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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Jason Kampman
Commercial Fisheries Entry Commission

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: February 24, 2021

RE: Filed Permanent Regulations: Commercial Fisheries Entry Commission

Commercial Fisheries Entry Commission regulations re: domicile, refund of fees, emergency transfers of permits, demerit points, and repeal of definition of "illness" (20 AAC 05.245(a)(3); 20 AAC 05.290; 20 AAC 05.425(c); 20 AAC 05.560(d); 20 AAC 05.1750(f); 20 AAC 05.1770(a)(9); 20 AAC 05.1971)

Attorney General File:	2020200660
Regulation Filed:	2/24/2021
Effective Date:	3/26/2021
Print:	237, April 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE COMMERCIAL FISHERIES ENTRY COMMISSION


The attached 8 pages of regulation to correct a cross-reference in a regulation about fee adjustments; amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; repeal the definition of illness which applies to permit transfers; and to adopt a new section to implement the demerit point statute are certified to be a correct copy of the regulation changes that the Commercial Fisheries Entry Commission adopted at its January 4, 2021 meeting, under the authority of AS 16.43.110 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Commercial Fisheries Entry Commission paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 1/6/2021



Fate Putman, Chair

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on Febr. 24th, 2021 at 3:02 pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective: March 26, 2021

Register: 25th April 2021

20 AAC 05.245(a)(3) is amended to read:

(3) notwithstanding (1) and (2) of this subsection, and subject to the limits for an annual base fee in AS 16.43.160(c) [AS 16.43.160(e)], the commission may make an appropriate adjustment to an annual base fee if (A) more than one permit type allows the directed harvest of the same species with the same gear in the same area or if one permit allows the directed harvest of the same species by a combination of gears in the same area; or (B) strict application of (1) and (2) of this subsection results in an annual base fee that is not appropriate in light of the rate of economic return for the fisheries covered by that permit;

(Eff. 10/27/2001, Register 160; am 5/16/2002, Register 162; am 12/21/2002, Register 164; am 12/6/2003, Register 168; am 12/1/2004, Register 172; am 11/6/2005, Register 176; am 10/28/2006, Register 180; am 11/10/2007, Register 184; am 11/23/2008, Register 188; am 11/20/2009, Register 192; am 12/31/2010, Register 196; am 12/25/2011, Register 200; am 12/27/2012, Register 204; am 12/25/2013, Register 208; am 11/13/2014, Register 212; am 11/4/2015, Register 216; am 11/16/2016, Register 220; (S: 6.1) am 10/29/2017, Register 224; am 11/25/2018, Register 228; am 12/21/2019, Register 232; am 6/25/2020, Register 234; am 3/26/2021, Register 237)

Authority:	AS 16.43.100	AS 16.43.140	AS 16.43.160
	AS 16.43.110	AS 16.43.150	AS 16.43.990

Register 237, April 2021 MISCELLANEOUS BOARDS

20 AAC 05.290 is amended to read:

20 AAC 05.290. Residency. For the purpose of assessing fees for the application for, annual issuance of, or renewal of entry and interim-use permits, an individual is a resident of this state if, on the date of permit application, issuance, or renewal, and throughout the 12-month period before that date, that individual maintained their domicile in this state, did not claim residency in another state, territory, or country, and did not obtain benefits under a claim of residency in another state, territory, or country. For the purposes of this section, "domicile" means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the commission. (Eff. 10/27/2001, Register 160; am 12/27/2012, Register 204; am 3/26/2021, Register 237)

Authority: AS 01.10.055 AS 16.43.110 AS 16.43.160
AS 16.43.100

20 AAC 05.425(c) is repealed and readopted to read:

(c) Fees submitted for an interim-use permit for a specific fishery will be refunded only in the event of a season-long administrative closure of the fishery. However, the commission may ~~in its discretion~~, refund fees if the commission finds that a circumstance applicable to all permittees in that fishery has prevented a substantial number of permittees from participating. The commission may ~~in its discretion~~, refund fees if the permittee erroneously applied for the wrong permit for the permittee's intended fishing activities during the season and did not try to participate in the fishery with the erroneous permit. A permittee may request a refund described in this subsection by submitting a written request to the commission that specifies the

Register 237, April 2021 MISCELLANEOUS BOARDS

circumstances relevant to the request. The permit card or compelling evidence of the destruction of the permit card must accompany the request. The commission may require an applicant to submit additional affidavits or other evidence in support of a request for refund.

