Continued to defend state against elimination of nonresident fee differential. Carlson v. CFEC.

CALENDAR YEAR 1996

- Conducted research, held public hearings and adopted regulations limiting the Southeastern Alaska shrimp pot fishery.
- Conducted research, held public hearings and adopted regulations establishing point systems and an application period for the Southeastern Alaska dungeness crab, the Cook Inlet dungeness crab fisheries, and the Southeastern Alaska shrimp pot fishery.
- Held application period for the Southeastern Alaska dungeness crab and Cook Inlet dungeness crab fisheries.
- Received petitions to limit additional fisheries and began required analysis.
- Participated in the Koliganek Economic Development Council meetings.
- Served on the Child Support Enforcement Division's Rural Task Force, concerning child support and Alaska fishers.
- The legislature adopted HB 297 which raised the annual vessel license fee based on overall length.
- The legislature adopted HB 547 which established a four year moratorium on entry into Southeast Alaska dive fisheries.
- The legislature adopted HB 538 which established a four year moratorium on vessels participating in the Bering Sea Korean hair crab fishery and directed the Commission to draft legislation for a vessel permit limited entry program.
- The legislature adopted SB 42 giving the Commission the authority to propose permit stacking (an individual could hold more than one permit up to limits set by the Board of Fisheries), where the Commission has imposed effort fishing capacity restrictions on individual entry permits.
- The IRS conducted a pre-Christmas sale of a Cook Inlet salmon set net permit and sold the permit, valued at \$30,000, for only \$5,005.
- 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 of 1995.
- Representatives from the Commission, other state agencies and Senator Steven's office met with the IRS to explore means to help permit holders achieve voluntary tax compliance and to eliminate forced sales of limited entry permits.
- Commission statutes, regulations, public notices, transfer survey, and staff's e-mail addresses became available to users of the Commission's internet site.
- Continued to defend state against elimination of nonresident fee differential. Carlson v. CFEC.

CALENDAR YEAR 1997

- Conducted research, held public hearings and adopted regulations limiting entry into the Southeast Alaska shrimp beam trawl and shrimp otter trawl fisheries and the Goodnews Bay herring gillnet fishery.
- Conducted research, held public hearings and adopted regulations establishing point systems for the Prince William Sound sablefish fisheries and the Northern and Southern Southeast herring spawn-on-kelp pound fisheries.
- Held application periods for the Southeast Alaska pot shrimp fishery and the Prince William Sound sablefish fisheries, and began the application period for the Northern and Southern Southeast herring spawn-on-kelp pound fisheries.
- Received 406 entry permit applications for the Southeast Alaska pot shrimp fishery and 98 entry permit applications for the Prince William Sound sablefish fisheries.
- Received petitions to limit additional fisheries and began required analysis.
- Members of the Commission and staff participated in the Governor's Salmon Forum.
- The legislature adopted HB 141 which established a four year moratorium on vessels participating in the Statewide and Cook Inlet weathervane scallop fisheries.
- Representatives from the Commission, other state agencies, and Senator Stevens's office met with the IRS to explore means to help permit holders achieve voluntary tax compliance and to eliminate forced sales of limited entry permits.
- With the Alaska Attorney General, we continued to defend state against elimination of non-resident fee differential in the *Carlson* case.

CALENDAR YEAR 1998

- Conducted research, held public hearings, and adopted regulations establishing point systems for the Southeastern Alaska shrimp beam trawl and otter trawl fisheries and the Goodnews Bay herring gillnet fishery.
- Began the application period for the Southeastern Alaska shrimp beam trawl and otter trawl fisheries.
- Received 189 entry permit applications for the Northern Southeast herring spawn-on-kelp pound fishery and 221 entry permit applications for the Southern Southeast herring spawn-on-kelp pound fishery.
- Held public meetings in Southeast communities to discuss the status of the moratorium and future limited entry and other alternatives for the Southeast geoduck clam, sea urchin, sea cucumber, and abalone dive fisheries.
- Participated in the Governor's 1998 Salmon Forum.
- Participated in the Bristol Bay Native Association's Blue Ribbon Commission on Limited Entry Issues.
- Completed and published an outline of options for fleet/gear reduction in the salmon fisheries in response to the salmon industry crisis.

- The Commission began assessing demerit points after the legislature adopted HB 285, which established a demerit point system for suspending commercial fishing privileges based on convictions of fishing violations in the salmon fisheries.
- Continued to meet with IRS to explore means to help permit holders achieve voluntary tax compliance and to eliminate attempted forced sales of limited entry permits.
- Received petitions to limit additional fisheries and began required analysis.
- With the Alaska Attorney General, we continued to defend state against elimination of non-resident fee differential in the *Carlson* case.

CALENDAR YEAR 1999

- Received 66 applications for the Southeast Alaska shrimp beam trawl fishery and 5 applications for the Southeast Alaska shrimp otter trawl fishery. Completed final adjudication of 48 of the shrimp beam trawl applications and three of the otter trawl applications.
- Received 198 applications for the Goodnews Bay herring gillnet fishery. Completed final adjudication of 158 of the applications.
- Proposed regulations and held public hearings on limiting entry into the Southeast Alaska sea urchin and geoduck clam dive fisheries. Adopted regulations limiting entry into the Southeast Alaska geoduck clam dive fishery.
- Proposed regulations and held public hearings on limiting entry into the Southeast Alaska sea urchin and geoduck clam dive fisheries. Adopted regulations limiting entry into the Southeast Alaska geoduck clam dive fishery.
- Participated in the Governor's 1999 Salmon Forum in Anchorage, Alaska.
- Participated in a discussion on Bristol Bay fleet reduction hosted by the Bristol Bay Native Association and the Bristol Bay Native Corporation.
- Received petitions to limit additional fisheries and began required analysis.
- Continued to meet with IRS to explore means to help permit holders achieve voluntary tax compliance and to eliminate attempted forced sales of limited entry permits.
- With the Alaska Attorney General, we continued to defend state against elimination of non-resident fee differential in the *Carlson* case.

CALENDAR YEAR 2000

- Conducted research, held public hearings, and adopted regulations limiting entry into Southeast Alaska sea urchin and sea cucumber dive fisheries.
- Conducted research, held public hearings, and adopted regulations establishing point systems for the Southeast Alaska sea urchin, sea cucumber and geoduck clam dive fisheries.
- Received 90 applications for the Southeast Alaska sea urchin dive fishery. Completed final adjudication of 82 of the applications and issued 76 limited entry permits.
- Conducted a public comment period and adopted a regulation establishing an optimum number for the Northern Southeast Inside sablefish longline fishery.

- The legislature adopted House Bill 429 which extended the vessel moratoria in the Bering Sea hair crab fishery and the Alaska weathervane scallop fishery until July 1, 2003, and July 1, 2004, respectively.
- Completed and published a report discussing the issue of transferability of limited entry permits.
- Participated in a discussion on Bristol Bay fleet reduction hosted by the Bristol Bay Native Association and the Bristol Bay Native Corporation.
- Received petitions to limit additional fisheries and began required analysis.
- Continued to meet with IRS to explore means to help permit holders achieve voluntary tax compliance and to eliminate attempted forced sales of limited entry permits.
- With the Alaska Attorney General, the Commission continued to defend the state against elimination of nonresident fee differential in the *Carlson* case.

CALENDAR YEAR 2001

- Conducted research, held public hearings, and adopted regulations limiting entry into the Kodiak food and bait gillnet and seine combined fishery and the Kodiak food and bait herring trawl fishery.
- Conducted research, held public hearings, and adopted regulations establishing point systems for the Kodiak food and bait herring fisheries.
- Received 116 applications for the Southeast Alaska geoduck clam dive fishery. Completed final adjudication of 107 of the applications and issued 37 limited entry permits.
- Received 391 applications for the Southeast Alaska sea cucumber dive fishery. Completed final adjudication of 387 of the applications and issued 383 limited entry permits.
- Adopted regulations implementing the new fee structure for the annual renewal of limited entry permits and interim-use permits in preparation for the 2002 licensing year.
- Began preliminary work on an optimum number study for the Bristol Bay salmon drift gillnet fishery
- Continued efforts to examine options for reducing the size of salmon fleets, throughout the year, by participating in a meeting of the Bristol Bay Fisheries Committee (sponsored by the Bristol Bay Native Association); on panels at Fish Expo sponsored by individual fishermen and United Fishermen of Alaska (UFA); and in a statewide teleconference to discuss various options identified by the UFA and Representative Drew Scalzi.
- Received petitions to limit additional fisheries and began required analysis.
- Continued to maintain a professional relationship with the IRS to help Alaska fishermen protect their fishing privileges, including the completion of a jointly produced brochure entitled, *Resources for Alaska Commercial Fishers*.
- With the Alaska Attorney General, the Commission continued to defend the state against elimination of nonresident fee differential in the *Carlson* case.

CALENDAR YEAR 2002

- Conducted research, held public hearings, and adopted regulations limiting entry into the Kodiak bairdi Tanner crab pot fishery.
- Received seven applications for the Kodiak food and bait herring gillnet and seine combined fishery and four applications for the Kodiak food and bait herring trawl fishery. Completed final adjudication of all of the applications for both fisheries and issued five limited entry permits for the Kodiak food and bait herring gillnet and seine combined fishery and four for the Kodiak food and bait herring trawl fishery.
- Adopted regulations implementing the new law (Chapter 134 SLA 2002) that allowed a person to hold up to two salmon permits for purposes of fleet consolidation.
- Continued work on optimum number study for the Bristol Bay salmon drift gillnet fishery.
- Continued efforts to examine options for reducing the size of salmon fleets, throughout the year, by participating in the Governor's 2002 Salmon Summit in Kodiak, Alaska, by participating in discussions of and as a resource to the Joint Legislative Salmon Industry Task Force, participating in a meeting of the Yukon River Drainage Fishermen's Association to discuss options for improving their salmon fishery, participating in a Workshop on Options for Restructuring Alaska's Salmon Fisheries at the University of Alaska in Anchorage, and participating in workshops at the Seattle Fish Expo dealing with the restructuring of Alaska salmon's fisheries.
- Received petitions to limit additional fisheries and began required analysis.
- Continued to maintain a professional relationship with the IRS to help Alaska fishermen protect their fishing privileges.
- With the Alaska Attorney General, the Commission continued to defend the state against elimination of nonresident fee differential in the *Carlson* case.

CALENDAR YEAR 2003

- Conducted research, held public hearings, and adopted regulations limiting entry into the Bering Sea hair crab fishery under a vessel-based system.
- Conducted research, held public hearings, and adopted regulations establishing a point system for the Kodiak bairdi Tanner crab pot fishery.
- Continued work on optimum number study for the Bristol Bay salmon drift gillnet fishery.
- Continued efforts to examine options for reducing the size of salmon fleets, throughout the year, by participating in discussions of and as a resource to the Joint Legislative Salmon Industry Task Force, and participating on the advisory panel for an Analysis of Options to Restructure the Bristol Bay Salmon Fishery, an independent study funded and published by the Bristol Bay Economic Development Corporation.
- Addressed the International Association for the Study of Common Property on *License Limitation in Alaska's Commercial Fisheries*.

- Participated in a meeting of the Salmon for Success Summit in Juneau on the status of limited entry permits in Southeast communities.
- Participated in discussions of and a resource to the Gulf of Alaska groundfish rationalization committee formed by the Board of Fisheries to explore options for managing state waters groundfish fisheries.
- Continued to maintain a professional relationship with the IRS to help Alaska fishermen protect their fishing privileges.
- With the Alaska Attorney General, the Commission continued to defend the state against the *Carlson* case, a class action challenging the fee differential charged to nonresidents for annual renewal of Alaska commercial fishing permits.

CALENDAR YEAR 2004

- Conducted research, held public hearings, and adopted regulations limiting entry into the statewide weathervane scallop fishery under a vessel-based system. Conducted an application period and received 10 applications. Completed adjudication of 9 applications and issued 8 permanent vessel entry permits.
- Conducted a limited entry application period for the Bering Sea hair crab fishery and received 20 applications. Completed adjudication of 14 applications and issued 12 permanent vessel entry permits.
- Conducted a limited entry application period for the Kodiak bairdi Tanner crab pot crab fishery and received 233 applications. Completed adjudication of 205 applications and issued 136 permanent entry permits.
- Completed The Bristol Bay Salmon Drift Gillnet Optimum Number Report. Proposed an optimum number of entry permits for the Bristol Bay drift gillnet fishery and held public hearings.
- Participated in the meetings of the Joint Legislative Salmon Industry Task Force and the Alaska Board of Fisheries' Salmon Industry Task Force.
- Addressed the Kenai Working Group on limited entry issues.
- Addressed the Southeast Inter-Tribal Fish and Wildlife Conference on Commercial and Subsistence Fisheries on limited entry issues.
- Addressed the Bristol Bay Native Corporation's Leadership Conference on the optimum number proposal for the Bristol Bay drift gillnet fishery.
- Participated in a discussion of the proposed Bristol Bay drift gillnet optimum number hosted by the Alaska Independent Fishermen's Marketing Association at Fish Expo in Seattle.
- Participated in the Gulf of Alaska Groundfish Rationalization Committee formed by the Board of Fisheries.
- Continued to maintain a professional relationship with the IRS to help Alaska fishermen protect their fishing privileges.
- With the Alaska Attorney General, we continued to defend the state against elimination of non-resident fee differential in the *Carlson* case.

CALENDAR YEAR 2005

- Adopted an optimum number range of 900 to 1,400 permits for the Bristol Bay drift gillnet fishery.
- Provided testimony and data for SB 93, an act relating to commercial fishing permits and vessel license fees.
- Proposed and adopted regulations implementing SB 93, which raised the maximum allowable base fee (“fee cap”) for an annual permit renewal from \$300 to \$3,000.
- Continued to work with the Alaska Board of Fisheries, the Department of Fish and Game, and other interested persons and groups to explore options for groundfish fisheries in state waters.
- Participated in a discussion of groundfish issues in Kodiak.
- Participated in a panel discussion dealing with salmon consolidation at the Pacific Fish Expo in Seattle.
- Continued to maintain a professional relationship with the IRS to help Alaska fishers protect their fishing privileges.
- With the Alaska Attorney General, we continued to defend the state against elimination of nonresident fee differential in the *Carlson* case.
- Provided testimony and data for HB 251 authorizing the Board of Fisheries to adopt regulations regarding fishing by a person who holds two entry permits for a salmon fishery.

CALENDAR YEAR 2006

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

CALENDAR YEAR 2007

- Participated in meetings with ADF&G, Sport Fish Division’s Sport Fish Guide Task Force to discuss issues regarding limited entry and the sport fish guide industry.

- Continued to work with the Southeast Revitalization Association (SRA) to structure a fleet consolidation plan for the Southeast Alaska purse seine salmon fishery.
- Presented “State Limited Entry” at the Alaska’s Young Fishermen’s Summit: Weaving a Network of Future Fishing Leaders.
- Adopted regulations implementing the Application for Immediate Fishing.
- Met with representatives of the Congressional delegation to discuss federal legislation affecting Alaska’s commercial fisheries.
- Reported to the Southeast Alaska King and Tanner Crab Task Force on the status of commission adjudications for those fisheries.
- Participated on an advisory panel to a study commissioned by the Bristol Bay Economic Development Corporation to explore ways to increase the number of limited entry permits held by local Bristol Bay residents.
- Continued to maintain a professional relationship with the IRS to help Alaska fishers protect their fishing privileges.
- With the Alaska Attorney General, we continued to defend the state against elimination of non-resident fee differential in the *Carlson* case.

CALENDAR YEAR 2008

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

CALENDAR YEAR 2009

- Legislation allowing CFEC to freely share non-confidential information with Alaska Regional Development Organizations (ARDORS).
- Renewed 3,485 permits and 1,696 vessel licenses through the Commission’s new online licensing system.

- Online licensing renewal kiosk service expanded to ADF&G offices at Cordova, Craig, Ketchikan, and Homer.
- Participated in the Board of Fisheries meeting at Sitka, concentrating on restructuring proposals for Southeast Alaska finfish management.
- Participated in the ComFish Expo in Kodiak and the “Fish Expo” in Seattle, meeting and conferring with permit holders at space shared with DCC&ED.
- Participated in the Board of Fisheries meeting at Anchorage, concentrating on several restructuring proposals for finfish management in Bristol Bay.

CALENDAR YEAR 2010

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

CALENDAR YEAR 2011

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

Appendix D

Letter of Intent Chapter 211 SLA 1990

May 3, 1990

SENATE JOURNAL 3856¹

It is the intent of the legislature to amend AS 16.43.170(a) as set forth in Section 23 of [CSHB 124](#) (Rules) in order to reiterate, emphasize, and clarify the original intent of the legislature in adopting the Limited Entry Act of 1973, AS 16.43.010--990.

Alaska's limited entry system is the product of years of effort by the State beginning in 1961. Two previous attempts by the legislature to establish the means to limit entry into Alaska's fisheries failed as the result of legal challenges.

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

Following action by the legislature, in 1972, Alaska voters approved an amendment to Article VIII, Section 15 of the Alaska Constitution, which authorized:

the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

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

As a food source important to Alaskans and the world, Alaska's fisheries are without question one of its most important renewable resources. Alaska's fisheries employ a substantial segment of the State's population, and many remote communities rely upon commercial fishing as their primary economic base. Therefore, sound management of its fisheries is crucial to the State of Alaska, and limited entry is an important part of the State's management system.

Extensive biological, economic, historic, and cultural data and analyses have been generated to aid the development, enactment, and review of entry limitation in Alaska. (A partial bibliography

¹ Appendices omitted.

is set forth in Appendix A.) Thousands of hours of hearings throughout the State and before the legislature have informed the choices made in shaping Alaska's limited entry system. Alaska's courts have carefully scrutinized the program and developed a body of law governing limited entry in Alaska that is both extensive and unique. (A partial list of cases decided by the Alaska Supreme Court set forth in Appendix B.)

In addition to direction and support from the legislature and the courts, Alaska's limited entry program has functioned only through the continuing cooperation and support of the Governor of Alaska, the Alaska Departments of Fish and Game, Law, Revenue, Administration, Commerce, and Public Safety, together with that of private citizens, economists, lawyers, scientists, processors, and, particularly, fishermen.

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

In enacting a limited entry system, if the legislature had been committed only to simplicity and economy, it could have authorized auctioning of a limited number of property rights to its fisheries. The legislature rejected this approach, because it would not have been consistent with the State's most important objectives in establishing a limited entry system.

The legislature recognized that, for the purpose of conservation, the State needed to retain control of its fishery resources. Looking ahead, the legislature wished to ensure that privileges extended through an entry permit could be revoked or modified as necessary and without compensation. Furthermore, to ensure compliance with laws and regulations governing its fisheries, privileges extended must be conditioned upon compliance with those requirements. At the same time, the legislature believed that, in view of the substantial reliance on their fisheries by fishermen and those dependent upon them, privileges should be extended only to qualified, individual fishermen who could demonstrate their dependence.

While recognizing the importance of limiting and controlling fishing privileges, the legislature also intended to provide individual fishermen with a sufficient stake in their fisheries that they would be more likely to have a personal commitment to conservation and enhancement of those fisheries. In recognition of the fact that fishermen, their families, and, in many cases, entire communities, depended upon access to their fisheries for their basic welfare, the legislature believed that any privileges extended should be protected from forced and intemperate transfers. At the same time, because, necessarily, only a limited number of privileges would be extended, the legislature wished to ensure that the State would be reasonably compensated by regular permit fees. Finally, the legislature wished to restrain the unnecessary growth of State bureaucracy.

Among other considerations, the resulting Limited Entry Act and its implementation by CFEC have defined and regulated entry permits in a manner designed to reach these legislative objectives.

The legislature declared that an entry permit and the privileges it carried would not be the property of its holder. AS 16.43.150(e) provides that an entry permit is merely:

a use privilege which may be modified or revoked by the legislature without compensation.

An entry permit must be renewed annually, and is subject to forfeiture if not renewed for two years. The holder must pay an annual renewal fee established by CFEC based upon "the different rates of economic return for different fisheries." AS 16.43.160(b).

The legislature required CFEC to issue permits only to fishermen applicants who needed the permits the most. Only an individual, and not a vessel nor an organization of any kind, may receive an entry permit.

Under AS 16.43.250, CFEC ranks applicants for entry permits for a particular fishery "according to the degree of hardship which they would suffer" by not receiving a permit from the State. AS 16.43.250 provides the following standards for measuring hardship:

(1) degree of economic dependence upon the fishery, including, when reasonable for the fishery, the percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, investment in vessels and gear;

(2) extent of past participation in the fishery, including, when reasonable for the fishery, the number of years of participation in the fishery, and the consistency of participation during each year.

From the statute, and further derived from extensive biological, economic, and other data, CFEC has developed a series of intricate point systems for the purpose of ranking the degree of hardship individual denied applicants would suffer. 20 AAC 05.600--20 AAC 05.742. Each applicant who would suffer significant hardship by denial is entitled to a permit, even if the maximum number of permits for a given fishery would be exceeded thereby. AS 16.43.270(a). To support the State's conservation goals and to recognize some historic and cultural fishing patterns, the system has never rewarded nor encouraged high individual production.

Although permits do not constitute property belonging to their holders, the legislature, subject to control and approval by CFEC, authorized holders to transfer their permits. Doing so advanced several of the State's objectives. Among other considerations, by not interrupting a holder's use of his entry permit and further authorizing the fisherman to transfer his permit, the fisherman and those dependent upon him held the means to continue their access to the fishery and their livelihood. Additionally, by not cutting off the fisherman's interest (as would have been the case through a lottery or reversion and reissue system) the holder was granted a sufficiently long-term

privilege in the fishery so as to be encouraged to both conserve and enhance the fishery resource. Finally, by not requiring the State to select who would be a subsequent recipient of the privilege, the legislature avoided generating an additional and unnecessary State bureaucracy.

Consistent with its grant of only a privilege, the State through CFEC, retained control over all transfers. A permit holder may transfer his permit only upon approval by CFEC. AS 16.43.170. To ensure against intemperate transfers, the legislature requires a 60-day waiting period before a permit may be transferred. A fisherman may revoke an agreement to transfer any time during this 60-day period. A number of legal requirements must be satisfied before CFEC will approve a transfer. AS 16.43.170; 20 AAC 05.710.

Generally, AS 16.43.150(g) prohibits involuntary transfer requiring that an entry permit may not be "attached, distrained, or sold on execution of judgement or under any other process or order of any court." Additionally, a fisherman may not pledge his entry permit as security for a debt. (The legislature recognized that the absence of a property right might impair a fisherman's ability to obtain financing for the purchase of a permit and his fishing operation, and, therefore, established two State authorized loan programs. AS 16.10.333-16.10.377; 44.81.271; and 44.81.230-44.81.250.) Just as a fisherman could not, contrary to State law, create a security interest in his fishing privilege, neither can a creditor.

The legislature recognized that a fisherman's earnings were seasonal and subject to many variables from year-to-year beyond control (for example, weather, predation, and interception). If creditors with short term objectives were allowed to treat an entry permit as a fungible item of property and to seize and force its sale, a fisherman without other means of earning a living, together with those dependent upon him, could well be left destitute. In Alaska, where many communities in remote areas of the State depend upon commercial fishing as the primary basis for their cash economy, this is a very real possibility. [The legislature notes that the Social Security Administration has acknowledged the wisdom of Alaska's approach by recognizing that an entry permit is essential to self- support, and, therefore, by not considering the market value of a permit as an alternative resource in determining an individual's eligibility for Supplemental Security Income benefits. 50 Fed. Reg. 42683, 42685 (1985).]

Although the State of Alaska could not countenance a system that inexorably would sever fishermen from the source of their livelihood, nonetheless, as a privilege, the legislature has made clear that an entry permit is subject to forfeiture, if its holder fails to abide by the applicable laws. See, for example, AS 16.05.480; 16.05.665; 16.05.710; 16.43.960; 16.43.970. Ultimately, because it has granted to fishermen only a revocable privilege, the State retains the dominion and control necessary to protect and manage its fishery resources.

In conclusion, compelling State interests were served, when the legislature rejected the idea that an entry permit represents a property right belonging to the permit holder. Instead, the legislature chose to establish an entry permit as a mere privilege, subject to State control, and revocable at the will of the State without compensation. In order to reemphasize and to clarify its intent, the legislature amends AS 16.43.170(a) as set forth in Section 23 of CSHB 124 (Rules).

Appendix E

MEMORANDUM

STATE OF ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION

TO: File

DATE: April 30, 2003

PHONE: (907) 789-6160 VOICE
(907) 789-6170 FAX

FROM: Commercial Fisheries Entry Commission
Marlene Johnson, Commissioner
Mary McDowell, Commissioner
Bruce Twomley, Chairman

SUBJECT: CFEC Contributions to Fishermen's Fund

The Fishermen's Fund was created by the Alaska Legislature prior to statehood and was one of the few "dedicated funds" grandfathered in under the state constitution upon statehood. While the licensing of commercial fisheries has changed over the years since creation of the Fund, particularly with the advent of limited entry, the fundamental form, funding mechanism, and purposes of the Fishermen's Fund remain basically unchanged.