(Eff. 12/18/74, Register 52; am 1/1/78, Register 64; am 10/30/82, Register 84; am 6/5/83, Register 86; am 2/29/84, Register 89; am 6/16/86, Register 98; am 11/22/87, Register 104; am 11/26/87, Register 104; am 11/10/2007, Register 184; am 11/23/2008, Register 188; am 6/1/2013, Register 206; am 11/4/2015, Register 216; am 3 / 26 / 2021, Register 237)

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.220

20 AAC 05.560(d) is repealed and readopted to read:

(d) The commission may ~~in its discretion~~, waive the annual renewal fee of a limited entry permit if the commission finds that a circumstance applicable to all permittees in a fishery has prevented a substantial number of permittees from participating in that fishery including the person requesting the fee waiver. A permittee may request a refund of fees paid for that season by submitting a written request to the commission that specifies the circumstances that prevented the person and a substantial number of other permittees from participating in that fishery. The permit card or compelling evidence of the destruction of the permit card must accompany the request. The commission may ~~in its discretion~~, require a permittee to submit affidavits or other evidence in support of a request for a refund.

(Eff. 12/18/74, Register 52; am 1/1/78, Register 64; am 1/2/81, Register 77; am 6/5/83, Register 86; am 2/29/84, Register 89; am 11/22/87, Register 104; am 11/26/87, Register 104; am 12/31/98, Register 148; am 11/10/2007, Register 184; am 11/23/2008, Register 188; am 6/1/2013, Register 206; am 3 / 26 / 2021, Register 237)

Register 237, April 2021 MISCELLANEOUS BOARDS

Authority: AS 16.43.110 AS 16.43.150

20 AAC 05.1750(f) is amended to read:

(f) An annual request for emergency transfer of an entry permit held by a person who received that permit by right of survivorship, designation, or inheritance ^{be granted by} ~~may~~ [WILL], in the discretion of ^(L) the commission ^(L) be granted for the three years after the decedent's death, unless the recipient has fished the permit since the death of the holder. ^{in lowercase} The Commission may grant additional emergency transfers beyond the three years after the death of the decedent upon a showing by the recipient of a new unavoidable hardship under 20 AAC 05.1740(i)(1), ^{of} extraordinary circumstances as described in 20 AAC 05.1740(i)(2), or that the permit remains a principal source of income to the recipient's family. If the recipient is a youth or a surviving spouse who intends to permanently transfer the permit to an immediate family member that is a youth, upon request the commission ~~may~~ [WILL], in its discretion, grant annual requests for emergency transfers until the youth has reached the age of presumptive ability to participate as set out in 20 AAC 05.1707(a). An emergency transfer granted under this subsection is valid for the remainder of the calendar year in which it is granted.

(Eff. 12/18/74, Register 52; am 12/27/79, Register 72; am 1/2/81, Register 77; am 10/30/82, Register 84; am 6/5/83, Register 86; am 7/20/83, Register 87; am 2/29/84, Register 89; am 12/29/84, Register 92; am 11/26/87, Register 104; am 8/20/89, Register 111; am 5/4/95, Register 134; am 10/31/2001, Register 160; am 6/25/2020, Register 234; am 3 / 26 / 2021, Register 237)

Authority: AS 16.43.100 AS 16.43.150 AS 16.43.180
AS 16.43.110 AS 16.43.170

20 AAC 05.1770(a)(9) is repealed:

(9) repealed 3 / 26 / 2021;

(Eff. 12/18/74, Register 52; am 12/27/79, Register 72; am 2/29/84, Register 89; am 12/29/84, Register 92; am 11/13/94, Register 132; am 6/25/2020, Register 234; am 3 / 26 / 2021, Register 237)

Authority: AS 16.43.100 AS 16.43.150 AS 16.43.180
AS 16.43.110 AS 16.43.170

20 AAC 05 is amended by adding a new section to read:

20 AAC 05.1971. Demerit points. (a) Upon receipt of notice from a court, the commission ^{will} ~~shall~~ immediately assess demerit points against a person for each conviction of a commercial fishing law designated in AS 16.43.850(b) or a regulation adopted under the statutes designated in AS 16.43.850(b), including a strict liability or misdemeanor violation involving commercial salmon fishing described below: ^{as follows:} ~~below:~~

- (1) fishing in closed waters, ^{including} ~~which includes~~ regulations that prohibit salmon fishing in a specified area;
- (2) fishing during closed season or period, ^{including} ~~which includes~~ regulations that prohibit salmon fishing during specific dates or times;
- (3) fishing with more than the legal amount of gear, ^{including} ~~which includes~~ regulations that restrict the size or quantity of fishing gear that may be used in a salmon fishery;
- (4) fishing with gear not allowed in fishery, ^{including} ~~which includes~~ (A) regulations that govern the gear type that may be used in a salmon fishery;

(B) regulations that govern the physical characteristics of gear that may be used in a salmon fishery, including the type of mesh or filament that may be used in salmon fishing nets; and

(C) regulations that prohibit or limit the use of fish traps, airplanes, lights, explosives, chemicals, drums, reels, or other instrumentalities in salmon fisheries.

(5) fishing before expiration of transfer period, ^{including} ~~which includes~~ regulations that prohibit the operation of gear before the approval and processing of a transfer request by the commission if the violation occurred while participating in a salmon fishery;

(6) interfering with commercial fishing gear, ^{including} ~~which includes~~ regulations that prohibit physical disturbance of or damage to the fishing gear of another salmon fisherman;

(7) fishing with more than the legal amount of gear on vessel, ^{including} ~~which includes~~ regulations that restrict the amount of fishing gear that is permitted to be aboard a vessel used in a salmon fishery;

(8) improper operation of fishing gear, ^{is a violation of regulations for improper operation of fishing gear (ACA)} ~~which includes~~ regulations that govern the proper deployment, operation, use, or movement of salmon fishing gear in water, including the ^{(S; 9(B))} improper use of a vessel to drive or direct fish, but does not include regulations that govern possession of personal identification, marking of fishing gear, or vessel or gear registration except as it applies to area registration requirements;

(9) permit holder not present when required, ^{including} ~~which includes~~ regulations that require the physical presence of one or more limited entry permit holders to operate gear in a salmon fishery;

(10) fishing with underlength or overlength vessel, ^{including} ~~which includes~~ regulations

that govern the minimum or maximum length of a vessel that may be used in a salmon fishery;
and

(11) wanton waste of fishery resources, including ~~which includes~~ regulations that require utilization of the majority of a salmon carcass.

(b) The number of demerit points to be assessed for each conviction will be determined according to the point schedule in AS 16.43.850(b).

for a first conviction. (c) Notwithstanding (b) of this section, if a conviction meets the requirements described in AS 16.43.850(c), the number of demerit points to be assessed will ~~must~~ be reduced by one-half. If a person receives two or more convictions on the same day and each conviction meets the the number of demerit points for each conviction requirements described in AS 16.43.850(c), each conviction is a "first conviction" and will be assessed at the one-half rate. A prior conviction that did not result in an assessment of demerit points against the person for whatever reason does not count as a "first conviction" for the purpose of this subsection.

(d) Demerit points are assessed as of the date of conviction, as determined by the date of entry of judgment, and apply against the person in the specific salmon fishery associated with the conviction that gave rise to the points. Demerit points remain assessed in the same amount for a continuous 36-month period following the date of the conviction that gave rise to the assessment, unless the conviction is vacated or reversed on appeal. However, suspension, modification, discharge, removal, or expiration of a sentence that arose from a conviction or the setting aside of a conviction under AS 12.55.085(e) does not remove or reduce demerit points assessed against a person under this section. At the end of a 36-month period following the date of conviction, the

demerit points automatically expire. However, an expiration of demerit points does not alter the duration of a suspension that was imposed under AS 16.43.850(d).

(e) If a person permanently transfers a permit for a fishery in which the person has active demerit points or is suspended under AS 16.43.850(d), the points remain assessed against the transferor and do not pass on to the transferee. A person who has active demerit points but is not suspended may acquire a new permit in the fishery; points that are generated while holding the new permit will be added to the person's previously accumulated points in the fishery for calculations described in AS 16.43.850(d).

(f) If a person is granted an emergency transfer of a permit and the transferee's conduct during the period of the emergency transfer generates an assessment of demerit points, the transferee and transferor will be assessed the same number of demerit points. If the transferee qualifies for the one-half point reduction described in (c) of this section but the transferor does not, both the transferee and transferor's points will be reduced under that provision. However, if the transferor qualifies for the one-half point reduction described in (c) of this section but the transferee does not, the transferor's points will be reduced under that provision and the transferee's points will not be reduced.