AS 23.35.060 directs that the Fishermen's Fund shall be composed of a given percentage "of the money derived by the state from all commercial fishermen's licenses..." After implementation of limited entry, what had been known as the "commercial fishing license" became, in effect, available in two forms. One is what we now refer to as the "crewmember license," issued by the Alaska Department of Fish and Game. The other is the commercial fishing *permit* (in the form of an interim-use permit or a limited entry permit) issued by CFEC.

We have reviewed the legislative history of the Fishermen's Fund and the legislative discussion and action pertaining to the Fund since its creation, including, most recently, the legislative testimony and deliberations on SB146 and discussion and correspondence between the Department of Law and SB146 sponsor, Sen. Torgerson, during the 1999 legislative session. Our review leads us to conclude that legislative intent has been, and continues to be, 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. That is, CFEC is to transfer to the Fishermen's Fund for each permit holder who has paid annual fees for one or more permits, an amount equal to the amount that the Department of Fish and Game would contribute to the Fund for each holder of a crewmember license. This has been, and should continue to be, CFEC's practice.

HB194, passed by the legislature in 2001, amended the fees for crewmember licenses. Under AS 16.05.480, beginning with the 2002 licensing year, the annual adult crewmember license fee for a resident Alaskan is \$60. For a non-resident the fee is, "\$60 plus an amount, established by the department by regulation, that is as close as is practicable to the maximum allowed by law." The reference to "maximum allowed by law," is intended to mandate that the additional amount added to the fee for nonresidents will be the maximum allowed in accordance with most current court rulings in the Carlson lawsuit (a class action challenging the state's commercial fishing fees charged to nonresidents). The

crewmember license fees for 2002 and 2003 have been established as \$60 for residents and \$180 for nonresidents.

AS 23.35.060 directs that 39% of the amount of each crewmember fee paid, up to a maximum of \$50, be contributed to Fishermen's Fund. Thus, the amount to be contributed is now \$23.40 ($\$60 \times .39$) for a resident crewmember license and \$50.00 ($\$180 \times .39$, but capped at \$50) for a non-resident license. The amount contributed to Fishermen's Fund for each nonresident crewmember license may vary from year to year in the future, depending upon the total fee for a nonresident license, which may vary due to amount of the maximum allowable differential that will be charged to nonresidents over the price of a resident crewmen license.

Therefore, the amount CFEC is to annually contribute to Fishermen's Fund for each holder of one or more commercial fishing permits must also to be recalculated each year in accordance with the fees being charged for resident and nonresident crewmember licenses for the given licensing year. For 2003, CFEC is to contribute to Fishermen's Fund \$23.40 for each resident permit holder and \$50.00 for each nonresident permit holder who has paid annual renewal fees for one or more 2003 permits.

Appendix F

The Alaska Commercial Fisheries Entry Commission's
Explanation of the Time Required to Complete Adjudications

September 19, 2013

1. Introduction

Since the Alaska Commercial Fisheries Entry Commission began adjudicating cases in 1975, the time required to do so has been an issue.¹ In more recent years, the commission has offered an explanation for the time taken. *See, for example, Crivello*, CFEC 75-683 (1999 Final Comm. Dec. on Admin. Rev. at 7-9); affirmed *Crivello v. State*, CFEC, 59 P.3d 741 (Alaska 2002). Where time is an issue, courts fault agencies that fail to provide an explanation. *See, for example, Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230 (1988).

More recently, a denied applicant for a Chignik salmon permit argued to the Alaska Supreme Court that the commission should be reversed, because the time taken to finally adjudicate his application denied him due process and was unreasonable. *Brandal v. State, Commercial Fisheries Entry Commission*, 128 P.3d 732 (Alaska 2006). The court observed that Brandal could not show prejudice in any way, because he was allowed to continue to fish during the pendency of his application, and, therefore, the court rejected his claims. In fact, during this time, Brandal actually received a benefit that the court characterized as a "windfall."² As the court concluded, Brandal

was not prejudiced by the delay. Had the CFEC adjudicated his case promptly, Brandal would not have received the windfall of being allowed to fish without being entitled to a permit.^[3]

In *Brandal*, the court additionally commented⁴ as follows:

The traditional remedy for such a delay, however, has generally been a court order compelling the agency to reach a decision. At no time during the twenty-two years after 1982 did Brandal seek an order compelling the CFEC to reach a decision. [footnote omitted]

In its entire history, no court has ever ordered the commission to issue a decision. For an applicant, a more practical remedy is to ask the commission, which has exercised its best efforts to issue a prompt decision when an applicant made a reasonable request for one. *See, for example,*

¹ Commentators have stated a limited entry system should allow ample time for denied applicants to remain in the fishery in order to amortize their investment. Rettig and Ginter, *Limited Entry as a Fishery Management Tool* (1978 at 11, 246, 266, 418).

² *Brandal*, 128 P.3d 732, 739.

³ *Id.* 128 P.3d at 740-741.

⁴ *Id.*, 128 P.3d at 740.

Wilber, CFEC 01-017-A (2005); May, CFEC 90-145-A (2004); May, CFEC 88-044-A (2004); May, CFEC 88-043-A (2004); and Bruno, CFEC 98-061-A (2003).

Of course, a request for a prompt decision may hasten bad news. *See, for example, Bruno, id.* And, as former Representative Bruce Weyhrauch stated to the Senate Finance Committee on May 4, 2004,⁵ a common strategy for an appellant before the CFEC is to drag out an appeal in order to continue to fish.⁶

Although the court in Brandal upheld the commission, it chastised the commission for the adjudication time required.⁷ The court found what it took to be the commission's explanation below to be "profoundly unpersuasive."⁸

The CFEC's claim that "[t]he time when Brandal's complete application record came before the commission coincided with a time when the commission was unable to devote sufficient time to its review" may excuse a delay of weeks or months, but not of decades.^[9]

But the unattributed quote is not the commission's explanation. The quote is a short summary statement from page 10 of the state's brief. The commission's explanation was appended to its Brandal decision. This current document is an update of that detailed historic account of long-term obstacles the commission confronted over decades.

Nonetheless, the commission is duly chastened and fully accepts the court's criticism. At the same time, our view is that the unique obstacles the commission has consistently worked to overcome were not temporary, but persisted over decades. Currently, a very small percentage of our final decisions is appealed to the Alaska Supreme Court, and, consequently, the court sees only a small portion of the decisions we issue on a yearly basis.¹⁰ Our perspective, therefore, is different from the court's. In fact, our steady progress through a daunting caseload has finally produced a manageable situation.

⁵ In testimony supporting HB 533 (providing a judicial remedy to obtain a final administrative decision).

⁶ As the Anchorage Daily News reported on Saturday, February 11, 2006:

Brandal and his attorney, James
Vollintine of Anchorage, concede they
really weren't in a hurry for a decision.

"We didn't want to rock the boat,"
Vollintine said.

⁷ Brandal, 128 P.3d at 739-40.

⁸ *Id.* 128 P.3d at 739.

⁹ *Id.* at 739.

¹⁰ During 1981 and 1982 approximately 150 appeals from CFEC decisions were pending in the Alaska court system. Today, there is only one. On March 18, 2004, in support of a bill changing administrative appeal procedure, the House Judiciary Committee heard testimony that a low rate of judicial appeals is a measure of perceived fairness.

2. 1975--1980: Initial Implementation of Limited Entry

Beginning with limitation of the original 19 salmon fisheries in 1975, the commission has received and processed almost 23,000 applications for entry permits. In the midst of the initial flood of cases from the original 19 salmon fisheries, Isakson v. Rickey, 550 P.2d 359 (Alaska 1976), required the commission to accept 1,327 additional salmon applications from fishermen who held gear licenses for the first time in 1973 or 1974.

With each newly limited fishery, the initial classification of applications based on state records can be accomplished in a relatively short period of time. When commission staff issue initial classifications at nearly the same time, appeals from the classifications invariably come in a flood (as opposed to a more orderly case flow). While the commission has generally issued final decisions at the rate of more than 100 per year, hundreds of administrative appeals arise at nearly the same time. Invariably, both hearing officers and commissioners have a substantial number of cases before them.

Faced with a torrent of such appeals, the first commission hearing officers decided to complete evidentiary hearings throughout the state before issuing decisions. Their rationale was to gather available evidence as soon as practicable, before the evidence might be lost. This approach proved problematic, however, because the original hearing officers departed from the commission before writing their decisions leaving their replacements with a room full of hearing tapes requiring careful review. For example, in the early 1980's, decisions were due in cases where 500 evidentiary hearings had been conducted by five different hearing officers who were no longer employed by the commission.

The commission further aggravated demands on hearing officers by meeting its statutory duty to limit additional fisheries, resulting in a corresponding flood of new administrative appeals each time another fishery was limited.

As of 1981, the commission had only three full-time hearing officers. To meet the demands of an ever-increasing caseload, from late 1981 through 1982, through a special appropriation, the commission hired six contract attorneys to help hearing officers draft recommended decisions. However, this measure shifted some demands from hearing officers to the commissioners, when hearing officers passed 382 decisions to the commissioners for final review by the end of 1982.¹¹ This flood of cases to the commissioners came on top of their existing caseload.¹²

¹¹ This situation would be akin to a court receiving 382 new administrative appeals *in addition to* the court's normal caseload and other duties.

¹² The quality of decisions produced by this crash effort was very mixed. Limited entry decisions require special knowledge. *See, for example, Bruno*, CFEC 98-061-A (2003); and *Carle*, CFEC 96-003-P (1996). Lawyers and at least one sitting Alaska Supreme Court Justice have characterized limited entry law as "arcane."

A hearing officer decision must be reviewed by the commission within 60 days of that decision, at which point the commission must adopt the decision or order administrative review of the decision. In conducting an administrative review (initiated by the commission or by an applicant through a petition filed under 20 AAC 05.1845), commissioners must read and analyze the decision of the hearing officer and all of the documentary evidence relevant to the case, and review the audio tape or transcript of the hearing conducted by the hearing officer. An applicant dissatisfied with a commission decision on administrative review may file a request for reconsideration of that decision, which requires the commissioners to look again at the case and any additional evidence and briefing submitted by the applicant. Draft decisions must circulate among the commissioners until at least two commissioners can reach an agreement.

3. 1980's: Effect of Judicial Decisions

During the 1980's, the Alaska Supreme Court held a number of limited entry cases in abeyance pending the outcome of State v. Ostrosky, 667 P.2d 1184 (Alaska 1983); appeal dismissed for want of a substantial federal question, 467 U.S. 1201, 104 S.Ct. 2379, 81 L.Ed.2d 339 (1984). Following its July 19, 1983, decision in Ostrosky through 1985, the Alaska Supreme Court issued 28 limited entry decisions.

Among the limited entry decisions issued in the wake of Ostrosky, each of the following required many additional adjudications by the commission: Forquer v. State, CFEC, 677 P.2d 1236 (Alaska 1984); CFEC v. Byayuk, 684 P.2d 114 (Alaska 1984); Cashen v. State, CFEC, 686 P.2d 1219 (Alaska 1984); Deubelbeiss v. CFEC, 689 P.2d 487 (Alaska 1984); Roehl v. CFEC, 684 P.2d 130 (Alaska 1984); Wickersham v. State, CFEC, 680 P.2d 1135 (Alaska 1984); Chocknok v. State, CFEC, 696 P.2d 669 (Alaska 1985). In particular, Deubelbeiss required the commission to halt adjudication of salmon and herring cases until the commission could develop, propose, and adopt new availability of alternative occupation point regulations and consider new claims under them.

Most important, Byayuk required the commission to apply a Supreme Court reversal *retroactively* to reopen previously closed applications, and Cashen 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 adjudications 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.

Subsequently, in 1988, the State and the plaintiff class reached a settlement in Wassillie v. Simon, No. 3AN 75-506 Civ., which authorized 275 new applications for entry permits in the original 19 limited salmon fisheries. In contrast to other applicants, who can continue to fish as long as their applications remain pending, applicants under the Wassillie settlement were not entitled to fish until they received a favorable final decision. Therefore, the commission gave Wassillie applications

priority in adjudications, as the commission does other claims where the immediate right to fish is at issue.¹³

Thus, pendency of the Wassillie cases, which required many additional evidentiary hearings to be conducted throughout rural Alaska, interrupted the commission's ability to complete review of many other pending applications arising from the same time period. In the fall of 2000, the commission finally completed all Wassillie appeals and thereby created the opportunity to continue our review of the postponed appeals.

Furthermore, since 1984, the commission has met its affirmative statutory duty by limiting some 35 additional fisheries generating more than 4,700 applications for permanent entry permits in the newly limited fisheries. Each limitation required the commissioners as rulemakers to develop a proposal, conduct public hearings, and, subsequently, to develop and propose a point system for evaluating applicants, subject to further public hearings. As a new and additional duty, prior to initial issuance of any permits in a limited fishery, AS 16.43.270¹⁴ now requires the commission to consider restricting individual fishing capacity in each limited fishery. Most important, each new limitation generated more administrative appeals.

As the result of these various developments, the number of cases before the commission and its hearing officers nearly doubled to almost 900 in 1990.

4. 1990's: Fisheries under Pressure

The continuous influx of new administrative appeals, coupled with additional statutory duties, made nearly 900 cases unmanageable. Every case the commission picked up to adjudicate left hundreds waiting attention. In a form of triage, the commission made choices. As noted, the commission chose first to address cases where the immediate right to fish was at stake.

Next in line, the commission concentrated on older cases and cases from fisheries under the most pressure.¹⁵ In the early 1990's, these fisheries included the Prince William Sound fisheries (as the result of the 1989 Exxon Oil Spill); the Cook Inlet salmon drift and set net fisheries (as the result of pressure from sport fishing interests and actions by the Board of Fisheries); and the Southeast salmon seine and troll fisheries (as the result of the U.S.--Canada Treaty).

¹³ The immediate right to fish is at stake in every request to transfer an entry permit submitted to the commission. In a given year, the commission and its staff can be required to rule upon more than 2,000 requests to transfer entry permits. See for example, CFEC 2005 Annual Report.

¹⁴ As amended in 1995.

¹⁵ Identified priorities serve as guidelines. As noted earlier, 20 AAC 05.1845 requires the commissioners to review each new hearing officer decision within 60 days. We adopted this regulation in 1984 in an attempt to avoid an even greater pileup of cases. However, as a practical matter, this regulatory deadline leads to decisions in younger cases along with cases identified as priorities.

In contrast at the time, some fisheries appeared to be under less pressure. For example, in the Chignik salmon purse seine fishery (once regarded as one of the wealthiest of Alaska's salmon fisheries), the commission had already received a petition signed by many members of the local Chignik communities asking the commission to stop adjudicating applications so that more fishermen could remain in the fishery. Similarly, the petitioner in the 1990 Kelley case¹⁶ asked the Alaska Superior Court to eliminate limited entry in its entirety in the Bristol Bay drift gill net fishery, arguing that the fishery had become so healthy and wealthy, limitation was no longer necessary nor constitutional.

The commission has never neglected its duty to complete adjudications. Johns v. CFEC, 758 P.2d 1256 (Alaska 1988). However, at a given time, the commission has necessarily applied its limited resources to fisheries showing the greatest need. In the early 1990's, when the commission selected salmon cases to adjudicate, those cases were normally not from the Chignik or Bristol Bay fisheries (unless they were Wassillie applicants).

The salmon situation changed dramatically by 1997, when world competition from farmed salmon caused the bottom to drop out from under Alaska's salmon fisheries. From that point forward, every salmon fishery descended into economic crisis, and the commission had to redirect its efforts.¹⁷

For example, in the Bristol Bay drift gill net fishery (Alaska's largest salmon fishery), there were some 237 appeals before the commission in 1989. When trouble for all salmon fisheries surfaced in 1997, the commission necessarily turned its attention back to the salmon fishery affecting the most people. The Commission exercised its best efforts to complete all administrative appeals in the Bristol Bay drift gill net fishery.¹⁸ With Bristol Bay completed, the commission gave attention to cases remaining in the Chignik purse seine and other fisheries, including Brandal, CFEC 75-586-A (2004); affirmed by the Alaska Supreme Court in Brandal v. State, Commercial Fisheries Entry Commission, 128 P.3d 732 (Alaska 2006).

5. Additional Obstacles

From the 1980's through 2005, other obstacles prevented the commission from focusing exclusively on adjudications. As noted, the commission met its statutory duty to limit some 35 additional fisheries generating thousands of new applications. The commission's clash with the IRS over the IRS' efforts to seize and force the sale of Alaska limited entry permits culminated in the commission's Carle decision.¹⁹ Additionally, since 1984, the commission has helped defend Alaska from the Carlson class action²⁰ challenging Alaska's nonresident commercial fishing permit fees and seeking tens of millions of dollars in damages.

¹⁶ Kelley v. State, CFEC, 3 AN-90-2701 CI.

¹⁷ See Outline of Options for Fleet Consolidation in Alaska's Salmon Fisheries (CFEC 1998).

¹⁸ The commission had completed adjudications in the Bristol Bay set net fishery well before it completed the drift fishery.

¹⁹ Carle, CFEC 96-003-P (1996).

²⁰ See State, CFEC v. Carlson, 65 P.3d 851 (Alaska 2003).

Over the years, the commission has also suffered from severe budget reductions. During the 1980's and early 1990's, a series of budget cuts required the commission to eliminate its executive director and other positions. More often than not, the commission required staff to forego merit increases and, at times, requested staff to take leave without pay. Additionally, for one period, the commission reduced the hours and salaries of all staff to absorb a mid-year budget reduction.²¹ Since 1986, budget cuts reduced the commission's full-time positions from 41 to 28 -- a loss of more than 30%. As recently as 2004, the commission's general fund budget was essentially²² at the level of its 1983 general fund budget in nominal dollars without an adjustment for inflation. Under these pressures, the commission did its best to protect adjudication functions, but reductions in staff invariably mean the commissioners and remaining staff members must absorb additional responsibilities.

6. A Welcome Resolution

Despite obstacles over 25 years (1982-2006), the Alaska Commercial Fisheries Entry Commission averaged 115 final commission decisions per year. Our case production included an average of 75 final commission decisions per year on applications for permanent entry permits.

The commission's regular production of final decisions has reduced the number of pending appeals to approximately 8 before commission hearing officers and approximately 28 cases before the commissioners. Therefore, from nearly 900 cases pending before the commission and its hearing officers in 1990 (plus incoming cases from newly limited fisheries that followed), the commission today has reduced the number to 32.

The commission has reduced the number of pending cases over the years despite the fact the commission has been required by statute to continue to limit additional fisheries, from which new administrative appeals continued to be filed. The reduction in the number of pending cases over time shows the commission has decided cases at a rate faster than new administrative appeals arise. Finally, the commission's efforts have achieved a manageable caseload.

²¹ The reduction in hours and compensation was progressive with commissioners and other higher paid staff members absorbing the largest cuts and lower paid staff members absorbing the least.

²² The difference was less than \$100,000 with no adjustment for inflation.

Appendix G

Executive Summary

Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report

CFEC Report 04-3N-Exec
October, 2004

Commercial Fisheries Entry Commission
8800 Glacier Highway #109
Juneau, Alaska 99801

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Executive Summary

Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report

Abstract

This report presents the results of a study to help the Commercial Fisheries Entry Commission determine the optimum number of permits for the Bristol Bay salmon drift gillnet fishery. Under terms of AS.16.43.290, the Commercial Fisheries Entry Commission is directed to determine optimum numbers of permits for the state's limited entry fisheries. The statute requires the commission to choose an optimum number which represents a reasonable balance of three general standards. The standards include economic, conservation, and fishery management concerns.

The report considers each standard separately. It includes a history of the regulatory development of the fishery, historical harvest data, estimates of historical costs and returns in the fishery, forecasts of future returns in the fishery, and a detailed background discussion of conservation concerns. The report recommends that an optimum number falling in the range of 800 to 1,200 permits would represent a reasonable balance of the three standards.

The commission will consider this report and propose for public review and comment a regulation to establish an optimum number for the Bristol Bay salmon drift gillnet fishery.

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Executive Summary

Bristol Bay Salmon Drift Gillnet Fishery Optimum Number Report

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Introduction

This report provides the results of an optimum number study for the Bristol Bay salmon drift gillnet fishery. The report recommends that the “optimum number” of permits for the Bristol Bay salmon drift gillnet fishery should range from 800 to 1,200 permits.

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.

The commission adopted a maximum number of 1,669 for the Bristol Bay salmon drift gillnet fishery in 1974. For a variety of reasons that are explained in the report, the maximum number was exceeded, and today 1,857 potentially active permanent entry permits have been issued in the fishery.

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. The purpose of this study was to help the commission determine an optimum number.

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 buy-back program for the purpose of reducing the number of permits in the fishery to the optimum number.

The study analyzes each optimum number standard with respect to the Bristol Bay salmon drift gillnet fishery. The report reviews the limited entry amendment to Alaska’s constitution, discusses an important Alaska Supreme Court decision that relates to optimum numbers, reviews previous work on optimum numbers, and discusses understandings of the optimum number standards. The report provides a history of the fishery, background on the regulatory framework, a detailed discussion of management and resource conservation concerns, estimates of historical costs and net returns, and forecasts of future rates of return in the fishery.

The limited entry law requires that the optimum number represent a reasonable balance of the three general standards, and the law allows the optimum number for a fishery to be a range of numbers rather than a single number. This report concludes that a range of 800 to 1200 permits for the Bristol Bay salmon drift gillnet fishery represents a reasonable balance of the three optimum number standards.

Optimum Number Standard One: The Economic Optimum Number

The first optimum number standard in Alaska's limited entry law (AS 16.43.290(1)) seeks the number of entry permits sufficient to maintain an economically healthy fishery. The standard reads as follows:

(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 the fishery, considering time fished and necessary investments in vessel and gear.

“Economically healthy fishery” is defined in AS 16.43.990(2) as follows:

(2) “economically healthy fishery” means a fishery that yields a sufficient rate of economic return to the fishermen participating in it to provide for, among other things, the following:

(A) maintenance of vessels and gear in satisfactory and safe operating condition; and

(B) ability and opportunity to improve vessels, gear and fishing techniques, including, when permissible, experimentation with new vessels, new gear, and new techniques.

The first optimum number standard was named the “economic optimum number” standard by commission staff in the early years of the limited entry program.

Average rates of economic return per permit fished were examined in two chapters of the main report and are summarized here. Chapter 3 of the main report provides

estimates of historic average economic returns in the fishery. Chapter 4 of the main report forecasts how average economic returns per permit will vary in the future depending upon likely future harvest levels, likely levels of future ex-vessel prices, and the number of permits in the fishery.

Historical Rates of Economic Return

Chapter 3 examines historical data for the Bristol Bay salmon drift gillnet fishery. Data on the number of permits fished, average pounds harvested per permit fished, estimated average sockeye price per pound, estimated average gross earnings per permit, and the estimated permit market value are provided for the 1975-2003 time period.

Data on costs and net economic returns were collected in a CFEC survey of Bristol Bay drift gillnet permit holders in 2002. Data were collected for multiple years. The survey data were then used to model and to produce estimates of average costs and net economic returns per permit fished over the 1983 through 2003 time period.

Two different measures of economic return were used in the study. The reasons for using these two measures of economic returns are provided in Chapter 3, along with a detailed listing of the costs considered for each measure.

The first measure was “Returns to Labor, Management, and Investment” (RLMI). This measure is calculated by subtracting payments for variable and fixed costs and an estimate of the vessel depreciation expense from the permit's gross earnings from fish sales.

The second measure was “Economic Profit.” This measure subtracts two

additional costs; namely, the opportunity cost of the skipper's time, and the opportunity cost of the investment in vessel and equipment. Economic profit is a measure of economic returns that meets the legislature's "reasonable average rate of economic return" criterion, since it explicitly considers "time fished and necessary investment in vessel and gear."

Table 1 provides estimates of economic returns for the Bristol Bay salmon drift gillnet fishery over the 1983 through 2003 time period. The table includes data on the number of permits fished, and the average pounds harvested per permit. The table also includes estimates of the sockeye ex-vessel price per pound, average gross earnings per permit, average returns to labor, management, and investment per permit, and average economic profits per permit.

The dollar-denominated estimates in Table 1 are in "nominal dollars" which means the actual dollars for the respective year. Nominal dollar estimates are not corrected for inflation. Chapter 3 also provides estimates of the historical costs and returns converted into "real 2003, constant-value" dollars, which are dollars that have been corrected for general price inflation. The results using real dollars follow a roughly similar pattern, but more starkly demonstrate the changes that have occurred over time.

The data in Table 1 indicate that estimated average gross earnings per permit fished in nominal dollars rose over the 1984 to 1990 time period, from \$51,418 in 1984 to a peak of \$99,564 in 1990. Average gross earnings per permit fluctuated in the 1990's, but tended to decline in the years from 1994 to 2003. Average gross earnings per permit were \$93,591 in 1994 and only \$25,989 in 2003. The declines in average gross earn-

ings were partly due to declines in harvest, but also reflect the declines in ex-vessel prices for Bristol Bay salmon.