(g) The provisions of 20 AAC 05.1800 – 20 AAC 05.1865 apply to administrative hearings and adjudications following the assessment of demerit points. The commission will ~~may~~ not review or adjudicate the validity of a conviction, sentence, or court order pertaining to a violation of a commercial fishing law. (Eff. 3/26/2021, Register 237)

Authority: AS 16.43.110 AS 16.43.850 AS 16.43.855

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Thru: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Date: February 24, 2021

File No.: 2020200660

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Commercial Fisheries Entry
Commission regulations re: domicile,
refund of fees, emergency transfers of
permits, demerit points, and repeal of
definition of "illness" (20 AAC
05.245(a)(3); 20 AAC 05.290;
20 AAC 05.425(c); 20 AAC
05.560(d); 20 AAC 05.1750(f);
20 AAC 05.1770(a)(9); 20 AAC
05.1971)

The Department of Law has reviewed the attached regulations of the Commercial Fisheries Entry Commission against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Commercial Fisheries Entry Commission after the close of the public comment period. The regulations make a technical correction to a cross-reference, clarify the definition of residency to address the identification of a person's domicile, clarify provisions regarding the refund of interim-use and limited entry permit fees, provide for additional emergency transfers to a person who acquired a permit by right of survivorship, designation, or inheritance under certain criteria, repeal a definition of "illness" that applied to permit transfers, and add provisions to implement, interpret, and make specific AS 16.43.850 - 16.43.895, the statutes that set up a demerit point system by which a limited entry permit is suspended for frequent violations of commercial fishing laws in a salmon fishery.

The November 5, 2020 public notice and the January 6, 2021 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Honorable Kevin Meyer, Lieutenant Governor
File No. 2020200660; Commercial Fisheries Entry Commission

February 24, 2021
Page 2 of 2

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/enc: Fate Putman, Chair
 Commercial Fisheries Entry Commission

 Jason Kampman, Regulations Contact
 Commercial Fisheries Entry Commission

 Vanessa M. Lamantia, Assistant Attorney General
 Natural Resources Section

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE COMMERCIAL FISHERIES ENTRY COMMISSION

BRIEF DESCRIPTION
The Commercial Fisheries Entry Commission proposes to change regulations to correct a cross-reference in a regulation about fee adjustments; amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend 20 AAC 05 to adopt a new section to implement the demerit point statute, AS 16.43.850 – 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery; amend the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; and repeal the definition of illness which applies to permit transfers.

The Alaska Commercial Fisheries Entry Commission proposes to adopt regulation changes in Title 20, Chapter 05 of the Alaska Administrative Code, as follows:

- (1) Amend 20 AAC 05.245(a)(3) to correct a cross-reference to another regulation;
- (2) Amend 20 AAC 05.290 to clarify the definition of residency by adding a definition of domicile;
- (3) Repeal and readopt 20 AAC 05.425(c) to clarify the regulation regarding the refund of interim-use permit fees;
- (4) Repeal and readopt 20 AAC 05.560(d) to clarify the regulation regarding the refund of limited entry permit fees;
- (5) Adopt a new section, 20 AAC 05.1971, to implement the demerit point statute, AS 16.43.850 – 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery;
- (6) Amend 20 AAC 05.1750(f) to provide an opportunity for additional emergency transfers to a person who acquired a permit by right of survivorship, designation, or inheritance; and
- (7) Repeal 20 AAC 05.1770(a)(9), the definition of illness which applies to permit transfers.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jason Kampman at Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302 or by email: Jason.Kampman@alaska.gov. The comments must be received **not later than 5:00 p.m. on December 9, 2020**.

You may submit written questions relevant to the proposed action to Jason Kampman at Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302 or by email: Jason.Kampman@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Commercial Fisheries Entry Commission will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at <http://www.cfec.state.ak.us>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jason Kampman at (907)790-6940 or Jason.Kampman@alaska.gov no later than **December 1, 2020**, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available online at the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx> or at the Commercial Fisheries Entry Commission webpage at <http://www.cfec.state.ak.us>; or you may contact Jason Kampman, Law Specialist, Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302, (907)790-6940, email Jason.Kampman@alaska.gov.

After the public comment period ends, the Commercial Fisheries Entry Commission will either adopt these or other provisions dealing with the same subject without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments received are public records and are subject to public inspection.