The estimates of average returns to labor, management, and investment (RLMI) per permit fished remained positive over the entire 1983 through 2003 time period. The estimates tended to roughly follow the estimated average gross earnings in the fishery. For example, average RLMI per permit tended to rise over the 1984 through 1990 time period, from \$24,599 in 1984 to a peak of \$59,551 in 1990. The estimated average RLMI per permit fluctuated in the 1990's, but tended to decline in the years from 1994 through 2003. The estimated average RLMI per permit were \$47,718 in 1994 but were only \$4,107 in 2003. This measure of economic returns hit a low in 2001 at \$929.

The estimates of economic profits per permit include deductions for the opportunity cost of the skipper's time and the opportunity cost of the investment in the vessel. Again, average profits also tended to roughly follow the estimates of average gross earnings in the fishery. Estimated average profits per permit tended to rise over the 1984 through 1990 time period, from \$13,127 in 1984 to \$47,300 in 1990. Average profits fluctuated in the 1990's, but tended to decline over the 1994 through 2003 time period. Average estimated profits per permits fished were \$35,899 in 1994 but were -\$3,318 per permit in 2003. Over the 1997 to 2003 time period, estimated average profits per permit fished were negative in all years except 1999.

Estimated average profits per permit fished were negative for the first time in 1997 at -\$6,662. Permit participation rates began to fall in 1997 when 1,875 permits were fished.

**Table 1. Bristol Bay Salmon Drift Gillnet Fishery, 1983-2003:
Estimated Average Harvests, Gross Earnings, Costs, and Net Returns
(in nominal dollars)**

Year	Permits With Landings	Average Pounds per Permit	Sockeye Average Price	Average Gross Earnings	Avg. Fixed and Variable Costs	Avg. Return Labor, Mgt. & Investment	Average Opportunity Costs	Average Economic Profits
1983	1,797	113,001	\$0.64	\$71,012	\$30,456	\$40,556	\$10,377	\$30,179
1984	1,804	83,564	\$0.66	\$51,418	\$26,818	\$24,599	\$11,472	\$13,127
1985	1,815	72,463	\$0.83	\$58,785	\$27,929	\$30,856	\$10,571	\$20,285
1986	1,823	49,832	\$1.42	\$65,238	\$27,675	\$37,563	\$9,260	\$28,303
1987	1,824	51,242	\$1.40	\$65,990	\$27,768	\$38,222	\$9,887	\$28,335
1988	1,837	48,647	\$2.10	\$91,150	\$36,867	\$54,284	\$11,690	\$42,594
1989	1,855	80,573	\$1.25	\$96,747	\$39,028	\$57,719	\$13,150	\$44,569
1990	1,869	94,070	\$1.09	\$99,564	\$40,013	\$59,551	\$12,251	\$47,300
1991	1,873	73,026	\$0.75	\$52,979	\$28,076	\$24,903	\$9,768	\$15,135
1992	1,879	89,362	\$1.12	\$96,976	\$42,627	\$54,348	\$11,126	\$43,222
1993	1,875	116,342	\$0.68	\$77,534	\$39,577	\$37,957	\$10,471	\$27,485
1994	1,865	97,168	\$0.99	\$93,591	\$45,874	\$47,718	\$11,829	\$35,889
1995	1,882	115,835	\$0.80	\$90,345	\$46,240	\$44,105	\$13,786	\$30,319
1996	1,884	88,440	\$0.81	\$69,327	\$38,329	\$30,998	\$12,982	\$18,017
1997	1,875	33,380	\$0.94	\$30,235	\$24,374	\$5,862	\$12,524	-\$6,662
1998	1,858	27,431	\$1.21	\$30,787	\$24,048	\$6,740	\$11,530	-\$4,790
1999	1,847	61,480	\$0.84	\$50,296	\$29,809	\$20,486	\$11,806	\$8,680
2000	1,823	57,408	\$0.67	\$37,527	\$26,821	\$10,706	\$12,593	-\$1,887
2001	1,566	51,491	\$0.42	\$20,699	\$19,770	\$929	\$8,762	-\$7,832
2002	1,184	45,751	\$0.49	\$21,482	\$18,989	\$2,492	\$6,908	-\$4,415
2003	1,424	55,099	\$0.50	\$25,989	\$21,882	\$4,107	\$7,926	-\$3,819

*Notes: Average pounds per permit include landings of all species on the permit.
Estimates of average sockeye price per pound are provided because sockeye salmon is the predominant species harvested.
Fixed and variable cost categories include: food; crew shares (excluding the skipper); fuel; maintenance and repairs; gillnets; miscellaneous gear; fish taxes; transportation; moorage and storage; insurance; administrative costs; permit and vessel license fees; property taxes; and depreciation.
Opportunity costs include the opportunity cost of the skipper's time during the fishery and the opportunity cost of the investment in vessel and equipment.*

In 2001, the number of permits fished declined to 1,566, and in 2002 only 1,184 permits were fished. The number of permits fished rebounded somewhat in 2003 to 1,424, but still remained well below the number of permits outstanding in the fishery. Even with fewer permits fished in recent years, estimated average profits per permit fished remained negative.

Changes in average gross earnings and average net returns can be caused by changes in average pounds per permit and changes in average ex-vessel prices. Average gross earnings per permit are dependent upon total pounds harvested, ex-vessel prices, and the number of permits fished. For example, in 1987 there were 1,824 permits fished in the drift gillnet fishery and a harvest of about 93.5 million pounds, for an

average harvest of 51,242 pounds per permit fished. The average ex-vessel price for sockeye (the bulk of the harvest) was \$1.40 per pound. This combination of price and average harvest per permit resulted in average gross earnings of \$65,990, and average estimated profits of \$28,335.

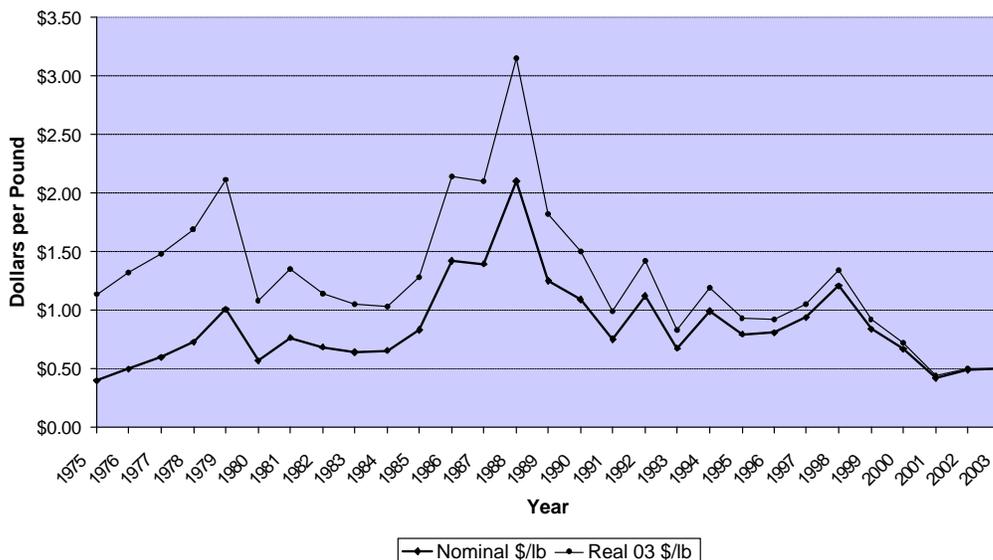
In contrast, in 2001 there were only 1,566 permits fished, and a total harvest of about 80.6 million pounds of salmon, for an average harvest of 51,491 per permit fished. While the average pounds were similar to 1987, the average ex-vessel price for sockeye was only \$.42 per pound. As a result, this combination of prices and average harvest per permit resulted in average gross earnings of only \$20,699 and an average estimated loss of -\$7,832 per permit. Thus, the same number of pounds per permit could result in either a profitable or unprofitable year, depending upon the ex-vessel prices received by fishermen.

Future profits in the fishery will depend

critically on salmon harvests, ex-vessel prices, and the number of permits in the fishery. Chart 1 provides a view of Bristol Bay sockeye ex-vessel prices from 1975 through 2003. The prices are shown in both nominal and real 2003 dollars. In nominal terms, sockeye ex-vessel prices were about as low in 2001 through 2003 as they were in 1976 and 1977. However, when converted to real 2003 dollars, the ex-vessel prices from 2001 through 2003 were the lowest of the entire time period. The dramatic decline in ex-vessel prices in recent years is partially due to the dramatic growth in the supply of farmed salmon and trout and the concomitant decline in the price of substitutes for wild salmon.

The number of permits that will generate a reasonable average rate of economic return in the future depends critically upon the likely range of future ex-vessel prices, as well as the size of the salmon harvests. Chapter 4 of the report examines the issue of likely future returns in more detail.

Chart 1.
Bristol Bay Sockeye Salmon Ex-Vessel Price per Pound, 1975-2003:
Real 2003 Dollars and Nominal Dollars



Forecasts of Future Rates of Economic Return

Chapter 4 of the report provides forecasts of how future average rates of return in the Bristol Bay salmon drift gillnet fishery will vary depending upon the number of entry permits in the fishery and other assumptions about future conditions in the fishery. The chapter also provides an estimate of the “economic optimum number” under Standard One in Alaska’s limited entry law. The estimate of the economic optimum number of permits under Standard One ranged from 600 to 1,200 permits.

If future economic returns in the fishery were expected to vary as economic returns varied over the entire 1983-2003 time period, the economic optimum number of permits would likely remain near current permit levels.

However, the decline in ex-vessel prices, coinciding with a dramatic growth in farmed salmon and trout production and a concomitant decline in the price of farmed substitutes for wild salmon, suggests that economic returns will be lower in the future, reflecting these factors and the reality of more recent experience. The sharp decline in the market value of entry permits for the fishery and the large decline in participation rates suggest that fishermen have revised their expectations about future net returns sharply downward.

To make the forecasts, the authors developed an economic simulation model that is derived from relationships estimated from historic and survey data, and relies on assumptions about likely “future values” of key explanatory variables. The model was used to generate estimates for a “baseline scenario,” a “high ex-vessel price scenario,” and a “low ex-vessel price scenario.”

The results of these simulations are shown in Chapter 4 in real 2003 constant-value dollars. All scenarios assume that harvests will continue to vary in the same fashion as harvests varied over the 1978 through 2003 time period. However, the assumptions about future ex-vessel prices reflect the reality of the growth of the salmon farming industry. Therefore, the price forecasts tend to be much lower, on average, than average ex-vessel prices observed during the 1980’s and early 1990’s.

Ex-vessel prices are a critical part of forecasts of future net economic returns. If harvests are held constant, percentage change in ex-vessel prices lead to equal percentage changes in total gross earnings. Thus, forecasts of future economic returns are very sensitive to forecasts of future ex-vessel prices.

Because ex-vessel prices have recently declined to new lows, and future ex-vessel prices are of critical importance in an optimum number determination, CFEC contracted with Dr. Gunnar Knapp to help with forecasts of future ex-vessel prices. Dr. Knapp is a Professor of Economics at the University of Alaska Anchorage and is a recognized expert on world salmon markets. Dr. Knapp’s recommendation for a sockeye ex-vessel price forecasting equation was used in the CFEC economic simulation model of future net returns. Ex-vessel prices for the other Bristol Bay salmon species were related to the sockeye ex-vessel price.

The baseline simulation follows directly from Dr. Knapp’s equation, as well as from the other ex-vessel price equations and the assumptions about future harvest levels. The results of 100 simulations of the baseline scenario suggest that future average sockeye ex-vessel prices will be

somewhat lower in real terms than any observed over the 1975-2003 time period. The overall mean of the sockeye ex-vessel price from the 100 simulations was \$0.41 per pound, measured in real 2003 “constant-value” dollars. Forecasts of ex-vessel prices for the other salmon species were also near historic lows. The results, coupled with forecasts of average operating costs per permit, suggest that a reduction to around 900 permits would be needed to achieve positive average economic profits in the future. Even at 900 permits, some of the simulations twenty-five years into the future suggest that average profits may still be negative.

Table 2. Sockeye Salmon Ex-vessel Price Forecasts. Mean Prices From the Distribution of Sample Means of 100 Simulations.

Mean Prices are in Real 2003 Dollars per Pound.

Scenario	Overall Mean	Minimum Mean	Maximum Mean
Baseline	\$ 0.41	\$ 0.35	\$ 0.47
High Price	\$ 0.54	\$ 0.45	\$ 0.61
Low Price	\$ 0.29	\$ 0.24	\$ 0.33

The two other scenarios were run to put boundaries around the economic optimum number. The scenarios reflect the fact that there is great uncertainty about future ex-vessel prices and hence future economic profits. One can come up with many hypotheses suggesting why ex-vessel prices in the future could be higher or lower than under the baseline case. Some of these theories are mentioned in Chapter 4 and are discussed in more detail in Dr. Knapp’s report to the commission. The results from the economic simulation model are highly sensitive to future ex-vessel price

assumptions, and these two scenarios highlight that sensitivity.

The “high ex-vessel price” scenario simply increased sockeye ex-vessel price forecasts by 30%, which also increased the forecast for the other salmon species. The overall mean of the sockeye ex-vessel price from 100 simulations of this high price scenario was \$0.54 per pound. Simulations under this scenario suggest that positive average economic profits per permit in the future could be achieved with a reduction to around 1,200 permits.

The “low ex-vessel price” scenario simply decreased the sockeye ex-vessel price forecast by 30%, which also decreased the forecast for the other salmon species. The overall mean of the sockeye ex-vessel price from 100 simulations of this low price scenario was \$0.29 per pound. Simulations under this scenario suggest that positive average economic profits per permit in the future would be achieved only with a reduction to around 600 permits. Table 3 shows the results of the 3 simulation scenarios. It illustrates the overall estimated average profits derived from varying levels of permits for the baseline, the high price, and the low price scenarios. Note again the forecast is the result of 100 simulations; therefore, the table also shows the range (the minimum and maximum) of the average estimated profits generated by the simulations.

Results from the economic simulation model are highly sensitive to the assumptions about future ex-vessel prices. Modifications of other elements of the model, such as the cost function, could also lead to significant changes.

Table 3. Average Economic Profits by Number of Permits for the Baseline, High Price, and Low Price Scenarios. Distribution of Means From 100 Simulations of 25 Years into the Future Assumes That All Permits Will be Fished

Number of Permits	Baseline Scenario Estimated Profits			High Price Scenario Estimated Profits			Low Price Scenario Estimated Profits		
	Mean	Minimum	Maximum	Mean	Minimum	Maximum	Mean	Minimum	Maximum
500	\$25,726	\$18,639	\$31,904	\$44,582	\$34,890	\$53,117	\$6,843	\$2,361	\$10,942
600	\$16,078	\$10,424	\$21,061	\$31,760	\$23,932	\$38,627	\$374	-\$3,106	\$3,697
700	\$9,313	\$4,695	\$13,501	\$22,727	\$16,244	\$28,388	-\$4,121	-\$6,873	-\$1,356
800	\$4,337	\$496	\$7,923	\$16,052	\$10,576	\$20,883	-\$7,394	-\$9,615	-\$5,037
900	\$542	-\$2,697	\$3,658	\$10,934	\$6,239	\$15,157	-\$9,865	-\$11,800	-\$7,758
1,000	-\$2,435	-\$5,196	\$306	\$6,899	\$2,826	\$10,636	-\$11,783	-\$13,495	-\$9,873
1,100	-\$4,823	-\$7,199	-\$2,339	\$3,646	\$75	\$6,992	-\$13,303	-\$14,837	-\$11,555
1,200	-\$6,773	-\$8,915	-\$4,488	\$974	-\$2,182	\$3,999	-\$14,531	-\$15,919	-\$12,919
1,300	-\$8,390	-\$10,353	-\$6,277	-\$1,254	-\$4,064	\$1,505	-\$15,537	-\$16,803	-\$14,045
1,400	-\$9,751	-\$11,561	-\$7,788	-\$3,138	-\$5,656	-\$598	-\$16,374	-\$17,537	-\$14,986
1,500	-\$10,908	-\$12,589	-\$9,075	-\$4,749	-\$7,036	-\$2,378	-\$17,077	-\$18,153	-\$15,780
1,600	-\$11,902	-\$13,471	-\$10,182	-\$6,139	-\$8,277	-\$3,916	-\$17,674	-\$18,675	-\$16,456
1,700	-\$12,764	-\$14,235	-\$11,143	-\$7,351	-\$9,358	-\$5,258	-\$18,185	-\$19,122	-\$17,037
1,800	-\$13,518	-\$14,903	-\$11,986	-\$8,416	-\$10,307	-\$6,438	-\$18,627	-\$19,507	-\$17,541
1,900	-\$14,183	-\$15,491	-\$12,729	-\$9,359	-\$11,148	-\$7,484	-\$19,013	-\$19,843	-\$17,982
2,000	-\$14,773	-\$16,013	-\$13,390	-\$10,200	-\$11,897	-\$8,417	-\$19,352	-\$20,138	-\$18,370

Summary: Optimum Number Standard One

Given the uncertainties about the future, the broad range of 600 to 1,200 permits was selected for the “economic optimum number” under Standard One. Even the upper bound of this range would require a substantial decrease in the number of permits from current levels.

(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;

This standard brings the concepts of manageability, orderliness, and efficiency into the optimum number determination. "Sound fishery management techniques" are necessarily interconnected with the need to manage for resource conservation. This is the optimum number standard that most closely addresses the resource conservation purpose of the limited entry amendment to Alaska's constitution. The commission has referred to this standard as the “management optimum number.”

Optimum Number Standard Two: The Management Optimum Number

The second optimum number standard, AS 16.43.290(2), reads as follows:

To derive the range of values for the management optimum number, CFEC staff relied heavily upon the expertise of the Alaska Department of Fish and Game (ADFG or Department) and its fishery managers. The commission believes that persons charged with the responsibility of successfully managing a safe and orderly commercial fishery for resource conservation would best be able to outline the nature of the management problems which they face.

For purposes of this study, 800 to 1,500 permits will be used as the best estimate for the range of permits under optimum number Standard Two. This range is based largely upon two concepts and a set of questions asked of the Department in a formal memo sent by the commission to ADFG Commissioner Kevin Duffy in September, 2003. In addition to the direct questions regarding optimum numbers, the commission's memo asks many other questions about managing the Bristol Bay drift gillnet fishery. The Department's answers provide an important background to understand their advice regarding the management optimum number range.

In addition to the formal memo sent to Commissioner Duffy, CFEC staff interviewed ADFG biologists several times, and were able to observe management of the fishery first-hand during the 2002 season. Through this experience, the CFEC staff was able to gain a greater understanding and appreciation for the extremely complex and challenging task that biologists have in managing the Bristol Bay salmon fisheries. Chapter 2 in the main report provides details on how the fishery is managed. It outlines the most important considerations that biologists have to account for to accomplish their management goals; it also provides a summary of some

of the principal regulations that affect management. Chapter 2 is summarized below.

Management of the Bristol Bay Drift Gillnet Salmon Fishery

The Bristol Bay management area encompasses all coastal and inland waters east of a line from Cape Newenham to Cape Mensehikof. The area is divided into five fishery management districts, which correspond to the major river systems of the region. The salmon fishery is managed by the Alaska Department of Fish and Game.

Sockeye salmon are the predominant species harvested, comprising approximately 91% of the pounds of salmon harvested in the region since 1975. Both set and drift gillnet gear are allowed in Bristol Bay, forming two separate fisheries that occur concurrently. There are currently 1,857 potentially active entry permits in the drift gillnet fishery, and 992 in the set gillnet fishery.

Figure 2 illustrates the pattern of commercial salmon harvests in Bristol Bay. From 1900 through 2003, harvests averaged 15.6 million fish. Returns and harvests from 1970 to 1973 were exceptionally low, possibly resulting from harsh winter weather during that period. By 1978, however, harvests improved dramatically. The average harvest from 1978 through 2003 was 25.2 million fish, considerably higher than the long-term average. A series of especially high harvests occurred from 1989 through 1996, averaging 35.1 million fish. The record high harvest was in 1995, when 45.4 million fish were taken.

Bristol Bay Salmon Harvests

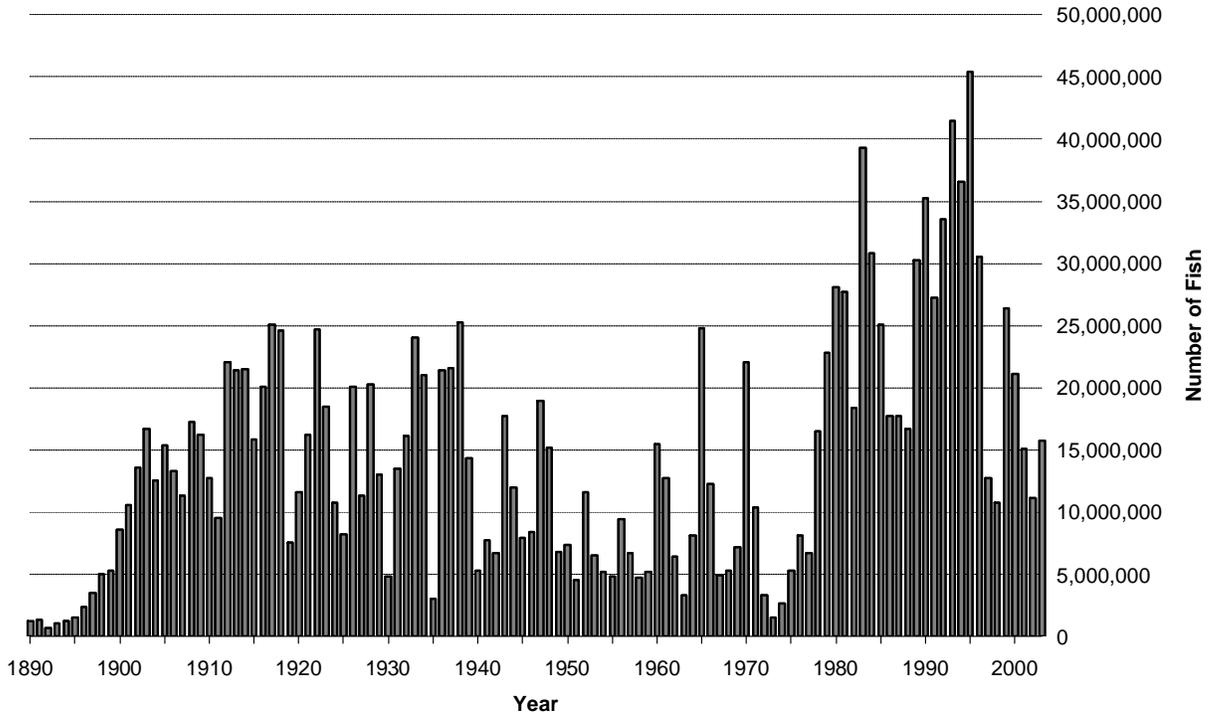


Figure 2

Current Management Objectives

ADFG's management of the salmon fisheries in Bristol Bay includes the regulatory objectives of managing for sustained yields (largely accomplished by adhering to escapement goals), maintaining the genetic diversity and overall health of the escapement, providing an orderly fishery, helping to obtain a high-quality fishery product, and harvesting fish consistent with regulatory management plans. Of all these goals, regulations state that obtaining escapements and maintaining the genetic diversity of the escapement shall be given the highest priority.

Escapement Goals and Maximum Sustained Yield

Escapement goals are established through scientific review and in collaboration with the Board of Fisheries. Sockeye escapement goals for the major spawning systems are based upon the principle of maximum sustained yield (MSY), which is the greatest average annual yield that one could expect from a stock of fish without harming the population.

Managing for MSY requires a high degree of scientific information and monitoring of a salmon stock's performance. Under MSY there is an optimum range of escapement that

produces, on average, the highest harvests. The ranges take into account that return-per-spawner rates can exhibit wide variation. From year-to-year, spawning success fluctuates and the survivability of immature salmon in the fresh and salt-water environments is highly variable. Escapement goal ranges also account for uncertainties in the data used to estimate spawning productivity.

Escapement goals that provide the greatest potential to achieve MSY are called biological escapement goals (BEG). Each major spawning system in Bristol Bay has a BEG for sockeye salmon. There is also a BEG for chinook and coho salmon on the Nushagak River.

Sometimes there are biological, allocative, or economic considerations apart from MSY that require ADFG to manage for an escapement level that is different from the biological escapement goal. These are referred to as optimal escapement goals (OEG), which are established by the Board of Fisheries and set out in state regulatory management plans. When an OEG is set, it becomes the primary management objective, taking precedent over biological escapement goals. In Bristol Bay, the Naknek and Nushagak River sockeye runs are the only stocks that currently have an OEG.

In systems where BEG's cannot be estimated due to a lack of scientific information on salmon returns, ADFG may establish a sustainable escapement goal (SEG), which is an estimate based upon historical performance and/or indices known to conserve the stock. Maximum sustained yield might not be attained with these goals, but the stock should remain healthy while still allowing some level of commercial harvest. Apart from sockeye

salmon, there are several stocks of other salmon species in Bristol Bay with escapement goals that fall into this classification.

Genetic Diversity and Healthy-Fish Escapement

Along with the goal of attaining escapement goals, state regulations direct ADFG to conserve distinct genetic races of fish within a spawning system. Large spawning systems, such as those found in Bristol Bay, contain multiple stocks of fish that return to particular areas to spawn. Preserving the genetic diversity of spawning stocks ensures the overall health of the system. ADFG attempts to maintain this diversity by allowing proportionate catches and escapements to occur throughout the run, avoiding excessive harvests or escapements at any particular time. Additionally, biological escapement goals themselves are designed to protect the genetic integrity of a spawning system. If escapement levels are set correctly, small stocks of fish will receive adequate escapements, even at the lower limits of escapement goals.

ADFG also takes efforts to maintain the quality, or health, of escaped fish. Fish that escape through an active fishery are often harmed by gillnets; biologists feel these fish are less likely to spawn successfully. By scheduling frequent fishery closures throughout the run, ADFG allows healthy, untouched fish to escape upriver. As mentioned, these "pulse" closures also help to maintain the genetic diversity of the escapement. ADFG also advances healthy escapement by attempting to schedule fishery openings to occur near the high tide; fishing during periods of deeper water allows more fish to escape unharmed by gillnets. There can be trade-offs to frequent fishery closures, however. Although they may facilitate healthy and genetically diverse escapement,

they can also lessen management precision; it is easier to exceed escapement goals with frequent closures, particularly when the run is strong and large numbers of fish enter the district quickly.

Product Quality

High product quality is another goal of Bristol Bay salmon management. ADFG can manage for the quality of the delivered catch by scheduling shorter openings. Closed periods - even if they are short - allow fish to be delivered and processed sooner. However, as mentioned above, short openings with frequent closures can also present problems with achieving escapement goals.

Bristol Bay salmon management plans call for the use of special inriver harvest areas that are used under certain conditions. The special inriver harvest areas are much smaller than the general districts. Salmon management plans specify when fishing will be restricted to the special inriver harvest areas; the smaller areas are used to adjust harvest rates on specific stocks of fish when it is necessary to lower rates of interception of fish between river systems, or to allocate fish between the set and drift gillnet fisheries.

Although special inriver harvest areas are designed to help achieve certain management goals, quality is reduced when fisheries move from the larger districts into the inriver harvest areas. In the small inriver areas where fishing conditions are crowded, currents are especially strong and boats frequently have to drag their nets to keep them from snagging or tangling with other nets, or to keep the nets from drifting out of the allowable fishing area. Fishing in this fashion

damages captured fish and lowers product quality.

Managers also have more difficulty managing for the biological escapement goals of systems where inriver fisheries occur. When fishing effort is spread out in the normal district, managers have more advanced notice when large numbers of fish quickly enter the district, but when fishing is restricted only to the special harvest areas, managers lose this response time, making it more likely to exceed escapement goals. Managers also have more problems balancing allocations between drift and set gillnet fisheries in the inriver fisheries.

Orderly Fisheries

Orderly fisheries are supported by regulations that discourage congestion on the fishing grounds. There are regulations for keeping a minimum distance between set and drift gillnet gear and for reducing the amount of allowable gear when fisheries are restricted to the small, inriver special harvest areas. ADFG and the Board of Fisheries also promote orderliness through regulations for more effective fisheries enforcement, such as the requirements for marking and identifying gear and for restrictions on how many fathoms of gillnet each vessel may have onboard.

Orderliness is also a consideration when ADFG sets the length of fishery openings. Shorter, more frequent openings tend to promote orderliness, especially in some districts. Before a fishery opening, fish will usually be distributed throughout the district, but if there are enough boats in the district most of the fish will be caught shortly after the fishery opens. After this initial phase of harvest, oftentimes the only productive fishing that remains will be on the district boundary line, where fresh incoming fish can

be caught. The infamous Bristol Bay “line fisheries” result, with boats extremely congested at the district boundary. Collisions and other accidents are frequent, and fishery violations are common.

If fishing is closed shortly after the initial harvest phase, then line fisheries are less likely to occur. Fresh fish can enter the district, again distributing themselves throughout the area, where they can be harvested in the next fishing period. As mentioned above, these short “pulse” periods also serve to enhance product quality and allow escapement to occur throughout the run. Recall, however, that short openings can sometimes make it difficult for biologists to manage for escapements. It is easier to exceed escapement goals if there are frequent closures, especially when returns are large.

Orderly fisheries also have meaning in the avoidance of wasting harvested fish. For example, when processors reached their capacity during the 1999 season, ADFG reduced fishing time to avoid wasting fish that could have spoiled before they were processed.

Although the small inriver harvest areas that are specified in some management plans are designed to promote conservation and to help allocate fish among gear and user groups, they also interfere with managing for orderly fisheries. The inriver areas are much smaller than the full districts, and orderliness declines when vessels crowd into small areas. Collisions between vessels are more frequent, gillnets tangle, and regulation violations increase - particularly violations for fishing “over the line,” or fishing outside of the allowable fishing district.

Inseason Management

ADFG’s most important management objective is to achieve escapement goals, which is accomplished mainly by restricting fishing time and allowing fishing only in the terminal areas of each management district. However, actually attaining these escapement goals can be very difficult, involving a complicated set of considerations. The sockeye salmon run occurs over a very short time period. The vast majority of the fish enter the streams in only a two-week period, but the fishing power of the drift and set gillnet fisheries is extraordinary; the fishing fleet can harvest enormous numbers of fish in a short time. The behavior of the fish can also complicate management; how quickly and in what direction fish move through a fishing area can dramatically affect their vulnerability to fishing gear. In addition to achieving escapement goals, ADFG must also balance the other management objectives of fishery allocations, high product quality, providing for an orderly fishery, and maintaining the genetic diversity of fish populations by spreading escapements proportionately over the entire run.

To judge the size, movements, and timing of salmon returns, ADFG receives inseason information from a variety of sources, each one giving managers more information that helps them determine what actions are needed to achieve their objectives. The size and timing of the run is the principal determining factor in how much fishing time is allowed in a district. Other factors that may be considered to determine the amount of fishing time include the number of fishing boats (effort) in the district, fishery allocations, orderly fisheries, healthy and genetically diverse escapement, weather and tides, and processing capacity.

Perhaps the most important tool biologists have in managing for escapement goals are inseason run predictions that compare cumulative and daily escapement levels with historical run sizes and timing. Other sources of information used by biologists include preseason forecasts, test fishing operations, salmon age class determination, aerial surveys, and the performance of the fishing fleet, measured as catch per unit of effort.

Regulatory management plans also determine many management actions. These plans, adopted by the Board of Fisheries, call for specific adjustments to fishing time, fishing areas, and allowable gear. As mentioned above, the plans are mainly designed to allocate portions of the harvest to specific groups of fishermen (set gillnet or drift gillnet), or to help achieve escapements under certain conditions.

The body of regulations that govern salmon fishing in Bristol Bay help accomplish management goals, or they are designed to help enforce the fishery rules. Other regulations provide measures to limit competition between fishing operations, and serve mainly social or economic purposes.

As mentioned above, Bristol Bay salmon management plans mainly address salmon escapement and/ or interception issues. They also provide guidance on the allocation between user groups. In addition to salmon management plans, there are rules that restrict how much gear each vessel may carry and deploy, and a rule requiring vessels to be no longer than 32 feet in overall length. There are also restrictions on the transfer of permit holders and vessels between districts.

Concepts Used for Optimum Number Standard Two

The Bristol Bay drift gillnet fishery optimum number report builds upon earlier commission understandings of Standard Two to bracket the management optimum number within a range of values. Care has been taken to ensure that concepts used herein comport with the purposes of limited entry cited in the law, and with the purposes of the limited entry amendment to Alaska's constitution. Recall the second optimum number standard reads as follows:

(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;

Fundamental to the application of Standard Two in the determination of an optimum number is an understanding of the concepts of: “*harvesting the allowable commercial take...in an orderly, efficient manner,*” and “*consistent with sound fishery management techniques.*”

ADFG manages for maximum sustained yield of the Bristol Bay sockeye salmon stocks, and for a long-term sustainable yield for other salmon stocks in Bristol Bay. Successfully attaining escapement goals is consistent with Alaska’s constitutional mandate for resource conservation, and is also consistent with the limited entry constitutional amendment and “sound fishery management techniques” under Standard Two of the state limited entry law.

“Sound fishery management techniques” as interpreted under Standard Two should also include the other regulatory management goals of maintaining the genetic diversity and the overall health of the escapement, providing for orderly fisheries, helping to obtain a high-

quality fishery product, and harvesting fish consistent with regulatory management plans.

Harvesting fish in an orderly manner is an important management goal and needs to be considered under optimum number Standard Two. Orderly harvests include the avoidance of accidents that occur during the fishery, and effective enforcement of fishery regulations. Orderly fisheries are also linked to resource conservation, as understood by the framers of the state constitution and by the legislature when they drafted the amendment allowing Alaska's limited entry program. The link between orderly fisheries and resource conservation is described in detail in Chapter 5 of the main report. The link includes not only avoiding the waste of fish and wise use of the fishery resource, it also includes the notion of containing excessive labor and capital in the fishery, to the extent that the waste associated with a disorderly fishery can be avoided.

CFEC relied heavily upon the advice of ADFG managers to help determine the range of permits for the management optimum number. It should be noted that some questions about the fishery were difficult to answer definitively due to the inherent uncertainties involved and the variety of circumstances that managers may face. Nevertheless, to address the optimum number question, CFEC needed the expert opinions of managers, even where scientific evidence was inadequate or lacking. Because of this, many of the answers received from ADFG should be viewed as the expert judgments of those charged with the management tasks.

To bracket the management optimum number of permits, the Department was asked to answer two questions which

would attempt to establish boundaries for the management optimum number. The Department was asked to answer the questions assuming that existing regulations would remain unchanged, and that there would be at least enough processing capacity in Bristol Bay so that inseason management would not be significantly affected. The commission asked for these assumptions to establish benchmarks that would help the Department form their answers. Although it is entirely possible that new regulations and changes in processing capacity could affect future management of the fishery, at this time it can only be speculative as to what those changes might be.

Under the first conceptual boundary for management optimum numbers, the Department was asked to answer the following question:

Approximately how many fishing operations (drift gillnet permits) would actually be needed (the minimum required) to harvest, in an orderly and efficient manner, and consistent with sound management techniques, the allowable Bristol Bay salmon drift gillnet harvest from all districts during years with the highest expected returns over the next 20 to 30 years?

The Department's answer to the question was 1,400-1,500 drift net permits. The Department noted that the estimate was not based on a systematic analysis but was based upon the best professional judgment of the persons who have been managing the fishery in recent years. They were also careful to note that their estimates were made using the assumptions of adequate processing capacity and unchanged regulations. However, they said that processing capacity could indeed affect inseason management decisions in the future, noting that capacity has declined significantly

in the last 5 years. They indicated the likelihood is strong that processing capacity will affect management, particularly during years of large sockeye returns.

Note that the commission's question includes the statutory language that the harvest should occur in an orderly and efficient manner and consistent with sound fishery management techniques. The question in the CFEC memorandum to the Department came after the discussion on "orderly" cited above. Harvests "in an orderly and efficient manner" are part of optimum number Standard Two and are part of the resource conservation definition used herein. Resource conservation is also one of the constitutional purposes of limited entry. An objective would be to pick a number of permits that would avoid the most acute types of wastage caused by a disorderly fishery.

The CFEC question asks for the *minimum* number of units of gear needed to harvest the highest expected returns in an orderly, efficient manner. The minimum number of permits needed in years of the highest expected runs could represent considerable excess harvesting capacity in other years with lower returns. Moreover, it is possible that large excess harvesting capacity in years with lower run sizes could make it difficult to manage the fishery in an orderly fashion.

Under the second conceptual boundary for management optimum numbers, the Department was asked to answer the following question:

Approximately how many fishing operations (permits) could be effectively managed, in an orderly and efficient manner, and consistent with

sound management techniques, in the Bristol Bay salmon drift gillnet fishery during years with the lowest expected harvests over the next 20 to 30 years?

The Department's answer to this question was 800 to 900. Again, the Department says this represents the professional judgment based on the experience of those managing the fishery and they characterize the estimates as subjective and qualitative.

Summary: Optimum Number Standard Two

Using the Department's advice, and considering the concepts outlined above, this report recommends that 800 to 1,500 permits should be used as the best estimate of the range of permits for the fishery under optimum number Standard Two.

Optimum Number Standard Three

AS 16.43.290(3) contains the third optimum number standard under Alaska's limited entry law. The standard reads as follows:

(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.

John Martin, in a contract report done for CFEC in the early years of limited entry, indicated the commission believed that: "*The third criteria [sic] outlined in the statute was to be utilized to adjust the economic and management optimum numbers as required by local employment conditions.*" The authors believe that Standard Three allows the commission to moderate changes

suggested by the other two standards when appropriate. Moreover, the standard is probably most applicable when fleet reductions are being contemplated.

Under Alaska's limited entry law, if the optimum number is greater than the number of permits outstanding, then the commission is required to put additional permits into the fishery. 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 economic 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 permit holders and permit values, while exceeding the constitutional purposes of limited entry.

In contrast, when the optimum number is less than the maximum, the commission may establish a fisherman-funded buyback program to reduce the number of permits to the optimum number. Imposition of a buyback assessment might force some fishermen to exit the fishery who cannot continue to fish profitably and pay the tax,

and who have few other occupational alternatives. Such individuals would arguably have low opportunity costs, and in some instances it might be better if they stayed in the fishery. Under such conditions, using Standard Three to achieve a reasonable balance might lead to a somewhat higher optimum number than implied by the first two standards in order to avoid disenfranchising persons with few other alternatives.

Thus, the commission believes the third optimum number standard should be used when the results from the first two standards need to be moderated to avoid serious economic hardship to those currently engaged in the fishery. When the optimum number for the fishery is adopted as a range with a minimum and a maximum, any adjustments under the third optimum number standard could be accommodated through selection of a higher target number within the range.

Recommended Optimum Number

Chapter 6 of the report summarizes the findings and recommends an optimum number for the Bristol Bay salmon drift gillnet fishery as a range from 800 to 1,200 permits. The authors believe this range provides a reasonable balance of the three optimum number standards.

The commission's early work on optimum numbers in the 1970's bracketed the first two optimum number standards into bounded ranges. Given the large uncertainties about the future, many believe that defining the optimum number for a fishery as a bounded range of numbers rather than as a single number would make the optimum number

determination more meaningful and defensible.

In a sense, a bounded range acknowledges the fact that the future has many uncertainties, and even if there were no uncertainties, future economic returns from a fishery would still vary considerably on an annual basis. Recent changes in Alaska's limited entry law have made it clear that the optimum number can be an optimum range of numbers.

Choosing an optimum range of numbers may also provide more flexibility with respect to buyback options. The law allows the commission to establish a buyback program with the object of reducing the number of permits to the optimum. An optimum range of permits may provide more choices for a target number for a buyback program.

The recommended range of 800 to 1,200 is within the estimated bounded ranges for optimum number Standards One and Two. Since it is a wide range, the authors believe there is ample room to accommodate any concerns under optimum number Standard Three. In short, the range allows for some flexibility in choosing a fleet reduction target and provides a reasonable balance among the three standards.

The "economic optimum number" range under Standard One is estimated to be 600 to 1,200 permits. The results of the simulations under the baseline case scenario, which is the scenario the authors believe is most likely, showed the overall average future profits from 100 simulations were positive when there were about 900 permits in the fishery, and were negative at higher permit levels. With 800 permits being fished under the baseline case,

average profits were positive in all 100 simulations.

Under the "low ex-vessel price scenario," overall average future profits per permit from 100 simulations were positive at 600 permits but negative at higher permit levels. Under the "high ex-vessel price scenario," overall average profits per permit were positive at 1,200 permits, but negative at higher permit levels. However, if the "high ex-vessel price scenario" would eventually prove to accurately reflect the future, and the number of permits is reduced to 600, then average profits per permit and permit values at 600 permits might be high enough to put at risk a portion of the fleet reduction if a court challenge emerges on the "degree of exclusivity" of the fishery.

Using 800 as a lower bound for the optimum number range should reduce the risk that the optimum number determination would face a legal challenge that the fishery is "too exclusive" under Alaska's constitution after a permit reduction has occurred. The warnings of Alaska's Supreme Court in *Johns* should not be taken lightly. The commission would not want to be ordered to put more permits back into the fishery after permit holders have invested in a buyback program and permit reduction.

The "management optimum number" under optimum number Standard Two also had 800 permits as a lower bound. As such, it represents the Department of Fish and Game's rough estimate of the maximum number of permits they could manage effectively in an orderly and efficient manner while achieving other management objectives during years of the lowest expected run sizes.

Resource conservation is one of the stated reasons for allowing limited entry under the limited entry amendment to Alaska's constit-

ution, and the available evidence suggest that “wise use of resources” was the intended definition of resource conservation. Permit levels above 800 permits will make it more difficult for managers to run an orderly fishery and achieve their other objectives in some years. Thus it would be difficult to argue that 800 permits is “too exclusive” from a resource conservation perspective if it is the maximum number of permits that can be effectively managed in an orderly manner during low run years.

Should the “low ex-vessel price” scenario eventually prove to be true, the optimum number range could be revised downward in the future under the authority provided in AS 16.43.300. A conservative approach to fleet reduction should help discourage a legal challenge if future ex-vessel prices and profits prove to be better than forecasted. If future ex-vessel prices and profits prove to be worse than the baseline case, then the optimum number range can be revised downward in the future.

The recommended upper bound of the optimum number range is 1,200 permits. Based upon 100 simulations of the “high ex-vessel price scenario,” overall average profits permit were positive at 1,200 permits, but negative at higher permit levels. The high ex-vessel price scenario is the most optimistic future scenario in this report; therefore, the recommended upper bound of the “economic optimum number range” is 1,200 permits under the law’s optimum number Standard One.

Twelve hundred permits also falls within the “management optimum number range” under optimum number Standard Two in the law. This number of permits may represent considerable excess capacity in some years, and may make it difficult to

manage the harvest in an orderly, efficient manner in some years. However, it is also below the upper bound of the management optimum number range of 1,500 permits.

As noted previously, the Department of Fish and Game’s memorandum to the commission suggested that it might take up to 1,400 to 1,500 permits to harvest the available surplus in an orderly and efficient manner and consistent with sound fishery management techniques in years of the highest expected returns. The answer assumed that current regulations would continue unchanged.

The Department’s answer may raise a concern that a lower number may be inadequate to harvest the available surplus in an orderly and efficient manner in years of the highest expected returns. Nevertheless, the Department’s answers to other questions suggest that the available surplus could usually be taken by adjusting the number of openings and/or the length of openings, depending upon the fleet size. Moreover, the Alaska Board of Fisheries changes regulations frequently and may be able to alter regulations to help a smaller fleet harvest any available surplus in an orderly and efficient manner.

For these reasons, the authors believe that a lower bound for the optimum number range of 800 permits, and an upper bound for the optimum number range of 1,200 permits would best achieve a reasonable balance of the three optimum number standards. These bounds would also serve the constitutional purposes of preventing economic distress to fishermen and promoting resource conservation.

Other Considerations

The commission, the Alaska Board of Fisheries, and participants in the fishery will need to carefully consider what should happen next after an optimum number regulation is established. An optimum number determination that is below the number of permits currently outstanding in the fishery would indicate the Commission believes a fleet consolidation is appropriate under the limited entry law and Alaska's constitution. There may be several alternatives for promoting fleet consolidation.

One alternative would reduce the number of permits in the fishery using a fisherman funded buyback program developed under the authority of Alaska's limited entry law. The commission could work with stakeholders to develop a state-managed buyback program under AS 16.43.310. For a buyback of use-privileges to occur entirely at one point in time, a source for the requisite funds would be needed. If the funds are in the form of a "loan" with a required loan payback, then the commission would need to establish regulations for buyback assessments under AS 16.43.310(b). Other agencies, such as the Department of Revenue, would also need to be involved.

However, under recent changes in the limited entry law, establishment of an optimum number that is less than the number of permits outstanding no longer automatically triggers a fisherman-funded buyback program. Thus care should be taken to make sure that any fisherman-funded buyback proposal has adequate support among permit holders and the fishing industry.

A second alternative for reducing the number of permits might be for permit holders to conduct a privately run buyback program. In 2002, the legislature passed a law (Chapter 134 SLA 2002) allowing permit holders to form a qualified salmon fishery association and conduct fleet reductions by private initiative. Once the qualified salmon fishery association is formed, fishermen can vote to assess themselves up to 5% of the value of the salmon sold in the fishery. The legislature may then appropriate the money collected from the assessment to the Department of Fish and Game for funding the association. The fishery association must develop an annual operating plan to expend the funds, and consolidation of the fishing fleet must be a valid purpose of the plan. Presumably, the association could contract with persons to retire their permits from the fishery.

A third possible alternative for a fisherman-funded buyback program might be Section 312 of the Magnuson-Stevens Fishery Conservation and Management Act. Under this section, the buyback program would be run by the federal government, and great care would be needed to assure that the program comports with both state and federal law. Funding for such a program would again be in the form of a "loan" that would need to be paid back by assessments on the remaining permit holders. However, it is not clear that this law is directly applicable.

It might also be possible for stakeholders to seek special funding for a buyback program that was in the form of a "grant" rather than in the form of a loan that needed to be repaid by permit holders. Such funding would make a buyback option much more attractive to permit holders.

Development of any buyback program will take time and may require more statutory changes as well as regulatory changes. In the

interim, an optimum number in the range recommended in the report will signal to the Alaska Board of Fisheries and to permit holders in the fishery that the commission believes a fleet reduction makes sense under Alaska's limited entry law and would be defensible under Alaska's constitution.

The Alaska Board of Fisheries could continue to consider regulatory proposals that would encourage voluntary fleet consolidation. Some ideas for such regulations do not require an actual

reduction in the number of entry permits or changes to laws. Indeed, the Board has already experimented with a voluntary fleet consolidation regulation for the Bristol Bay salmon drift gill net fishery during the 2004 season. Such efforts by the Board may reduce harvesting costs and increase profitability for permit holders, even at existing permit levels. The commission can support the efforts of the Board and the fishing industry to search for alternative ways to encourage fleet consolidation, even if those alternatives are viewed only as temporary interim measures.

Appendix H

State of Alaska

SARAH PALIN, Governor

Commercial Fisheries Entry Commission

8800 Glacier Hwy, #109

P.O. Box 110302

Juneau, AK 99811-0302

MEMORANDUM

To: Cook Inlet Salmon Task Force
Representative Craig Johnson, Chair
Senator Lyda Green, Vice-Chair
Representative Kyle Johansen
Representative Mark Neuman
Representative Bill Stoltze
Representative Mike Doogan
Senator Charlie Huggins
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Tom Wagoner

Date: October 7, 2008¹

Phone: (907) 790-6944 VOICE
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From: Bruce Twomley, Commissioner
Commercial Fisheries Entry Commission

Subject: Report to the Cook Inlet Salmon
Task Force on the Buy-Back
Program under the Alaska
Limited Entry Act

I. INTRODUCTION

The Cook Inlet Salmon Task Force requested Commissioner Bruce Twomley² of the Alaska Commercial Fisheries Entry Commission (CFEC or Commission) to report on the buy-back program authorized by the Alaska Limited Entry Act³ and whether the program could serve the goals of the Cook Inlet Salmon Task Force.

As discussed in detail below, whether the voluntary buy-back program authorized by the Limited Entry Act would be helpful to the Cook Inlet Salmon Task Force would depend upon whether the goals

¹ Updated January 11, 2013, to include data as of year-end 2011

² Having been appointed to the commission by Governor Jay Hammond in 1982, Commissioner Twomley has reported on buy-back to the Alaska Legislature and to the Board of Fisheries a number of times. Additionally, Twomley is the principal author of the only optimum number decision upheld by the Alaska Supreme Court in *Simpson v. State, CFEC*, 101 P.3d 605 (Alaska 2004).

³ AS 16.43.010--AS 16.43.990.

agreed upon by the Task Force are consistent with the three enumerated statutory purposes that authorize a buy-back program under the Limited Entry Act.⁴ To paraphrase the statutory standards, the Limited Entry Act requires a buy-back program to produce a well conserved, economically healthy fishery which includes a sufficient number of participants to protect the reliance interests of those dependent on the fishery. The statutory standards also suggest a long-term commitment to the well-being of the fishery and its participants.

The Limited Entry Act also authorizes a private opportunity to buy out limited entry permits. However, any form of reducing the number of entry permits in a commercial fishery raises a State Constitutional issue: if the fishery were to become too exclusive under the Alaska Constitution, the State would have an obligation to put more permits back into the fishery.

This report begins with a brief profile of two Cook Inlet commercial fisheries: the Cook Inlet salmon drift gillnet fishery and the Cook Inlet salmon set gillnet fishery. These fisheries show substantial Alaskan participation. More than 1,000 Alaska residents hold entry permits in one or the other.

Finally, this report examines the statutory authorization for a buy-back program under the Limited Entry Act as well as some constitutional and other issues that arise from implementation of a buy-back program.

II. PROFILES OF THE COOK INLET SALMON DRIFT GILLNET AND SET GILLNET FISHERIES

A. Cook Inlet Salmon Drift Gillnet Fishery

In the Cook Inlet salmon drift gillnet fishery, 569 permit holders are entitled to participate.⁵ During the 2011 fishing season, participants in the drift gillnet fishery grossed an estimated \$30.4 million.⁶

⁴ AS 16.43.290 [quoted in Section III. A. of this report].

⁵ Attachment A (presenting figures as of year-end 2011).

⁶ *Id.* (sometimes referred to as ex-vessel value).

Alaska residents hold 409 out of the 569 drift gillnet entry permits for this fishery.⁷ Alaska residents thus hold 72% of the Cook Inlet salmon drift gillnet entry permits.⁸ Additionally, a substantial number of permit holders (390) live in areas local to the fishery.⁹

For December of 2012, CFEC estimated the market value of a Cook Inlet salmon drift gillnet entry permit to be \$76,800.¹⁰ As of that date, a lower bound estimate of the combined value of all permits in the fishery would be \$43.7 million.¹¹ Over the years, permit values have ranged from \$11,700 in 2002 to \$202,058 in 1990.

B. Cook Inlet Salmon Set Gillnet Fishery

In the Cook Inlet salmon set gillnet fishery, 736 entry permit holders are entitled to participate.¹² During the 2011 fishing season, participants grossed an estimated \$20.1 million.¹³

Alaska residents hold 609 of the 736 entry permits for this fishery. Alaska residents thus hold 83% of the Cook Inlet salmon set gillnet entry permits.¹⁴ Additionally, a substantial number of permit holders (583) live in areas local to the fishery.¹⁵

For December of 2012, CFEC estimated the market value of a Cook Inlet salmon set gillnet entry permit to be \$15,800.¹⁶ As of that date, a lower bound estimate of the combined value of all set gillnet entry permits in the fishery would be \$11.6 million.¹⁷ Over the years, permit values have ranged from \$7,600 in 2004 to \$98,514 in 1990.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 2. Additionally, an explanation and examples of areas considered local to the fishery are provided in Attachment C.

¹⁰ http://www.cfec.state.ak.us/mnu_permit_values.htm.

¹¹ Individuals who continue to hold their permits tend to value them at more than the market price. In addition considering the additional costs of vessels, gear, fuel and other expenses, the value of entry permits represents only a portion of the investment in an individual fishing operation.

¹² Attachment B (presenting figures as of year-end 2011).

¹³ *Id.* (as of year-end 2011).

¹⁴ *Id.* at 2.

¹⁵ *Id.* Additionally, an explanation and examples of areas considered local to the fishery are provided in Attachment C.

¹⁶ http://www.cfec.state.ak.us/mnu_permit_values.htm

¹⁷ Individuals who continue to hold their permits tend to value them at more than the market price. In addition considering the additional costs of vessels, gear, fuel and other expenses, the value of entry permits represents only a portion of the investment in an individual fishing operation.

III. THE BUY-BACK PROGRAM UNDER THE ALASKA LIMITED ENTRY ACT

A. The Limited Entry Act

The function of a voluntary buy-back program under the Limited Entry Act is to reduce the number of limited entry permits in a commercial fishery to a number considered optimum for the fishery's long-term benefit.¹⁸

AS 16.43.290 authorizes the commission to undertake a voluntary buy-back program if the program would achieve "a reasonable balance" of the following three purposes reflected in the determination of:

- (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 short, a buy-back program under the Limited Entry Act would be required to reduce permits down to numbers that served three goals: (1) an economically healthy fishery providing a reasonable average rate of economic return to the participants; (2) a well conserved fishery capable of capturing the allowable commercial harvest "during all years" in an orderly and efficient manner; and (3) a fishery with a sufficient number of permits to protect the reliance interests of those individuals dependent on the fishery and lacking reasonably available economic alternatives. The "during all years" language together with the opportunity to modify an optimum number in response to substantial changes of circumstance over time suggest a long-term commitment to the well-being of a fishery and its participants. A buy-back program demonstrated to serve these goals would come within the commission's statutory authority

¹⁸ AS 16.43.290--16.43.330.

B. Constitutional and Other Issues Arising from the Buy-Back Remedy

Those familiar with buy-back under the Limited Entry Act are cautious about this remedy, because (among other issues) it raises a serious constitutional issue. Reducing the number of permits in a limited fishery creates the risk the fishery could be found to be too exclusive under Article VIII, Section 15 of the Alaska Constitution.¹⁹ To remain constitutional, a limited fishery cannot exceed the constitutional authority for limited entry: namely, to serve conservation and to prevent economic distress among fishermen.²⁰ Consequently, a limited entry program should impinge on the open-to-entry principles of the Constitution as little as possible.²¹ In the event a fishery does become too exclusive, the commission is required to put more permits back into the fishery.²²

The only means by which the commission can attempt to protect a buy-back program from unconstitutionality is to perform an optimum number study under AS 16.43.290 in order to determine the optimum number of permits for the fishery.²³ The commission would require at least a year and one-half to complete optimum number studies of the Cook Inlet drift and set net fisheries. However, because of the constitutional nature of the issues entailed in an optimum number study, a court could always second-guess the commission and make an independent determination that a fishery had become too exclusive.²⁴ If a fishery were found to be too exclusive, the commission has the duty to create and sell more permits for the fishery.²⁵ The possibility of adding more permits back into a fishery creates an obvious risk for those who finance a buy-back program.

To finance a buy-back program, the commission is authorized to assess fishermen up to 7% of their gross earnings.²⁶ An investment, such as a state loan to be repaid over time from the assessment would be necessary for a program to have an initial impact making it practicable for remaining fishermen to tax themselves to pay off the cost. There is no statutory provision, however, for any initial

¹⁹ *Johns v. CFEC*, 758 P.2d 1256, 1265-1266 (Alaska 1988).

²⁰ *Id.* at 1266.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Simpson v. State, CFEC*, 101 P.3d 605, 609 (Alaska 2004).

²⁵ *Johns*, 758 P.2d at 1266; *Simpson*, 101 P.3d at 613-614; and AS 16.43.330.

²⁶ AS 16.43.310. However, actually imposing a tax on permit holders already suffering from economic pressure would be difficult unless a referendum of the affected fishermen supported the measure. By analogy, the legislature required a favorable vote by 2/3's of all permit holders before a salmon fishery association could institute an assessment for the purpose of fleet consolidation. AS 43.76.230.

investment in a buy-back program. Without a funding mechanism for a front-loaded purchase and retirement of permits, such a program may attract little support from the permit holders. A buy-back program under the Limited Entry Act would be entirely voluntary.²⁷

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

Finally, regulatory intervention in the Cook Inlet drift and set net fisheries may hinder efforts to conduct a meaningful optimum number study. The *Vanek* case documents the fact that, from 1996 through 2002, the Alaska Board of Fisheries reduced fishing opportunities available to both the drift and set net fisheries.²⁸ However, well before the period of time addressed in the *Vanek* case, there was considerable pressure on the Board to restrict fishing in these two fisheries. In response, by 1990, the Entry Commission made the Cook Inlet drift and the Cook Inlet set net fisheries high priorities for completing adjudications of pending applications, in order to reduce participants to the maximum numbers as soon as practicable.

This kind of human, regulatory intervention in the Cook Inlet drift and set net fisheries may create an obstacle to a meaningful optimum number analysis. In determining optimum numbers, CFEC normally gathers all of the data and creates models in an attempt to anticipate the effects of known variables that respond to natural and market conditions. 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 of these Cook Inlet fisheries presents 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.²⁹

²⁷ AS 16.43.300(b).

²⁸ *Vanek v. Alaska Board of Fisheries*, AK Supreme Court No. S-12579, Opinion No. 6308 (Sept. 19, 2008) at pps. 2-4.

²⁹ Other buy-back related issues include the substantial cost of retiring unfished permits and the likelihood that unrestrained fishing power could dissipate favorable effects of buy-back over time.

C. A Private Alternative to the Formal Buy-Back Program

As discussed above, buy-back under the Limited Entry Act is a cumbersome and issue-laden remedy. The Limited Entry Act, however, also facilitates a much simpler opportunity to buy out limited entry permits. Under AS 16.43.150(i), any permit holder may 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.

The simplicity of this private approach, however, does not eliminate the major constitutional issue. A private buy-back program would still run the risk of creating a fishery too exclusive under the state constitution, thereby requiring the state to put more permits back into the fishery.³⁰

IV. CONCLUSION

A buy-back program for permits in a limited fishery is authorized under the Limited Entry Act, but only if the statutory and constitutional purposes of limited entry would be served by the program. Roughly, the statutory purposes that must be served by a buy-back program are to produce a well conserved, economically healthy fishery with a sufficient number of participants to protect the reliance interests of those dependent on the fishery. The statutory purposes also suggest a long-term commitment to the well-being of the fishery and its participants.

A private opportunity for buying out limited entry permits is also authorized by the Limited Entry Act but subject to the same constitutional constraints. Under either scenario, the numbers of permits in a fishery could be reduced to a point where the fishery became too exclusive under the State Constitution requiring the state to put more permits back into the fishery.

If buy-back under the Limited Entry Act does not meet the needs of the Cook Inlet Salmon Task Force, or, if the Task Force agrees upon goals different from the enumerated purposes for buy-back authorized by the Limited Entry Act, new legislation may be required.

³⁰ *Johns* 758 P.2d at 1266.

State of Alaska
Commercial Fisheries Entry Commission
January 11, 2013

Permit Statistics for the Cook Inlet Salmon Drift Gillnet Fishery, 2002 – 2011

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits NOT Fished	% NOT Fished	Total Pounds Harvested	Estimated Gross Earnings	S03H Permit Value
Cook Inlet salmon drift gillnet		Resident	409	338	71	17%			
		Non-resident	160	124	36	23%			
	2011	Yearly total	569	462	107	19%	21,982,454	\$30,378,044	\$51,700
		Resident	406	273	133	33%			
		Non-resident	163	105	58	36%			
	2010	Yearly total	569	378	191	34%	12,897,208	\$19,300,854	\$31,700
		Resident	404	295	109	27%			
		Non-resident	166	109	57	34%			
	2009	Yearly total	570	404	166	29%	7,758,421	\$8,202,181	\$27,600
		Resident	409	304	105	26%			
		Non-resident	162	122	40	25%			
	2008	Yearly total	571	426	145	25%	7,577,541	\$7,823,008	\$35,200
		Resident	401	297	104	26%			
		Non-resident	170	120	50	29%			
	2007	Yearly total	571	417	154	27%	13,409,028	\$12,759,634	\$29,200
		Resident	400	293	107	27%			
		Non-resident	170	103	67	39%			
	2006	Yearly total	570	396	174	31%	6,125,229	\$5,159,160	\$28,800
	Resident	405	334	71	18%				
	Non-resident	166	137	29	17%				
2005	Yearly total	571	471	100	18%	17,142,608	\$15,344,259	\$39,300	
	Resident	400	313	87	22%				
	Non-resident	171	127	44	26%				
2004	Yearly total	571	440	131	23%	19,336,476	\$11,800,974	\$20,300	
	Resident	396	293	103	26%				
	Non-resident	176	125	51	29%				
2003	Yearly total	572	418	154	27%	10,891,761	\$6,329,162	\$15,700	
	Resident	394	284	110	28%				
	Non-resident	178	125	53	30%				
2002	Yearly total	572	409	163	28%	12,635,440	\$5,686,049	\$11,700	
	Resident	395	323	72	18%				
	Non-resident	179	144	35	20%				
2001	Yearly total	574	467	107	19%	6,256,255	\$3,711,269	\$22,300	

**Table 1a. Cook Inlet Salmon Drift Gillnet (S03H) permit holders by residency:
Initial issuance and year-end 2011**

	Resident	Non-resident	Total
Permits initially issued	386	187	573
Year-end 2011 permits	408	161	569

**Table 1b. Cook Inlet Salmon Drift Gillnet (S03H) permit holders by residency type:
Initial issuance and year-end 2011**

	ARL	ARN	AUL	AUN	NR	DCCED	Total
Permits initially issued	167	11	197	11	187	0	573
Year-end 2011 permits	241	11	149	6	161	1	569

ARL: *Alaska* resident of a *Rural* community which is *Local* to the fishery for which the permit applies;

ARN: *Alaska* resident of a *Rural* community which is *Nonlocal* to the fishery for which the permit applies;

AUL: *Alaska* resident of an *Urban* community which is *Local* to the fishery for which the permit applies;

AUN: *Alaska* resident of an *Urban* community which is *Nonlocal* to the fishery for which the permit applies;

NR: *Nonresident* of Alaska;

DCCED/CFAB: Signifies permits that have been foreclosed upon by the Department of Commerce, Community and Economic Development (DCCED) or by the Commercial Fishing and Agriculture Bank (CFAB) and have yet to be transferred back to individuals.

State of Alaska
Commercial Fisheries Entry Commission
January 11, 2013

Permit Statistics for the Cook Inlet Salmon Set Gillnet Fishery, 2002 – 2011

Fishery Description	Year	Permit Residency	Permits Issued	Permits Fished	Permits NOT Fished	% NOT Fished	Total Pounds Harvested	Estimated Gross Earnings	S04H Permit Value
Cook Inlet salmon set gillnet		Resident	606	445	161	27%			
		Non-resident	130	98	32	25%			
	2011	Yearly total	736	543	193	26%	14,089,410	\$20,116,813	\$14,500
		Resident	608	412	196	32%			
		Non-resident	128	76	52	41%			
	2010	Yearly total	736	488	248	34%	9,000,915	\$14,160,033	\$12,600
		Resident	608	402	206	34%			
		Non-resident	130	70	60	46%			
	2009	Yearly total	738	472	266	36%	7,382,198	\$8,963,165	\$12,900
		Resident	613	410	203	33%			
		Non-resident	125	74	51	41%			
	2008	Yearly total	738	484	254	34%	9,242,351	\$11,368,513	\$13,800
		Resident	618	405	213	34%			
		Non-resident	120	78	42	35%			
	2007	Yearly total	738	483	255	35%	10,258,292	\$10,181,085	\$14,000
		Resident	616	405	211	34%			
		Non-resident	122	77	45	37%			
	2006	Yearly total	738	482	256	35%	8,935,533	\$8,591,257	\$12,500
		Resident	615	418	197	32%			
		Non-resident	122	81	41	34%			
2005	Yearly total	737	499	238	32%	16,625,895	\$15,407,868	\$10,000	
	Resident	621	407	214	34%				
	Non-resident	118	74	44	37%				
2004	Yearly total	739	481	258	35%	15,504,196	\$11,120,261	\$7,600	
	Resident	618	408	210	34%				
	Non-resident	124	64	60	48%				
2003	Yearly total	742	472	270	36%	12,119,220	\$8,086,607	\$8,600	
	Resident	620	425	195	31%				
	Non-resident	123	71	52	42%				
2002	Yearly total	743	496	247	33%	10,987,787	\$5,547,596	\$8,000	
	Resident	623	421	202	32%				
	Non-resident	121	84	37	31%				
2001	Yearly total	744	505	239	32%	6,608,371	\$4,081,429	\$10,600	

**Table 2a. Cook Inlet Salmon Set Gillnet (S04H) permit holders by residency:
Initial issuance and year-end 2011**

	Resident	Non-resident	Total
Permits initially issued	690	56	746
Year-end 2011 permits	607	129	736

**Table 2b. Cook Inlet Salmon Set Gillnet (S04H) permit holders by residency type:
Initial issuance and year-end 2011**

	ARL	ARN	AUL	AUN	NR	DCCED	Total
Permits initially issued	202	16	446	26	56	0	746
Year-end 2011 permits	234	19	349	5	129	0	736

ARL: *Alaska* resident of a *Rural* community which is *Local* to the fishery for which the permit applies;

ARN: *Alaska* resident of a *Rural* community which is *Nonlocal* to the fishery for which the permit applies;

AUL: *Alaska* resident of an *Urban* community which is *Local* to the fishery for which the permit applies;

AUN: *Alaska* resident of an *Urban* community which is *Nonlocal* to the fishery for which the permit applies;

NR: *Nonresident* of Alaska;

DCCED/CFAB: Signifies permits that have been foreclosed upon by the Department of Commerce, Community and Economic Development (DCCED) or by the Commercial Fishing and Agriculture Bank (CFAB) and have yet to be transferred back to individuals.

DECISION RULES USED TO DESIGNATE URBAN, RURAL, LOCAL, AND NONLOCAL

Urban and rural designations are based upon the most recent information from Census 2000. During this cycle, the Census Bureau significantly changed its method of classifying areas as rural or urban. In general, there are now more Alaska places designated as rural, and consequently more permits issued and held by rural residents.

Urban and Rural Classification

For Census 2000, the Census Bureau classifies as "urban" all territory, population, and housing units located within an urbanized area or an urban cluster. It delineates these boundaries to encompass densely settled territory, which consists of:

1. Core census block groups or blocks that have a population density of at least 1,000 people per square mile and
2. Surrounding census blocks that have an overall density of at least 500 people per square mile

The Census Bureau's classification of "rural" consists of all territory, population, and housing units located outside of urbanized areas or urban clusters. Geographic entities, such as census tracts, counties, metropolitan areas, and the territory outside metropolitan areas, often are "split" between urban and rural territory, and the population and housing units they contain often are partly classified as urban and partly classified as rural.

Local/Nonlocal

The local/nonlocal distinction is linked to Commercial Fisheries Entry Commission administrative areas that are based on regulatory boundaries of the fishery. Coastal communities as well as some inland communities are considered local to the Cook Inlet set gillnet and drift gillnet salmon fisheries.

The Cook Inlet local area includes all but the eastern edge of the Anchorage Borough. The line dividing the Cook Inlet and Prince William Sound ADF&G regulatory areas is extended inland directly north. That is, the line runs from Cape Fairfield at 148°50'W, north to 61°32'N (just north of Bodenbug Butte and south of Palmer) and then west to 150°30'W (to the community of Susitna) and thereafter follows, at a little distance inland, the western shore of Cook Inlet, ending at Cape Douglas.¹

Alaska cities considered local to the Cook Inlet set gillnet and drift gillnet salmon fisheries are listed in the following table:

¹ "Changes in the Distribution of Alaska's Commercial Fisheries Entry Permits, 1975-2007" CFEC Report Number 08-5N, Appendix A.

Alaska Cities Considered Local to the Cook Inlet Set and Drift Gillnet Salmon Fisheries

Census Area	City	Zip Code	City Population	Rural / Urban Indicator
Anchorage Municipality	Anchorage	99501- 99509, 99511 - 99524, 99599	260283	U
	Birchwood	99577	260283	U
	Bird Creek	99540	260283	U
	Chugiak	99567	260283	U
	Eagle River	99577	260283	U
	Eklutna	99577	260283	U
	Elmendorf AFB	99506	260283	U
	Fire Island	99506	260283	U
	Fire Lake	99577	260283	U
	Fort Richardson	99505	260283	U
	Girdwood	99587	260283	U
	Indian	99540	260283	U
	Kern	99510	260283	U
	Peters Creek	99577	260283	U
	Portage	99587	260283	U
	Potter	99510	260283	U
	Rainbow	99510	260283	U
Spenard	99509	260283	U	
Kenai Peninsula Borough	Anchor Point	99556	1845	R
	Bear Cove	99603		R
	Bear Creek		1748	R
	Beluga		32	R
	Beluga River	99682		R
	Chenik			R
	Clam Gulch	99568	173	R
	Cohoe	99669	1168	R
	Cooper Landing	99572	369	R
	Crown Point		75	R
	Diamond Ridge		1802	R
	English Bay	99603		R
	Fox River		616	R
	Fritz Creek	99603	1603	R
	Funny River		636	R
	Grouse Creek Group			R
	Halibut Cove	99603	35	R
	Happy Valley		489	R
	Homer	99603	3946	R
	Hope	99605	137	R
	Jakolof Bay	99603		R
	Kachemak	99603	431	R
	Kalifonsky	99611		R
	Kalifornsky		5846	R
	Kasilof	99610	471	R
	Kasitsna Bay	99603		R
	Kenai	99611	6942	U
Kustatan			R	
Lowell Point		92	R	
Miller Landing		74	R	

Alaska Cities Considered Local to the Cook Inlet Set and Drift Gillnet Salmon Fisheries

Census Area	City	Zip Code	City Population	Rural / Urban Indicator
Kenai Peninsula Borough	Moose Pass	99631	206	R
	Nanwalek	99603	177	R
	Nikishka	99635		R
	Nikiski	99635	4327	R
	Nikolaevsk	99556	345	R
	Ninilchik	99639	772	R
	Port Graham	99603	171	R
	Portlock	99603		R
	Primrose		93	R
	Red Mountain	99663		R
	Ridgeway		1932	R
	Salamatof	99611	954	R
	Seldovia	99663	286	R
	Seldovia Village	99663	144	R
	Seward	99664	2830	R
	Soldotna	99669	3759	U
	Sterling	99672	4705	R
	Sunrise	99669	18	R
Tyonek	99682	193	R	
Matanuska-Susitna Borough	Alexander			R
	Alexander Creek			R
	Big Lake	99652	2635	R
	Bodenburg Butte	99645		R
	Butte		2561	R
	Gateway		2952	R
	Knik	99687		R
	Knik River		582	R
	Knik-Fairview		7049	R
	Lakes		6706	U
	Palmer	99645	4533	U
	Point Mackenzie		111	R
	Susitna		37	R
	Wasilla	99654, 99687	5469	U

Appendix I

April 15, 1999

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENTS OF ADMINISTRATION AND
COMMERCE AND ECONOMIC DEVELOPMENT
SELECTED STATE COMPENSATION ISSUES INCLUDING
ALASKA SEAFOOD MARKETING INSTITUTE AND
ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

April 15, 1999

Audit Control Number

02-4569-99

This audit primarily addresses employee compensation issues of the Alaska Seafood Marketing Institute (ASMI) and the Alaska Industrial Development and Export Authority (AIDEA). Additionally, the report reviews selected compensation issues for other governmental corporations that are exempt from the pay plan provided for in statute at AS 39.25.011. We contracted with KPMG Peat Marwick to compare compensation for certain higher paid ASMI and AIDEA employees with other similar positions in the public and private sectors. Additionally, we reviewed Alaska's salary schedules and personnel policies to determine if agencies appropriately follow various pay schedules and personnel procedures.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the finding and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we reviewed a variety of compensation related issues for employees in various governmental corporations. Our review focused on specific compensation issues at the Alaska Seafood Marketing Institute (ASMI) and Alaska Industrial Development and Export Authority (AIDEA). In addition, we reviewed state policies and procedures pertaining to pay rates, merit increases, and step placements employed in the executive branch of Alaska's government.

Objectives

Specifically, the objectives of our review were to:

1. Identify the state executive branch positions which are not legally required to comply with the employee salary schedule in AS 39.27.011. Further to identify the pay plan that is followed and who determines the rate of pay.
2. Identify the state policies and procedures regarding initial step hire and annual merit increases in general and specifically for ASMI and AIDEA.
3. Determine the comparability of salaries at ASMI and AIDEA at range 21 and above with salaries for positions with similar responsibilities in the private sector and other State of Alaska agencies.

Scope and Methodology

Our examination included reviewing laws, regulations, and policies in effect during state FY 97, FY 98, and part of FY 99. We reviewed applicable statutes and regulations, the Department of Administration (DOA) standard operating procedures, collective bargaining agreements, and various state salary schedules. We also reviewed the internal policies of (1) Alaska Permanent Fund Corporation, (2) Alaska Commission on Post Secondary Education, (3) Alaska Aerospace Development Corporation, (4) ASMI, and (5) AIDEA. We excluded legislative and judicial employee positions from our review.

We interviewed DOA's Payroll Services and Division of Personnel staff, as well as human resource personnel in state agencies. We discussed methods of determining pay for specific positions exempt by statute from personnel rules and from the statutory pay plan.

Additionally, we contracted with the accounting and management services firm KPMG Peat Marwick (KPMG) to perform a salary compensation study of 22 ASMI and AIDEA positions that are Range 21 and above. This competitive market analysis was based on information obtained in a Wage and Benefit Survey prepared for the State of Alaska Legislative Budget and Audit Committee and from published survey data.

KPMG compiled information for its survey from 68 respondents in both the private and public sector. This survey of benchmark positions in Alaska, Washington, California and Oregon was conducted in May 1998. The study was conducted through a written survey questionnaire that was mailed to survey participants.

KPMG also used the following published survey sources to evaluate ASMI and AIDEA positions. Survey information utilized by KPMG is as follows:

- Abbott, Langer and Associates, *Compensation of [Chief Executive Officers] CEOs in Nonprofit Organizations*
- American Compensation Association, *Total Salary Increase Budget Survey*
- Coopers and Lybrand, *Total Compensation in Not-for-Profit Organizations*
- Millman and Robertson, Inc., *Alaska Cross-Industry Survey*
- Watson Wyatt, *The ECS Industry Report on Middle Management Compensation*
- Watson Wyatt, *The ECS Geographic Report on Professional and Scientific Personnel Compensation*
- Watson Wyatt, *The ECS Sales and Marketing Personnel Compensation Report*
- William Mercer, *Finance, Accounting and Legal Compensation Survey*

The published surveys provide statistically valid survey data for benchmark jobs that are common across many industries.

The employee benefits portion of KPMG's survey was performed separately due to the type of information being collected. The benefits portion of the survey was conducted by telephone to allow for interaction between the interviewer and the respondent. This was considered necessary given the complexity of benefits data being gathered. The benefits survey included the following benefits: child care, life insurance, accidental death and dismemberment, short term disability, retirement benefits, long term disability, medical benefits (including dental and vision), and paid time off (personal or annual leave). KPMG spoke with personnel in DOA and gathered a significant amount of information from the State's web page.

KPMG's objective was to determine the aggregate cost of benefits as an absolute dollar value and as a percent of base salary, rather than determine what each individual benefit was worth. Accordingly, KPMG calculated the cost of the benefits offered to the "average" employee. This was done by determining the total premium paid for the insured benefits and subtracting any contribution made by employees, recognizing the State's contributions made toward retirement programs, and determining the cost of paid time off.

In order to evaluate the survey data, compensation specialists consider that a 50% range spread from the minimum to the maximum salary for a particular job is a reasonable estimate of a job's worth, and is also standard for employers with a formal salary structure. The competitive range for each job was set at 20% below and 20% above the market median, or 80% to 120% of median pay. The median is presented in this analysis as KPMG believes it is

more indicative of the central tendency of a population and less influenced by survey salaries extremely outside the concentration of the majority of the hits.

In accordance with Economic Research Institute compensation survey methodologies, jobs with salaries greater than \$50,000 are often recruited on a national basis and, therefore, are typically not influenced by geographic differentials. Consequently, no adjustments have been made in this study, since each of the positions being reviewed have an annual salary of over \$50,000.

Additionally, many state workers work what are considered to be full time jobs, but are scheduled for a 37.5 hour work week. Since the positions in the analysis were range 21 or greater, typically these positions are not overtime eligible positions whether the employee works 37.5 hours a week or 40 hours per week. As such, no adjustments were made to compensate for the 40 hour work week of the comparable positions.

ORGANIZATION AND FUNCTION

The Alaska Seafood Marketing Institute (ASMI) and the Alaska Industrial Development and Export Authority (AIDEA) are the two primary governmental corporations we evaluate and discuss in this review. We also summarize in this section information regarding other governmental corporations as well as information with respect to the functions of the Department of Administration, Divisions of Finance and Personnel.

Alaska Seafood Marketing Institute

ASMI was established in 1981 as an instrumentality of the State in the Department of Commerce and Economic Development (DCED). The central mission of this public corporation is improving the Alaska seafood industry. ASMI objectives, as outlined in statute include:

- Increasing consumer awareness of and a preference for Alaska seafood;
- Improving and maintaining quality awareness throughout the harvesting, processing and transportation lines;
- Collecting, organizing, distributing and making available to the public, information on prices paid and market conditions for salmon and salmon products; and
- Cooperating with commercial salmon fishers, and others in the industry, to investigate market reception of new salmon product forms, and develop future markets for Alaska salmon.

ASMI is governed by a 25 member Board of Directors appointed by the governor of Alaska. The board consists of 12 processors, 12 fishers and 1 non-industry public member.

ASMI is exempt from the State Personnel Act.¹ Additionally, the employees of ASMI are not required to follow the pay plan for state employees.²

¹ ASMI employees are exempted by AS 39.25.110(18). This means that the organization 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; ...

(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;...

(5) selection and retention of an employee's position secure from political influences.

² Alaska Statute 39.27.011(a) establishes a monthly basic salary schedule for certain employees in the executive branch of the state government “who are not members of a collective bargaining unit... .”

Alaska Industrial Development and Export Authority

AIDEA was created by an act of the Alaska State Legislature in 1967. AIDEA is a public corporation of the State, constituting a political subdivision of DCED but with a separate and independent legal existence.

AIDEA's statutory purpose is to promote, develop, and advance the general prosperity and economic welfare of the people of Alaska. Among other activities, AIDEA is authorized to issue bonds; own and operate development projects; accept grants from federal agencies; and foster the expansion of exports of Alaska goods, services, and natural resources.

The powers of the authority are bestowed on its board. The five board members of the authority consist of the commissioners of the Departments of Revenue and Commerce and Economic Development, another commissioner and two public members, all appointed by the governor. The board appoints an executive director to oversee the management and staff of the four functional areas of AIDEA: credit, development, energy and finance.

As was the case with ASMI, AIDEA personnel are exempt from the State Personnel Act, and are not required to follow the statutory pay plan for executive branch employees.

Governmental Corporations

Governmental corporations are established for administrative purposes within various departments but have legal existence independent and separate from the State. In addition to ASMI and AIDEA discussed above, the box at the right provides a listing of governmental corporations that are statutorily defined as exempt from the State Personnel Act. Representatives of these agencies were contacted during the course of this review. Similarly to ASMI and AIDEA, these agencies are not legally required to compensate staff in accordance with the statutory pay plan.

Department of Commerce and Economic Development

- Alaska Aerospace Development Corporation
- Alaska Tourism Marketing Council
- Alaska Science and Technology Foundation
- Alaska Railroad Corporation

Department of Revenue

- Alaska Permanent Fund Corporation
- Alaska Housing Finance Corporation

Department of Fish and Game

- Alaska Commercial Fisheries Entry Commission

Department of Education

- Alaska Commission on Postsecondary Education

University of Alaska

Department of Administration (DOA)

Alaska Statute 44.21.020 requires that DOA administer a statewide personnel program that includes central personnel services. Services to be administered include recruitment, examination, position classification, and pay administration. DOA's Division of Personnel is responsible for maintaining a classification system as well as recruitment and examination services. DOA's Division of Finance provides payroll services.

- Division of Personnel. The Division of Personnel is responsible for preparing a classification plan that groups similar positions in the classified service and the partially exempt service. The division considers job duties, responsibilities, qualifications and any other factors in preparing the plan. The division maintains standard operating procedures that are intended to supplement policy-setting requirements established in statute and regulation.
- Division of Finance – Payroll Services. The statewide payroll system is established pursuant to authority vested in DOA by AS 37.05.140(a). The Division of Finance is responsible for maintenance of the complex payroll tables on the State’s payroll system. These payroll tables are known as salary schedules. Salary schedules consolidate factors that determine rates of pay such as number of hours in the work week, pay ranges for position classes, merit and longevity increments, geographic differentials, and wage differences that result from collective bargaining or appointing authority revisions.

A set of salary schedules is maintained for each collective bargaining unit or unit designation in the State with the exception of the teachers’ and Alaska Marine Highway Units³(exempt bargaining unit agreements). Each unit designator has up to 13 schedules for geographic differentials. Several sets of salary schedules are required for a bargaining unit or a unit designation when required work hours per week vary between groups of employees. Additional sets of salary schedules are set up when necessary to distinguish employees strike eligibility classes when a collective bargaining unit provides different rates.

In addition to the maintenance of the payroll tables, other payroll services include processing payroll for all state employees as dictated by personnel rules and collective bargaining agreements and preparing and distributing necessary reports and schedules.

³ Salaries of the Alaska Marine Highway System (AMHS) maritime employees are paid using special tables in the Alaska Payroll System that are maintained by AMHS personnel.

Alaska Statute 39.27.011 Pay Plan

Legally Required to Use	Not Legally Required to Use
<p><u>Exempt</u></p> <ul style="list-style-type: none"> • None <p><u>Partially Exempt</u></p> <p>Deputy commissioners, assistant commissioners, special assistant to commissioners, secretaries to commissioners.</p> <p>Assistant Adjutant General at the Department of Military and Veterans' Affairs.</p> <p>Director of the major divisions of principal departments and some deputy directors.</p> <p>Regional managers at the Department of Transportation and Public Facilities.</p> <p>Attorney members of the staff of the Department of Law Public Defender Office of Public Advocacy.</p> <p>Employees of councils, boards, or commissions established by statute in the Office of the Governor or the Office of the Lieutenant Governor, unless a different classification provided by statute.</p> <p>Executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities Commission.</p> <p>Principal executive officer of a number of boards, councils or commissions identified below.⁴</p> <p>Alaska Pioneer Home managers</p> <p>Hearing examiners in the Department of Revenue</p> <p>Comptroller in the Division of Treasury</p> <p>Airport Managers</p> <p>Executive director of the Alaska Public Offices Commission</p> <p>The rehabilitation administrator of the Workers' Compensation Board</p> <p>Guards employed by the Department of Public Safety for emergencies</p> <p>Marine pilot coordinator of the Board of Marine Pilots</p> <p><u>Classified</u></p> <ul style="list-style-type: none"> • Student Interns • Staff of the Alaska Labor Relations Agency • Business emergency hires 	<p><u>Exempt</u></p> <p><i>Unions – Includes but not limited to...</i>⁵</p> <ul style="list-style-type: none"> • Licensed Deck Officers Unit • Licensed Marine Engineers Unit • Inland Boatmen's Union • Alaska Vocational Technical Center Teachers Unit • Alyeska Central School • Mt. Edgecumbe Teachers Unit <p><i>Agencies</i></p> <ul style="list-style-type: none"> • Officers and employees of the Alaska Permanent Fund Corporation Alaska Industrial Development and Export Authority Alaska Commercial Fisheries Entry Commission Alaska Commission on Postsecondary Education Alaska Aerospace Development Corporation University of Alaska • Employees of the Alaska Seafood Marketing Institute Offices of the Governor and Lieutenant Governor and the staff of the Governor's Mansion • Executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority • Executive director and other staff of the Alaska Tourism Marketing Council <p><i>Specific Positions</i></p> <ul style="list-style-type: none"> • Commissioners (per AS 39.20.080) • Commissioners of the Alaska Commercial Fisheries Entry Commission (per AS 16.43.060) • Patients and inmates employed in state institutions • Persons elected to public office by popular vote • Members of boards, commissions, or authorities • Various selected positions categorized as exempt to allow the State to compete in a particular job market -- such as, but not limited to medical examiners, mental health physicians, petroleum engineers, petroleum geologists, actuary, investment officers, etc. • Specific emergency personnel such as emergency fire fighters. <p><u>Partially Exempt</u></p> <ul style="list-style-type: none"> • None <p><u>Classified</u></p> <p><i>Unions</i></p> <ul style="list-style-type: none"> • General Government Unit • Confidential Employees Association • Supervisory Unit • Labor, Trades and Crafts Unit • Commissioned Public Safety Officers Unit • Correctional Officers Unit

⁴ Alaska Public Broadcasting Commission, Professional Teaching Practices Commission, Parole Board, Board of Nursing, Real Estate Commission, Alaska Royalty Oil and Gas Development Advisory Board, Alaska State Council on the Arts, Alaska Police Standards Council, Alaska Commission on Aging, Alaska Mental Health Board, State

BACKGROUND INFORMATION

State compensation rate structures are dictated by bargaining unit contracts, state statutes, or are determined by appointing authorities. For the purpose of this review, we are addressing compensation for executive branch employees only.

Various pay plans provide compensation structure for executive branch employees

Executive branch employees can be divided into three compensation categories. By doing this, it is soon apparent that the compensation for most employees is set established on a basis other than the pay schedule set out in statute (see opposite page). These “compensation categories” are as follows:

1. Employees covered by collective bargaining agreements (CBAs). As provided in AS 23.40, pay for employees represented by labor unions is set by the CBA involved. Classified executive branch employees are covered by six different CBAs. However, some exempt employees are also covered by CBA’s. For example, exempt teachers and marine highway workers are covered by six different CBAs.⁶ Also, employees of the Alaska Railroad Corporation, Alaska Housing Finance Corporation, and the University of Alaska are covered by a multitude of CBAs. CBAs are arrived at through negotiation. All the individuals in these bargaining units are covered by various CBAs and, as such,

State of Alaska employees are categorized as classified, partially exempt, or exempt.

Exempt Employees: Employees are exempt from the provisions of AS 39.25 (State Personnel Act) and the rules adopted under it.

Partially Exempt Employees: Partially exempt employees are exempt from some of the provisions of AS 39.25 (State Personnel Act). Some of the provisions from which these employees are exempt are as follows:

- The use of employee selection methods that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought.
- The establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examination.
- The procedure for certifying eligible candidates.
- Promotions from within the state service when there are qualified candidates in the state service.
- A period of probation not to exceed one year before an appointment to a position becomes permanent.
- Nonpermanent and emergency appointments to positions in the State in accordance with AS 39.25.195-39.25.200.

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. 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.

Medical Board, Governor’s Council on Disabilities and Special Education, Advisory Board on Alcoholism and Drug Abuse.

⁵ Some employees at Alaska Railroad Corporation, the University of Alaska, and Alaska Housing Finance Corporation also belong to bargaining units.

⁶ In addition to certain employees noted in footnote 8, other exempt employees covered by collective bargaining units include:

- certificated teachers employed by the Department of Education (DOE) as correspondence teachers, teachers in skill enters operated by DOE, or in Mt. Edgecumbe school;
- and persons employed by the Marine Highway System and as masters and members of the crews of vessels who operate the State ferry system.

are not required to be paid in accordance with the schedule set out at AS 39.27.011.

2. Non bargaining unit employees. Executive branch employees in the classified and partially exempt service who are **not** represented by a labor union, are paid in accordance with the schedule set out at AS 39.27.011. Some examples of classified personnel not in a bargaining unit are student interns, staff of the Alaska Labor Relations Agency, and emergency hires. As of January 1999, there were approximately 220 classified and 576 partially exempt positions that were paid according to the statutory schedule rather than an established CBA.

3. Exempt employees not covered by a CBA. Employees in the exempt service are identified in AS 39.25.110. Compensation for these employees, not covered by a bargaining unit, is set by the organization involved, or, in some cases, specifically by statute. Although not legally required to follow the statutory pay schedule many agencies with exempt employees do use the schedule as a basis for compensating their employees. These agencies use the schedule set out at AS 39.27.011 because the board, commission or other appointing authority involved has determined that the pay plan is fair, defensible, and administratively expedient. However, compensation for the chief executive officer of each entity is most often established outside of the statutory pay schedule. Rather, compensation for the chief officer is typically established separately by the oversight board, commission, or council involved. It is important to note that head official of each executive branch operating department⁷ (that is, commissioners and the adjutant general) and the

Statutory Pay Plan (AS 39.27.011) and Related Salary Schedules

AS 39.27.011 Salary schedule (a) The (following) monthly basic salary schedule [not reproduced in this report] is approved as the pay plan for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of the Public Employment Relations Act and employees of the legislature under AS 24.10 and AS 24.20.

The Department of Administration's (DOA) Division of Finance payroll services section uses the following salary schedules to address employees meeting the above definition. These salary schedules are identical however, they allow identification of branch or class of employee.

Unit Designation Schedule	Schedule Title
XE	Partially Exempt and Exempt Executive Branch Employees
EE	Excluded from Existing Units
XL	Legislative Branch Employees
XJ	Court System Non-Union Employees

Although the XE schedule title states this schedule is for exempt executive branch employees as well as partially exempt, exempt agencies are not legally required to follow the plan, but often use it as required by their appointing authority. This will be discussed in our Report Conclusions.

⁷ As an example, AS 39.25.110 categorizes the head of each principal department in the executive branch (i.e. the commissioner) as exempt. However, AS 39.20.080 requires the monthly head of each principal executive department of the State to be equal to step E, range 28 of the salary schedule in AS 39.27.011(a).

commissioners⁸ serving on the Commercial Fisheries Entry Commission have their salaries legally established from the statutory pay schedule.

Pay schedules are formulated by DOA's Division of Personnel

Typically, a pay schedule is essentially a matrix consisting of pay ranges and pay steps. Each position is assigned a pay range, and along that range the individual may be paid at one of various steps. This allows an individual to remain in the same position for a number of years, but still receive pay increases as merited. In the state system, pay ranges are typically assigned a numeric value, the higher the number the higher the pay, while pay steps have been assigned alpha characters, with the lowest step in a range being "A" and higher steps extending further down the alphabet.

The State Personnel Act requires the State's position classification plan to provide for grouping of all positions in the classified and partially exempt services into classes on the basis of duties and responsibilities.⁹ The classification of various positions, which affects the compensation for the position based on the pay schedule involved, is determined by DOA's Division of Personnel.

Employees in the exempt service of the executive branch are not covered by the State Personnel Act (see inset on page 9 for discussion of the term "exempt"). The pay range for a specific position will be set by statute or an appointing authority, not by DOA's Division of Personnel. (See Appendix B.)

Merit increments are based on performance

The statutory pay schedule provides for six merit increase steps within each salary range. As described in personnel regulations (2 AAC 07.365), merit increases are an integral part of the pay plan. Merit increases may be granted or withheld based on evaluation of an employee's performance.

A merit increase of one step in the salary range may be given on the "merit anniversary date"¹⁰ to an employee who has received an overall performance evaluation of "acceptable" or better and has demonstrated satisfactory service of a progressively greater value to the State. If an employee receives an overall performance evaluation of "outstanding" a merit increase of two steps in the range may be given on the merit anniversary date at the discretion

⁸Alaska Statute 16.43.060, Commercial Fisheries Entry Commission, classifies members of the commission (commissioners) as exempt and entitles them to a monthly salary equal to step C, range 26 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska.

⁹Alaska Statute 39.25.150(2)(A and B) requires a pay plan for all positions in the classified and partially exempt services that is based on the classification plan, that provides for fair and reasonable compensation for services rendered, and that reflects the principle of like pay for like work.

¹⁰An employee's merit anniversary date is the first day of the pay period following completion of the probation period or is the first day of the pay period following completion of one year of service.

of the appointing authority.¹¹ No merit increase may be given to place an employee at a higher salary level than the top step of the employee's assigned salary range. These established personnel rules are subject to each individual's CBA. If the CBA involved provides for a different procedure or process, it is followed.

Longevity increments are based on time of service

In 1972, the pay schedule was amended to provide for longevity pay steps in order to reward employees for longevity in state employment and to provide an incentive for employees who had attained the final step within a given range to continue employment with the State. The longevity¹² increments in the pay plan adds four additional step increments after the six merit increase steps.

Longevity step increases, for employees in the classified and partially exempt services who are not covered under a collective bargaining agreement, are in incremental increases of 3.75%. Longevity increment increases for employees covered under collective bargaining agreements are determined through the collective bargaining process.

Executive branch employees required to follow the statutory pay plan follow the merit and longevity increases. Bargaining unit contracts may set out pay rates, step and placement rules, and longevity requirements that may be similar to the statutory pay plan and the State's personnel rules. Exempt employees of the executive branch not covered by AS 39.27.011 or a bargaining unit contract also may incorporate merit or longevity factors into their use of pay plans depending on decisions made by the executive director, board, commission, or other appointing authority.

Personnel rules provide some guidance regarding new hires at an "advance" step

At the time of hire, employees covered under the personnel rules, are normally placed at the initial step in the range (step A) which represents the minimum rate of pay in a salary range. Under personnel regulations, newly hired individuals can be started at a step above the initial "A" step – that is, placed at an "advance step" upon being hire. Advance step placement upon hire, however, is allowable only if:

1. The appointee is exceptionally qualified;
2. Recruitment is extremely difficult for a job class or particular position; or
3. The salary is authorized by the appointing authority under 2 AAC 07.325 which allows a beginning salary higher than the minimum rate to a former employee eligible for

¹¹ We were advised by Division of Personnel human resource staff that collective bargaining units eliminated the possibility of two-step increases. This resulted in the commissioner of the Department of Administration directing other commissioners not to award two-step increases for classified and partially exempt employees not covered by bargaining units. This is a policy, not an official modification of the rules.

¹² Alaska Statute 39.27.022.

noncompetitive rehire if the salary step does not exceed the salary step formerly earned by the employee. Noncompetitive rehire is allowed for an individual who separated in good standing while holding a permanent or probationary appointment. These individuals must be reemployed in the same job class or in a lower class in the same series within two years after the employee's date of separation.

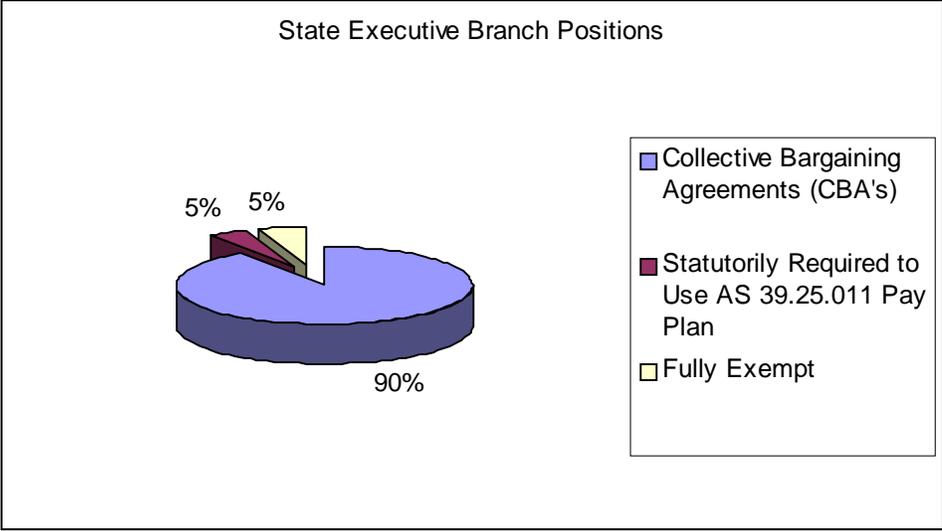
Advance step hire provides management flexibility in the pay plan in order to competitively compensate exceptionally qualified individuals and offer additional compensation for positions difficult to fill. Advanced step placement is to be strictly controlled in order to assure consistency in the pay plan providing like pay for similar work.

Personnel rules and pay plans vary among employees categorized as exempt

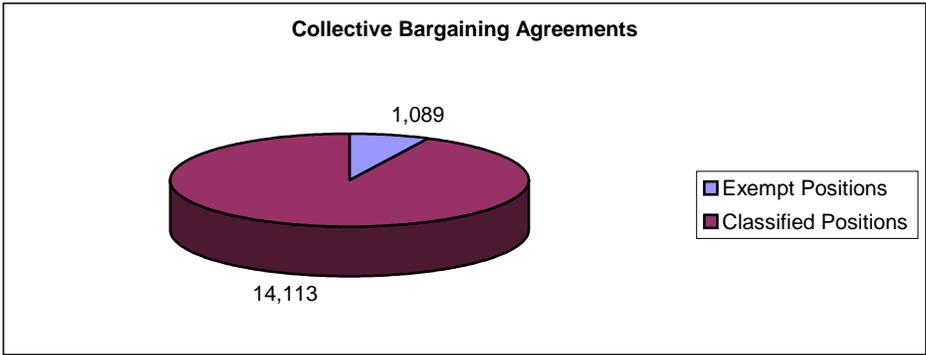
A listing of positions exempt from the personnel rules are shown under AS 39.25.110 (see Appendix B). Those exempt from the personnel rules have the flexibility to design and implement personnel rules that provide a framework for personnel and salary decisions if specific pay guidelines are not statutorily dictated elsewhere in statute.¹³

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 merit or longevity increases often differ among exempt agencies and between those employees classified and partially exempt. As an example, organizations such as the Alaska Permanent Fund Corporation, contracted for a personnel management program and has established its own position classification structure, compensation structure, and administrative guidelines. Other exempt agencies such as the Alaska Commission on Postsecondary Education, have personnel rules specific to their agency and have internally modified the salary schedule to provided expanded "steps."

¹³ As an example, the governor and lieutenant governor are exempt under AS 39.25.110(1), however, specific pay amounts are dictated under AS 39.20.010 and AS 39.20.030.



Classification of Executive Branch Positions	Number of Positions
Collective Bargaining Agreement	15,202
Statutorily Required to Use AS 39.25.01 Pay Plan	796
Fully Exempt	867



Source: Information provided by DOA, Division of Personnel as of January 26, 1999. University of Alaska, Alaska Railroad Corporation, Alaska Housing and Finance Corporation, legislative, and judicial branch employees are excluded.

REPORT CONCLUSIONS

As stated in the Objectives, Scope, and Methodology section, we had three main objectives:

1. Identify the basis used for determining the amount various executive branch employees are paid, and the degree to which these employees are subject to the pay schedule set out at AS 39.27.011;
2. Identify the degree to which the Alaska Seafood Marketing Institute (ASMI) and the Alaska Industrial Development and Export Authority (AIDEA) follow state personnel policies related to the following:
 - a. the pay range and step at which individuals are initially hired, and the circumstances under which an “advanced step” hire can be made; and,
 - b. the granting of annual merit pay increases.
3. Identify the comparability of salaries in general paid at ASMI and AIDEA at pay range 21 and above with salaries for positions with similar responsibilities both in the private sector and other State of Alaska agencies.¹⁴

Only 5% of executive branch employees are legally required to use the statutory pay plan

Only 5% of the executive branch employees are required to be paid in accordance with the statutory pay plan. The largest portion of the employees that are not paid in accordance with the statutory pay plan are those employees in positions represented by labor union contracts. Information provided by the Department of Administration (DOA) on the graph on the opposite page shows that approximately 90% of the positions are covered by bargaining units, 5% are exempt and may or may not use the statutory pay plan, and 5% use the pay plan.

Certain personnel are exempt from the personnel rules and also are not required to follow the statutory pay plan. Compensation methodology for exempt personnel may be decided by appointing authority or statutory reference. As described in the Background Information section, many exempt agencies use the pay plan set out in AS 39.27.011 because the board, commission or other entity that acts as the “appointing authority” has determined that the pay schedule set out in statute is fair, defensible, and administratively expedient.

Most pay schedules include ranges and steps consistent with the statutory pay schedule and classified positions. Positions are established at a specific range. Personnel are provided performance-based increases known as “steps” on the pay plan. Although exempt agency personnel may be paid from the statutory salary schedule, their formal or informal personnel rules

¹⁴ See Background Information section.

that accompany the pay schedule may not be in accordance with the intent of some step increases, such as longevity steps. (See Recommendation No. 1 in the Finding and Recommendation section.)

AIDEA follows the statutory pay schedule and has guidelines similar to those of Division of Personnel

AIDEA's board-approved compensation guidelines address "advanced step placement," merit increases, and longevity pay increments. As with the state personnel rules, advanced step placement upon hire is considered an exception, and allowed if the appointee has exceptional qualifications or in cases where recruitment is exceedingly difficult. AIDEA compensation guidelines state that merit increases in the salary range may be given to an employee who has received an "acceptable" or better performance evaluation on the employee's merit anniversary date. Such increases shall be based on merit and are not mandatory even if acceptable performance is observed.

AIDEA also considers the longevity/pay increments similar to those found in the state personnel rules. They pertain to employees hired by AIDEA on or after January 1, 1992. In order to advance to the pay increment J, the employee must have:

- been in the final step (F) of the employee's pay range for two years or more,
- worked continuously for the State and/or AIDEA for seven years or more; and
- received performance evaluations of "acceptable" or better in the employee's most recent performance evaluation.

Additional longevity increments K, L, and M may be awarded when an employee's current annual performance rating is "acceptable" or better and that employee has been in the F step or higher step for four, nine and thirteen years, respectively.

Our review of selected AIDEA payroll data¹⁵ back to 1992 for eight of the AIDEA employees indicated that the agency has been following the established guidelines.

ASMI personnel "policy" is informal consisting of two memorandums

When asked about personnel policies, ASMI's executive director provided two memorandums originally dated September 27, 1994. These memorandums, which were subject to board approval, describe the agency's policy for evaluations and salary range/step adjustments. Under the policies, supervisors are to establish individual goals, objectives, standards and performance measures on which comprehensive annual employee evaluations can be based. Each employee can be given a maximum of two step increases as follows:

¹⁵ Payroll data was reviewed on-line on the Alaska State Payroll system (AKPAY) personnel action screens.

- One step increase mandatory based on acceptable annual performance evaluation; and
- Second step increase based on attainment during the evaluation period of performance goals and measures agreed to by the supervisor and employee. The second step increase may be awarded based on performance at the discretion of the supervisor and approval by the executive director.

ASMI rules also allow salary range adjustments to be made at the discretion of the executive director. These range adjustments are made upon determination that positions duties and responsibilities would justify a higher salary range based on ASMI organizational needs and comparability, or where a range adjustment is necessary to adjust salary irregularities in the same job class.

ASMI pays employees from the statutory pay plan. However, annual increases are not as strict as for classified or partially exempt employees. As an example, two step merit increases, even through what are normally considered the “longevity” steps, were common. (See Recommendation No. 1.)

Advanced step hire is practiced by both classified and partially/fully exempt employees

We anticipated that since partially and fully exempt employees have more flexibility in hiring practices, there would be a greater number of employees being hired into advanced steps than for the classified employees. We requested a listing¹⁶ from DOA of all employees hired during FY 98. This listing was obtained from data in the State Payroll system maintained by DOA. Our reasons for comparing advanced step hire practices for classified employees to partially and fully exempt employees were as follows:

1. Ninety-eight percent of classified employees follow a bargaining unit contract. If a bargaining unit contract is silent in a certain procedural area, or if the classified employee is not a member of a bargaining unit, then the employee follows the relevant state personnel rule and related standard operating procedure. The personnel rules require minimum qualifications for positions that a candidate must meet. To be determined exceptionally qualified, candidates’ qualifications can be measured against these minimum qualifications. Classified employees appear to have the least flexibility with regard to hiring at an advanced step.
2. Partially exempt employees are not members of bargaining units and are exempt from hiring rules in the State Personnel Act. Hiring is more flexible for partially exempt employees. Although partially exempt employees are still required to meet the regulatory requirements for advanced step hire, we were advised by human resource staff that exceptional qualifications are more subjective since the State Personnel Act hiring

¹⁶ This file only contained the most recent hire data. If an employee was hired more than once during FY 98, only the last hire would be included in the data.

procedures are not required to be followed. Partially exempt staff can be placed at steps A-F.

Personnel rules for the various exempt agencies differ in formality, scope, and content

We contacted seven executive branch quasi governmental organizations (QGOs) that are made up entirely of exempt employees regarding the nature and extent that each has developed and follow personnel rules. We also compared those rules to those in place for executive branch line agencies to evaluate reasonableness and administrative consistency.

Five of the seven QGOs had rules and policies that had been formally adopted by the organization's governing board – the Alaska Permanent Fund Corporation, AIDEA, Alaska Commission on Postsecondary Education, ASMI, and the Alaska Aerospace Development Corporation. The other two agencies contacted -- the Alaska Science and Technology Foundation (ASTF) and the Alaska Tourism Marketing Council (ATMC), did not have any formally adopted policies or rules in place. However, both the ASTF and ATMC executive director reported their agency relied on the Department of Commerce and Economic Development (DCED) human resource personnel for advice when hiring and granting merit increases.

Other observations and comments from our survey of the QGOs:

1. Alaska Aerospace Development Corporation (AADC) rules were most flexible. Alaska Aerospace Development Corporation has personnel rules that are significantly broader than the rules of the other larger state corporations. AADC addresses merit increases succinctly:

The Executive director will determine employee promotions and merit pay increased based on an employees' annual evaluation.

Corporation rules do not address advance step hire, nor do they consider longevity increments. We reviewed AADC payroll data for two employees and did not identify any payroll activity out of the ordinary. AADC had four budgeted positions for FY 99, one being the executive director whose salary is determined by the board.

2. Alaska Science and Technology Foundation (ASTF) follow statutory schedule, but have no formal personnel rules. ASTF follows the statutory salary schedule. This change was made recently when the current executive director decided to adopt the established state pay plan. Although ASTF follows the statutory pay plan, it does not have written guidelines or procedures which explicitly describe the initial step placement process or merit or longevity increase policies. The executive director stated that he solicits technical advice as needed from DCED's human resource staff with increases or hiring step.

With regard to initial step hires, the executive director stated that he must consider the market pay to hire qualified personnel due to the specialized nature of some of ASTF positions. The executive director's goal is to annually evaluate his staff of five and their respective job duties. If their performance is at least acceptable, they are provided a merit increase. Our review of ASTF merit increases indicates that, similar to ASMI, longevity steps are not considered for the longevity purposes described in AS 39.27.022, however, they are used to provide a step increase for ASTF employees.

3. The Alaska Permanent Fund Corporation (APFC) has established its own compensation plans as allowed. APFC is also exempt from the State Personnel Act and chose to implement its own compensation program. The APFC Personnel Management Program (PMP) incorporates the position classification structure, compensation structure, delegation of authority for classification and compensation actions, executive director compensation management program, and general personnel practices.

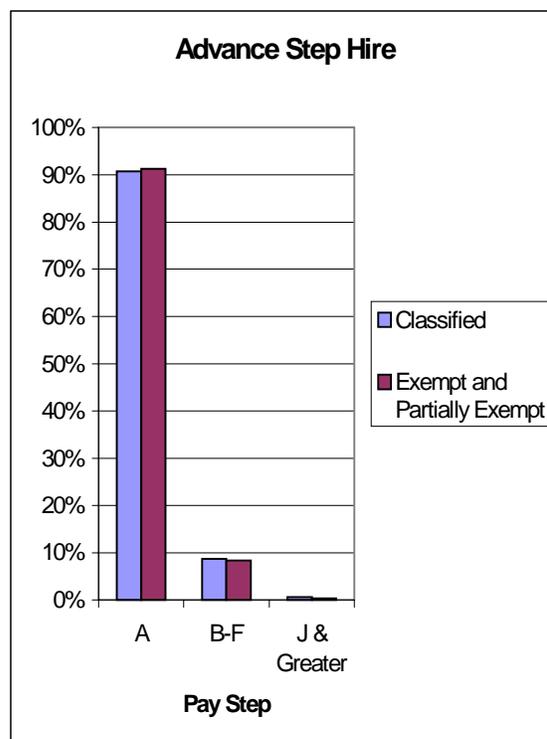
The PMP provides guidelines on employee compensation, hiring range, anniversary dates, promotions and reclassifications. It describes when performance based salary increases should occur and describes one-time allowance that would allow a percentage increase to the base salary for a specific period of time. Our review of the PMP indicates that it provides a solid framework for salary decisions.

- Finally, exempt employees not covered by bargaining unit contracts, have the most flexibility. They can determine their own rules and pay plans. We excluded exempt employees covered by bargaining units and emergency firefighters, youth, and student interns employed by the Department of Natural Resources from our analysis.

Our review concluded that in approximately 9% of the time both classified and partially/totally exempt employees were being placed in advanced steps upon hire (step B or above – see graph at right). One difference we did notice between the partially and fully exempt employees, is that fully exempt employees were being hired into the longevity steps. One deputy director at AIDEA was hired starting August 18, 1997 at a 24 J. The seafood technical program director at ASMI was hired at a 21 J on March 9, 1998. Both individuals had previously worked for the State of Alaska.

KPMG Peat Marwick (KPMG) determined most positions to be compensated competitively

We contracted with KPMG to perform a salary compensation study of ASMI and AIDEA positions that are range 21 and above. Twenty-two positions in ASMI and AIDEA are range 21 and above – ASMI has 6 and AIDEA has 16 such positions.



Nine¹⁷ positions were considered to be unique to ASMI and AIDEA. Therefore, KPMG was unable to gather comparable accurate external compensation information for these positions. KPMG evaluated the remaining 13 positions.

As stated in the Methodology Section of the KPMG report, this competitive market analysis was based on two main sources of information. The first source of information was KPMG’s private survey of benchmark positions in Alaska, Washington, California and Oregon conducted in May 1998. The survey provided data from 68 survey participants in all industries. The second source utilized by KPMG was published survey data. The private survey data was supplemented with information from published survey data.

KPMG determined the competitive range for each job to be 20% below and 20% above the midpoint. The midpoint is the median salary (50th percentile) of data utilized. Any positions paid either below the minimum salary or above the maximum salary are determined to be outside the competitive range.

¹⁷ Positions not evaluated are shown in Appendix A of this report (page 5 of KPMG’s report).

Compensation for most ASMI positions is within competitive market range

KPMG reviewed five of the six positions at ASMI that are range 21 and above. Their review indicated that four of the five positions are paid within competitive market ranges.

Position	ASMI Salary	Survey Average Salaries	ASMI Percent Over/(Under)
Export Promotions Director	75,900	73,200	3.7%
Finance Officer	57,000	70,000	-18.6%
Food Service Director	75,900	68,200	11.3%
Retail Marketing Director	75,900	76,900	-1.3%

The ASMI executive director was considered to be paid below the competitive market range.

Position	ASMI Salary	Survey Minimum	Survey Median	Survey Maximum	ASMI % Over/(Under)
Executive Director	80,700	85,000	106,200	127,400	-24.0%

AIDEA positions fall within, above, and below the competitive market according to KPMG analysis

KPMG reviewed 8 of 15 positions at AIDEA that are range 21 or greater. Of the eight reviewed, five were considered to be within the competitive market range as follows:

Position	AIDEA Salary	Survey Average Salaries	AIDEA Percent Over/(Under)
Deputy Director, Credit	77,800	90,000	-13.6%
Deputy Director, Finance	86,900	89,300	-2.7%
Development and Finance Manager	78,400	97,100	-19.3%
Procurement Manager	59,000	59,300	-.5%
Technical Engineer 08-0224	67,900	72,200	-6.0%

Two AIDEA positions were considered above the competitive range that is considered by KPMG to be 20% above the survey average. One position is considered to be below the competitive range that is considered by KPMG to be 20% below the survey average.

Position	AIDEA Salary	Survey Minimum	Survey Median	Survey Maximum	AIDEA % Over/(Under)
Accountant	63,200	36,800	46,000	55,200	37.4%
Technical Engineer ¹⁸	96,700	57,800	72,200	86,600	33.9%
Executive Director	95,000	123,300	154,100	184,900	-38.4%

¹⁸ Position Control Number 08-0212.

State of Alaska benefits are competitive when compared to KPMG 's survey data

KPMG determined that the costs of benefits as a percentage of salary for the State are slightly higher than corresponding amounts obtained from the private survey data. To determine comparable benefits, KPMG calculated the cost of the benefits offered to the “average” employee by determining the total premium paid for the insured benefits and subtracting any contribution made by employees, recognizing the contributions made toward retirement programs and determining the cost of paid time off. KPMG determined that for State of Alaska employees, not represented by a bargaining unit, benefits are 42% of salaries. KPMG survey participants reported that their employee benefits were 39% of salaries.

FINDING AND RECOMENDATION

Recommendation No. 1

We recommend that the Alaska Seafood Marketing Institute (ASMI) executive director develop comprehensive personnel policies approved by the board of directors.

Alaska Seafood Marketing Institute had 18 full time budgeted positions for both FY 98 and FY 99. ASMI is exempt from the State Personnel Rules that establish procedures for initial step hire, for merit increases, or for issuing longevity increments. Additionally, unless dictated by statute, appointing authorities, or by the board, exempt agencies are not required to use the statutory pay plan. According to the agency, staff compensation decisions are at the discretion of the executive director. As described in the Report Conclusion, ASMI uses the statutory pay plan.

Alaska Statute 16.51.080 pertaining to ASMI compensation states as follows:

The Board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary.

ASMI's policy consists of two one page memoranda on evaluations and step/range adjustments initially approved by the executive director effective September 27, 1994. These policies allow for two-step increases for employees with acceptable performance and that meet identified goals.

Although exempt, ASMI is still responsible to the citizens of Alaska to maintain a compensation program that both recognizes the public service responsibilities of the agency while enabling ASMI to attract and retain highly qualified employees. Our review of initial step hires and merit increases indicate that ASMI has chosen to pay from the pay plan in AS 39.27.011, however, does not follow the State Personnel Rules.

As an example, the intent of advanced step hire in the regulations that accompany the pay plans is to address exceptionally qualified individuals or issues due to difficulty in recruiting.

<u>ASMI Compensation</u>	
<u>Quality Assurance Coordinator</u>	
Individual promoted from 17K position which had the same title within ASMI to 21A position on June 15, 1993. The following merit increases were provided to the employee.	
June 16, 1993	21A
May 16, 1994	21F
May 16, 1995	21J
May 16, 1996	21K
July 16, 1997	21L
January 15, 1998	Employee Resignation
<u>Accounting Technician</u>	
Individual promoted from 14A position with the same title within ASMI to 16A position on 05/01/92. The following merit increases were provided to the employee.	
May 1, 1992	16A
June 16, 1993	16C
July 1, 1994	16E
May 16, 1995	16J
May 16, 1996	16L
July 16, 1997	16M
July 20, 1998	Employee Promoted 21D
ASMI employees are exempt from the Personnel Rules outlined in AS 39.25.150 so do not need to abide by merit increase procedures nor the longevity increments. Longevity pay increments require classified and partially exempt employees to remain in the "longevity steps" for multiple years as follows:	
Step F	2 years
Step J	2 years
Step K	5 years
Step L	4 years

However, we were told that an ASMI manager was appointed at an M step (range 25) to offer a salary competitive with similar industry positions.

We identified situations where employees were consistently provided two-step merit increases throughout the pay plan longevity steps, which is allowable by its internal policy. We also identified a situation where an employee was given a five-step merit increase. The five-step increase was granted prior to the implementation of the ASMI internal policy.

The Alaska Administrative Manual¹⁹ provides guidelines to state executive branch agencies using the longevity steps in pay plans. The Alaska Administrative Manual states that the longevity step increments were established to reward employees for longevity in state employment and provide an incentive for employees who had attained the final step within a given range to continue employment with the State. Final step in this situation refers to step F. Longevity increments (steps J, K, L, and M) used by ASMI were not treated any differently than the initial steps (A-F). Where it would take an acceptable employee that is required to follow the rules that accompany the pay plan being used, to get from step 16 A to 16 M, ASMI is compensating a similar employee against the same pay plan in a third of the time.

We recommend that ASMI establish comprehensive personnel policies and procedures for approval by the board that recognizes ASMI's public service responsibilities and provides guidelines to the agency to ensure fair and consistent treatment of employees. We recommend that ASMI develop written procedures that considers initial step hires, annual or meritorious increases, and longevity.

¹⁹ AAM 200.110.

SUBSEQUENT EVENT

During our survey work we identified correspondence between the Alaska Seafood Marketing Institute (ASMI) executive director and the ASMI board of directors addressing two specific issues of concern to a member of the legislative finance committee. ASMI's executive director polled a majority of board members to ascertain that:

1. The ASMI board will agree to a policy that ASMI will not hire any new employees over a range 21 outside the State of Alaska; and
2. ASMI will do as much contracting and buying of services within the State of Alaska as possible.

For these two concessions, ASMI received assurances that the legislative finance committee member would not block the passage of ASMI budget related matters during the 1998 legislative session.

ASMI is in the process of recruiting for a new project manager position in Seattle.

After completion of our fieldwork April 15, 1999, we became aware that ASMI is in the process of recruiting for a project manager position in Seattle. We were informed by the executive director that employment of that position may command a salary greater than a range 21 on the Seattle salary scale.

We identify this due to the conflict between potential salary placement of this Seattle employee at greater than a range 21 and the agreement not to hire any new employees over a range 21 outside the State of Alaska. The ASMI executive director stated that she intends to inform the legislative finance committee member that was party to this agreement of the situation after completion of interviews and the decision to hire.

Appendix J

FY14.DFG.Licensing Modernization

Project Charter

Prepared for ADF&G by Resource Data, Inc.

9/4/12
Version No. 1.5

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I. Project Overview and Vision Statement

Include the purpose, timeframe, total cost for all years (broken out if spans multiple fiscal years), and who is the primary customer. Provide a statement defining the vision for this project and the intended outcome when completed.

Project Vision

The purpose of this project is to complete the development of a modern, automated and consolidated licensing system for the issuing and the tracking of all types of hunting and fishing licenses, permits, and application processes such as Big Game Draw Hunts, McNeil River Bear Viewing Permits, and Hunter Education Courses issued by the Alaska Department of Fish and Game.

The mission of the Alaska Department of Fish and Game is to protect, maintain and improve the fish, game and aquatic plant resources of the State, and manage their use and development in the best interest of the economy and well-being of the people of the State, consistent with the sustained yield principle.

This document will demonstrate how this project will directly support ADF&G in fulfilling its mission by improving licensing management activities to better protect Alaska's natural resources and increase department fiscal health. The information obtained from the public in the licensing process enables each Division within the Department to fulfill its management responsibilities and provides a basis for law enforcement agencies to protect the State's resources. The new licensing system will be highly integrated and compatible with all Divisions' licensing/permit information management systems, allowing for future additions to, and modifications of those licensing systems as the Divisions' information needs change.

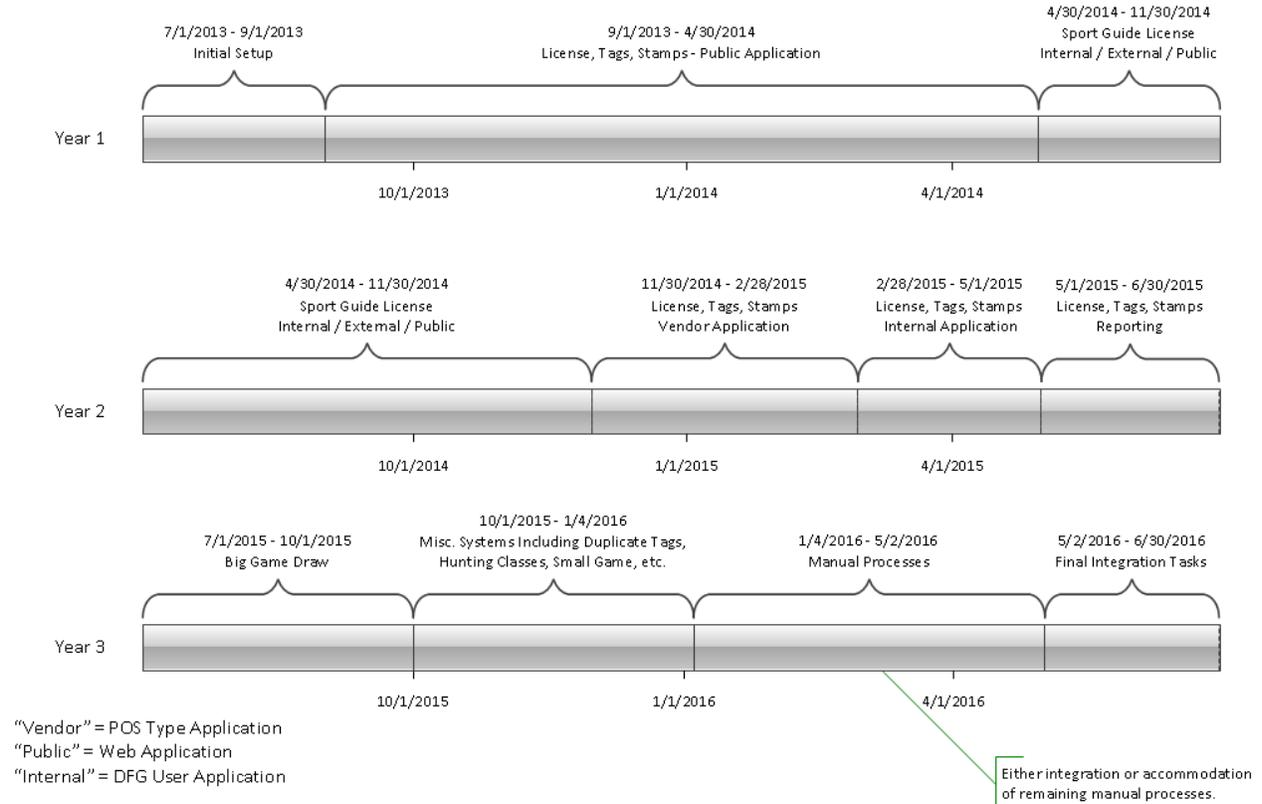
The licensing system will be based upon a core customer information system containing the identity and contact information for customers who purchase or obtain licenses and permits and will include all records of citations issued by law enforcement. That system will be used by all other subsystems. Each individual will be recognizable in the system by a unique identifier. All pertinent information will be attached to that identifier and can be accessed by any ADF&G staff, vendor or law enforcement.

Project Timeline

The new system will be developed in stages over a three year period (*see Figure 1 below*). It will be designed to:

- improve the customer service experience of users (those who buy licenses/permits/tags and the vendors who help with issuance)
- improve the accuracy and timeliness of the department customer data (vendors and users),
- improve the efficiency of the licensing processes employed
- be extensible to allow for rapid changes in legislation and new programs
- be easily maintainable by ADF&G staff after implementation

Figure 1: ADF&G Licensing Modernization Project Timeline



Initial Setup includes things such as server setup, etc.
 Dates are included on intervals to show rough timeframes.
 Year 1 begins when contract with Developer begins.

Project Cost

Estimated Project Cost: \$2,763,694.34

Methodology for Cost Estimation

This estimate has been calculated through a comprehensive metric-based approach that assigns a complexity score to each system and business process to be encompassed in the new licensing system.

The complexity score of each item to be included is based on:

- Number of internal and external users of the system
- Number of interfaces the item has to other legacy applications
- Number of security profiles and users incorporated by each
- Approximate number of records stored in each, and other items

The complexity score allows each system to have an approximate replacement cost by utilizing a uniform, logic-based metric approach to incorporate costs such as infrastructure, training and other ancillary costs that may be unknown until detailed requirements are completed.

After calculating a complexity score for each system, the base cost for replacing a Sport Fish licensing application from scratch was calculated. Based on the Complexity Score of that application, a cost-per-complexity-point was calculated.¹ Using this value an overall cost of the replacement system was derived. See *Appendix C-1: System Build Estimate (Printable Version)*, *Appendix C-2: Sport Fish License Estimate (Printable Version)*.²

Primary Customer

The primary customer of this system will be the Alaska Department of Fish and Game; it will be used to achieve excellence in the fulfillment of the Department's mission in order to better serve the people of the State of Alaska.

Core services to the public include:

- Providing opportunities to utilize fish and wildlife resources
- Ensuring sustainability and harvestable surplus of fish and wildlife resources
- Providing information on Alaska fish and wildlife resources to all customers
- Involving the public in management of fish and wildlife resources
- Protecting the state's sovereignty to manage fish and wildlife resources
- Protecting important fish and wildlife habitat during permit and project review

II. Statement of Need

A. Project Description/Justification

Project Description

This project will build a consolidated licensing system with a public facing, easy to use online licensing platform that will allow the Alaska Department of Fish and Game to:

- better serve, describe, analyze and manage its license customers
- better serve, describe, analyze and manage its license vendors
- improve its license research, monitoring and enforcement assistance capabilities
- effectively manage its license fiscal resources

At the heart of this project is the consolidation of data into a single system that tracks licensees with unique identifiers. This data-driven approach will drastically improve data integrity by:

- Reducing/eliminating duplicate data
- Providing automated validation at both internal and external data entry points

¹ This value was lowered by 25percent to represent shared costs- overhead such as hardware and software licenses, training and other infrastructure.

² These appendices have been modified from their original format to print legibly for hard copy review of this document. A full version of all Appendices in the form of an Excel workbook titled: "License Estimation Tool" is available in an electronic version for expanded views of all tabs.

- Creating reporting capabilities that will provide real time access to system data

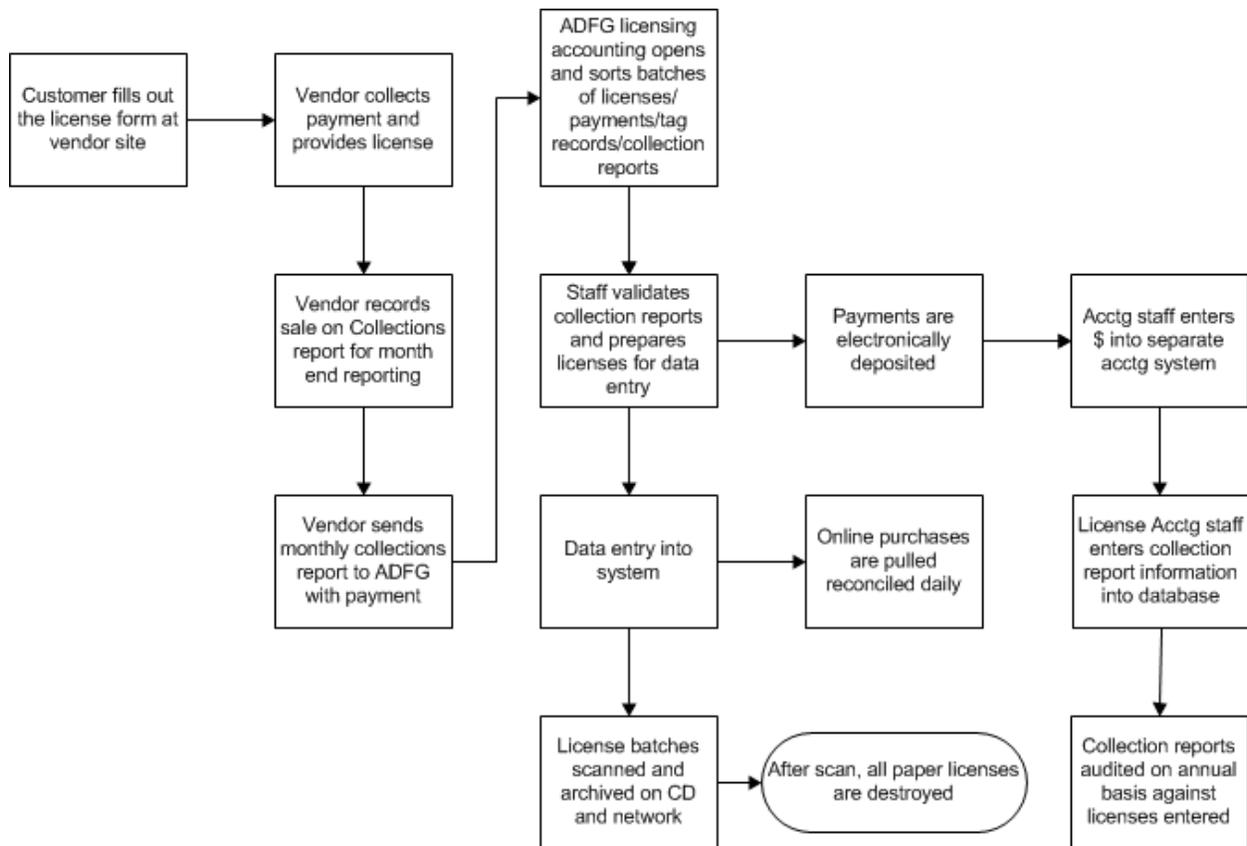
Project Justification

Paper Processing by the Numbers

In FY 2012, paper processing of fish and game licenses in Alaska cost the State nearly \$1.5 million. For a breakdown of individual costs (including commodities, services, etc.) that contribute to this total annual expense, Appendix C-3: As-Is Ten Year Cost.

In order to better understand some of the cost associated with paper processing licenses, it is important to look at the role paper plays in today's licensing process. The Alaska Department of Fish and Game issues multiple types of licenses and permits to hunters and anglers, guides, and commercial fishermen (both resident and non-resident). Most of these licenses and permits are still issued in paper form, and sold by retail vendors that either carry hunting and fishing equipment or provide fishing, hunting, and wildlife-use related services. These vendors collect the fees and then submit hand written license forms and fees to ADF&G. Currently only 14percent of all license sales are transacted online. This means the majority of license applications are processed several times by different parties in the course of hard copy submission. *Figure 2* below gives an overview of the number of steps required to execute a license and get it into its respective database.

Figure 2: ADF&G Licensing Paper Process



This diagram shows that each license application must be filled out or ‘touched’ several times in order to be processed. Each step in the process costs ADF&G time and money, and reduces the overall accuracy of the data entered.

It is understood that there are some customers who will continue to prefer to manually complete their license applications each year. Alaska’s unique geographic composition also includes areas where access to the Internet is limited or unavailable, leaving paper processing as the only option. That being said, the majority of resident and non-resident licensees have basic access to the Internet and adequate computer literacy to complete the same applications online that they do on paper. Now is the time to leverage technology to serve these clients as the ratio continues to shift in the preference of electronic over paper licensing applications.

Growing Demand for Electronic Processing

One of the fundamental goals of this project is to develop a technological platform that will allow ADF&G to keep pace with the growing demand for electronically facilitated services by both residents and non-residents.

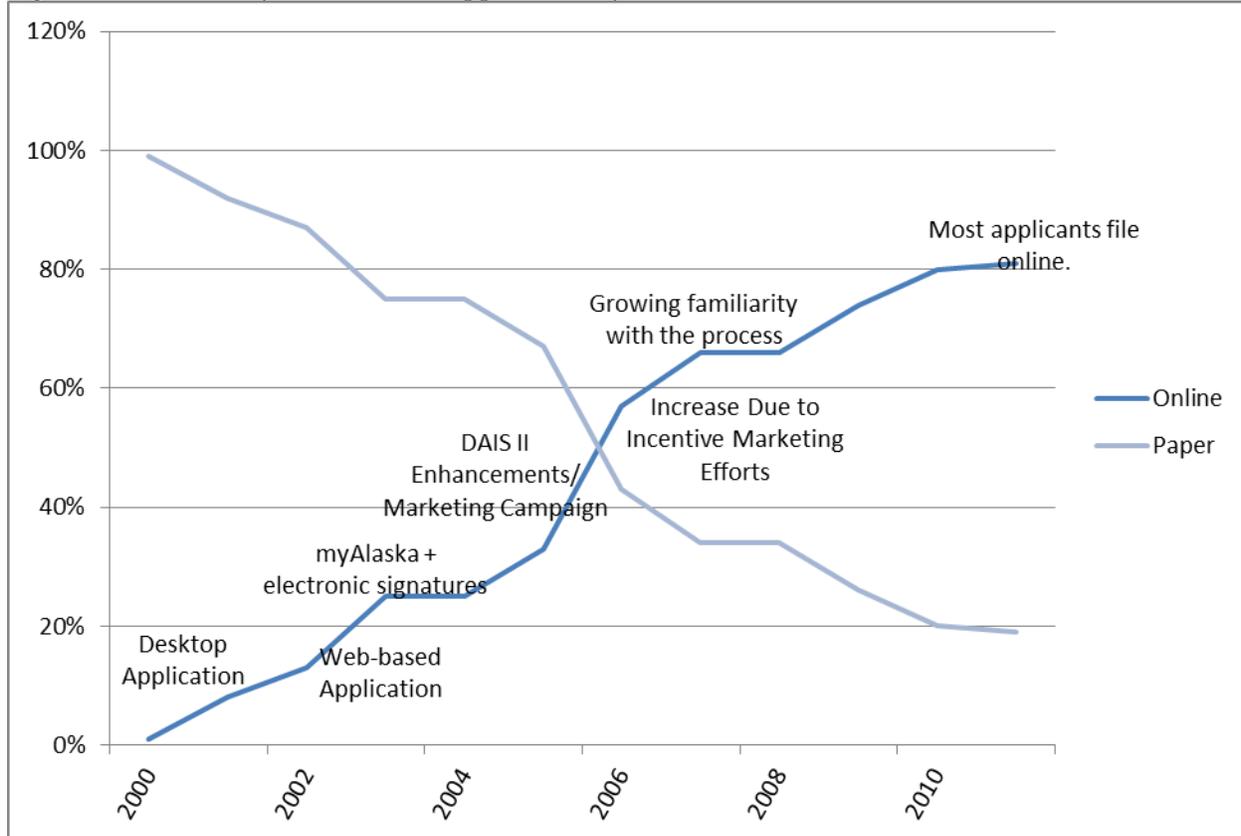
Non-Alaska Residents:

Non-Alaska residents planning trips to Alaska already demonstrate a strong preference for online license applications, allowing them to engage in excursions without delays or inconvenience once they have landed at their hunting or fishing destination. An improved, user-friendly online application system that increases convenience for Alaska’s visitors can already be predicted as well received by this group.

Alaska Residents:

Alaska residents are increasingly technically savvy and respond well to opportunities to receive more convenient and modern service. One well documented data point we can use as a snapshot of the potential demand of Alaska residents for electronic licensing is the tremendous success of the PFD Online Application over the last decade. Through replacement of its originally cumbersome desktop application system to a more sophisticated web application (with an extensible design that allows for periodic enhancements), along with a marketing/incentive outreach campaign, the PFD Division was able to grow its percentage of online applications from 1percent in 2000 to 81percent in 2011. *Figure 3* below shows the trend towards this majority participation in online filing and key events that fostered the more dramatic increases throughout the time period. The new licensing modernization application has an advantage in that our starting point is 2012, and the current licensing system is starting out at 14percent utilization (a much higher number than PFD’s starting point of 1percent). It is reasonable to predict that the new licensing system will be well utilized right out of the gate, with a rising percentage of use each year.

Figure 3: The Rise of PFD Online Applications from FY 2000-2011³



Disparate Systems = Disparate Data

There are several licensing data systems within the Department which serve the needs of different Divisions within ADF&G. The lag in information exchange resulting from these disparate systems and the heavy paper processing of licenses creates an average 2-3 month delay in licensee data reaching the ADF&G database. These delays affect the ability of other State Agencies to access information necessary to fulfill components of their respective missions (see bulleted list below). Some examples of some of the effects of these inefficiencies are:

- One example of the limitations of the current licensing system on the ability of ADF&G to efficiently server important programs within its own department is its inability to accurately identify an individual customer. Hunting and fishing regulations contain many restrictions on whether an individual can participate based on whether they hold a permit or the appropriate license or tag. Not being able to identify a customer across the department's various systems restricts our staff from enforcing these rules to increase customer satisfaction and regulatory compliance.

³ Information used to create this graph was collected from the PFD Annual Reports posted online at: <http://pfd.alaska.gov/DivisionInfo/AnnualReports>

- The Department of Revenue Child Support Services Division misses critical windows of opportunity to use licensee data to track down delinquent parents. By the time license data filed in paper applications reaches the point of data entry into the ADF&G database, the fishing season has often lapsed.
- State Troopers do not have access to current data due to the time lag in the current system, allowing individuals being sought by the law to slip through the cracks who could otherwise be quickly located and apprehended based on data collected in the licensing process.

Some Divisions have moved forward with Internet-based permit application processes, but these systems are not effectively integrated with the primary licensing systems managed by Division of Administrative Services.

The consolidation of information into one system would serve to streamline a multitude of Department of Fish and Game processes including:

- Law Enforcement
- Management Decisions⁴
- Fraud Detection
- Reporting
- Accounting
- Paper Processing
- Duplicate Processing
- Customer Service

B. What is the purpose of the project?

The primary purpose of the this project is to complete the development of a modern, automated and consolidated licensing system for the issuing and the tracking of all types of hunting and fishing licenses, tags, stamps, permits, and application processes such as Big Game Draw Hunts, McNeil River Bear Viewing Permits and Hunter Education Courses issued by ADF&G.

C. Is this a new systems development project, or, an upgrade or enhancement to existing department capabilities?

The Licensing Modernization project is a new system replacing all existing ADF&G licensing systems.

D. Specifically, what hardware, software, consulting services, or other items will be purchased with this expenditure. Include a line item breakdown.

The majority of the building of this system will be assigned to a qualified project development firm. See line item breakdowns in *Appendices A, B and C*.

E. How will service to the public be improved if this project is funded?

⁴ For example, Sport Fish and Wildlife managers need to get license data as soon as possible so they can make decisions about surveys, publications, etc. With the current lag time in data entering the database, these business decisions are delayed significantly.

Service to the public will improve on multiple levels, from the client experience of purchasing a license to the long term benefits of bringing the ADF&G into the future so that it can better fulfill its mission of sustaining Alaska’s fish and game populations. On the customer-facing side of the licensing process, the most notable improvement in the user experience will be the availability of a user-friendly, fast and easy online site to purchase licenses, stamps, permits and tags. This system would streamline licensing to the public by providing a “one-stop-shop” for all licensing and permitting needs. One of the goals of this system would be to eliminate a host of current system issues the public faces when applying for licenses and permits by providing a fully automated system with online access. With the newly consolidated database and unique identifier model, users who purchase licenses every year will not have to re-enter their information every year and their licensing history will be easily tracked for personal and State agency use. With consistent access to integrated information systems, vendors will be able to transact licenses far more quickly and conveniently at the point of sale. Vendors will also benefit from automated reporting and payment processes, which will save time so their staff can focus on other revenue-generating aspects of their business.

F. Does project affect the way in which other public agencies will conduct their business?

The new system will positively affect several public agencies that need accurate licensee data in short order to conduct their business.

Some of these include:

- Child Support Services Division
- Alaska Court System
- Alaska Troopers
- Federal Enforcement Agencies (i.e. NOAA)
- Police Departments
- University of Alaska and Other Researching Entities

G. What are the potential out-year cost implications if this project is approved (bandwidth requirements, etc.)?

As the replacement system will be a modern, streamlined, centralized, e-commerce platform improving the overall costs in the years after the project is implemented. Changes in the cost of the normal operations of the Licensing Application are expected, some of which are listed below:

- Bandwidth – minimal expected change
- Licensing Changes – unknown until design phase but anticipated to remain stable or contract
- Staffing Costs- unknown (anticipated reduction in data entry hours but other positions and associated costs will be better estimated during requirements gathering and design phases)
- Hardware/IT Infrastructure: unknown but will be easily estimated during design phase

H. What will happen if the project is not approved?

If this project is not approved, several issues will persist:

- Some of ADF&G license staff spends a majority of their day providing customer service to license customers and respond responding to client complaints resulting from technical limitations of the current system and researching eligible licensee information. Implementing a modernized, extensible F&G licensing system would refocus the time spent by a portion of agency staff responding to customer complaints towards keeping the system updated in real time to legislative and other policy changes.
- Fraud detection will continue to remain a significant challenge due to the lack of a unique identifier system. With increased revenue created by better fraud detection and ease of use of the online system.
- Public agencies that need accurate and fast access to ADF&G licensee data will continue to experience long delays and miss opportunities to use this data to fulfill their respective missions.
- Customer options for acquiring licenses will remain limited.
- Just as there is an estimable cost to creating a software application that would modernize the ADF&G Licensing system, so too is there an estimable cost to leaving the current system as-is. Ongoing estimated costs of leaving the current system in place over the next 10 years have been identified and estimated as \$14,594,409.60 as outlined in *Appendix C-4: As-Is Ten Year Cost*.

III. Scope

The Project Scope defines all of the products and a service provided by a project, and identifies the limits of the project. In other words, the Project Scope establishes the boundaries of a project. The Project Scope addresses the: who, what, where, when, and why of a project. Add items as necessary.

In Scope:

- On-line licensing service directly to the customer (via internet)
- MyAlaska shall be targeted as method for authentication for all in-state residents and vendors.
- Online Vendor Application to allow Vendors to purchase licensing products, reconcile transactions, and instantly access accounting
- Point of Sale service directly to the customer via vendors
- Provide Training for DF&G staff on use of the new applications.
- Provide user guides and other materials to public, vendor, and internal user of the new applications.
- Banking and financial programs to manage licensing funds and inventory
- System utilities for data management
- Marketing of the system to public and vendor users

Out of Scope:

- Customer/vendor Hardware and Software (support and maintenance)
- Data reporting beyond what is currently available.
- Remote vendor user hardware support
- Remote vendor or other user training
- Public user training

IV. Project Goals and Objectives

This goals and objectives section offers an opportunity to expand the project summary to highlight any aspects of the project that will provide greater understanding of the project's probable benefits.

- Improve the rate at which licensing data becomes available to public agency management and enforcement teams.
- Reduce costs associated with ADF&G staff capturing the data from paper licensing systems.
- Improve the quality and usability of the data captured, as well as the speed at which it can be accessed.
- Reduce the amount of time ADF&G staff spends responding to technical and license issuing complaints by vendors and the public.
- Provide for more efficient electronic funds transfer mechanism for license vendors and automated improvements in associated accounting and reporting systems for licensing revenue.
- Improve the Department's research, monitoring, and enforcement assistance capabilities by improving data quality and making licensing data available in a much shorter timeframe.
- Reduce licensing fraud by cross-checking the DOR PFD database.
- Provide important information in a timely manner to other agencies such as Child Support Services Division, the Alaska Court System, Alaska Troopers, Federal Enforcement Agencies (i.e. NOAA), Police Departments, University of Alaska and Other Researching Entities.

V. Project Life Cycle Capital Costs & Overall Budget

A. Overall Project Budget

Enter dollar amounts in thousands: \$ 1,000.00 = 1.0 \$ 1,350,000.00 = 1,350.

NOTE: If additional rows are needed, add them.

Auth. No.	Request	FY	Funding	GF	FED	Recpts.	Other
		Prior					
		2014	\$ 2,774.6	\$2,774.6			
		2015					
		2016					
		2017					
		2018					
		2019					
TOTAL			\$ 2,774.6	\$2,774.6			

B. Full Life Cycle Cost Information

Enter dollar amounts in thousands: \$ 1,000.00 = 1.0 \$ 1,350,000.00 = 1,350.

Description	FY14 CAP Cost
Project Initiation / Planning	\$ 24.60
Requirements Definition ⁵	\$ -
Staff Resources Required	\$ 46.80
Contractual Staffing Resources Required	\$ 2,241.90
System Design ⁶	\$ -
Software Acquisition	\$ 3.64
Software Installation / Programming	\$ 24.6
Hardware / Infrastructure Acquisition	\$ 10.0
Hardware / Infrastructure Installation	\$ 2.73
Hardware / Infrastructure Testing	\$ 1.00
System Integration and Testing	\$ 12.3
Installation and Deployment	\$ 12.3
System Operation and Maintenance	\$ 245.97
Corrective and Adaptive Maintenance	\$ 12.30
Training	\$ 61.49
Marketing	\$ 75.00
Totals	\$ 2,774.63

⁵ Requirements Definition will be done before the beginning of the year.

⁶ Contractor will be responsible for turning the requirements into a system design.

VI. Ongoing Operational Planning

Over next eight months [Sept 2012 – March 2013] ADF&G will work to finalize system requirements. The resultant system requirements will be used to formulate a system design that should produce a system requiring either the same or lower operational costs than are currently incurred by ongoing separate activities. Every effort will be given to produce a system that will drastically lower those operational costs.

VII. Project Technology Risk

	YES	NO
Are the project requirements clear?	X	
Is the required technology well-understood?	X	
Are the client expectations realistic?	X	
Will the technology or system(s) be geographically distributed?	X	
Are critical business events dependent on project completion?	X	
Does this project involve a normal level of complexity?		X
Does the project include public-facing components?	X	
Are all external dependencies controlled?		X
Are resources with appropriate skills available for this project?	X	
Are there health/safety/environmental concerns?		X
This project requires expanded bandwidth or increased network speed?		X
Will this project require deployment(s) in more than one location (VII.A. 3)?	X	
Does the project adhere to established IT Standards?	X	
If it does not adhere to established IT Standards, do you have a waiver?		

VIII. Business Assessment

A. Network Impacts

1. Who are this project's intended customers and how many will it serve?

The project's customers are those members of the public who hunt, fish, trap or view Alaska's wildlife resources. This is approximately 500,000 people per year.

2. Where are your customers located:

Worldwide

3. What is your primary method of service delivery for this project?

Internet deliver to the home and in-store internet connected desktops.

4.

IF this project is hosted in more than one location, indicate where below:

- | | | | | |
|---|--------------------------------------|--|---------------------------------------|-----------------------------------|
| <input type="checkbox"/> Anchorage | <input type="checkbox"/> Dillingham | <input checked="" type="checkbox"/> Juneau | <input type="checkbox"/> Nome | <input type="checkbox"/> Tok |
| <input type="checkbox"/> Aniak | <input type="checkbox"/> Eagle River | <input type="checkbox"/> Kenai | <input type="checkbox"/> Palmer | <input type="checkbox"/> Unalaska |
| <input type="checkbox"/> Barrow | <input type="checkbox"/> Fairbanks | <input type="checkbox"/> Ketchikan | <input type="checkbox"/> Petersburg | <input type="checkbox"/> Valdez |
| <input type="checkbox"/> Bethel | <input type="checkbox"/> Fort Yukon | <input type="checkbox"/> King Salmon | <input type="checkbox"/> Saint Mary's | <input type="checkbox"/> Wasilla |
| <input type="checkbox"/> Cordova | <input type="checkbox"/> Galena | <input type="checkbox"/> Kodiak | <input type="checkbox"/> Seward | <input type="checkbox"/> Wrangell |
| <input type="checkbox"/> Craig | <input type="checkbox"/> Haines | <input type="checkbox"/> Kotzebue | <input type="checkbox"/> Sitka | <input type="checkbox"/> |
| <input type="checkbox"/> Delta Junction | <input type="checkbox"/> Homer | <input type="checkbox"/> McGrath | <input type="checkbox"/> Soldotna | <input type="checkbox"/> |

B. How does this project meet your mission?

ADF&G has the mission of managing Alaska's fish and game resources for the benefit of all Alaskans. Resource management involves limiting the exploitation of wildlife and fisheries in an equitable manner, so that populations can be sustained. To do so, the Department issues licenses to hunters and fishermen, and issues permits for specific harvests that need close management. Resource management requires data, particularly data on number of users and associate revenue that is allocated to the different Divisions. Licensing is required by regulation and captures demographic data about the user community. It also provides the target audience for user-based surveys to collect effort and harvest data, as well as essential enforcement and compliance efforts by ADF&G and Department of Public Safety, Division of Wildlife Enforcement.

C. What is the planned project focus (must mirror placement in Appendix A)?

- Primary value is for: Division, Department, and Enterprise
- In support of: Infrastructure, Indirect, Direct

D. What fundamental Investment Type does this project represent?

- | | |
|----------------------|-----|
| • Infrastructure | No |
| • Security & Privacy | No |
| • Service Delivery | Yes |
| • Transactional | Yes |

E. What is the most important Business Objective for this project?

- Improving the department's Best Practices Workplace? Yes
- Improving Customer Relations? Yes
- Improving Systems & Data Reliability? Yes
- Improving Employee Recruitment & Retention? No
- Gaining Efficiencies? Yes
- Gaining Cost Savings? Yes