Statutory authority: AS 16.43.100; AS 16.43.110

Statutes being implemented, interpreted, or made specific: AS 01.10.055; AS 16.43.100; AS 16.43.110; AS 16.43.140; AS 16.43.150; AS 16.43.160; AS 16.43.170; AS 16.43.180; AS 16.43.220; AS 16.43.850 – 16.43.895; AS 16.43.990

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Under the Open Meetings Act (AS 44.62.310), the Commission will conduct a public meeting in the Commission's Conference Room, 8800 Glacier Highway, Suite 109, Juneau, Alaska, on **January 4, 2021 at 2:00 p.m.** to consider action upon the proposed regulations. You can contact Jason Kampman for a copy of the agenda on the Friday before the scheduled meeting. No public testimony will be accepted at this meeting.

The Commission keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Commission's Notice of Proposed Regulation Changes. To be added to or removed from the list, send a request to CFEC at P.O. Box 110302, Juneau, AK 99811-0302, or email: Jason.Kampman@alaska.gov and provide your name and preferred contact method for receiving notices.

Date: November 3, 2020

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION
Fate Putman, Chair
Dale Kelley, Commissioner
/s/ Fate Putman

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Commercial Fisheries Entry Commission
2. General subject of regulation: corrects a cross-reference in a regulation about fee adjustments; amends the definition of residency; repeals and readopts regulations regarding the refund of interim-use and limited entry permits; amends 20 AAC 05 to adopt a new section to implement the demerit point statute, AS 16.43.850 – 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery; amends the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; and repeals the definition of illness which applies to permit transfers.
3. Citation of regulation (may be grouped): 20 AAC 05.245(a)(3); 20 AAC 05.290; 20 AAC 05.425(c); 20 AAC 05.560(d); 20 AAC 05.1971(a)-(g); 20 AAC 05.1750(f); 20 AAC 05.1770(a)(9).
4. Department of Law file number, if any: _____
5. Reason for the proposed action:

☐ Compliance with federal law
☒ Compliance with new or changed state statute
☐ Compliance with court order
☒ Development of program standards
☐ Other (identify): _____
6. Appropriation/Allocation: Commercial Fisheries/ Commercial Fisheries Entry Commission
7. Estimated annual cost to comply with the proposed action to:

A private person -0-
Another state agency -0-
A municipality -0-
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>2021</u>	Subsequent Years
Operating Cost	\$ <u>-0-</u>	\$ <u>-0-</u>
Capital Cost	\$ <u>-0-</u>	\$ <u>-0-</u>


1002 Federal receipts	\$ -0-	\$ -0-
1003 General fund match	\$ -0-	\$ -0-
1004 General fund	\$ -0-	\$ -0-
1005 General fund/ program	\$ -0-	\$ -0-
Other (identify)	\$ -0-	\$ -0-

9. The name of the contact person for the regulation:

Name: Jason Kampman
 Title: Law Specialist
 Address: P.O. Box 110302, Juneau, AK 99811-0302
 Telephone: (907)790-6940
 E-mail address: Jason.Kampman@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify) _____

11. Date: November 3, 2020 Prepared by: 
 [signature]

Name (printed) Jason Kampman
 Title (printed): Law Specialist
 Telephone: 907-790-6940

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Fate Putman, Chair, of the Commercial Fisheries Entry Commission, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 20 AAC 05.245(a)(3); 290; 425(c); 560(d); 1750(f); 1770(a)(9); 1971 to correct a cross-reference in a regulation about fee adjustments; amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; repeal the definition of illness which applies to permit transfers; and to amend 20 AAC 05 to adopt a new section to implement the demerit point statute, AS 16.43.850 – 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date:

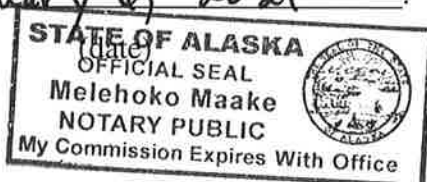
1/6/2021



Fate Putman, Chair

Subscribed and sworn to before me at Juneau, Alaska on

January 6, 2021



Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Fate Putman, Chair of the Commercial Fisheries Entry Commission, being duly sworn, state the following:

In compliance with AS 44.62.215, the Commercial Fisheries Entry Commission has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Commercial Fisheries Entry Commission regulation changes to correct a cross-reference in a regulation about fee adjustments; amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; repeal the definition of illness which applies to permit transfers; and to amend 20 AAC 05 to adopt a new section to implement the demerit point statute, AS 16.43.850 – 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery.

Date:

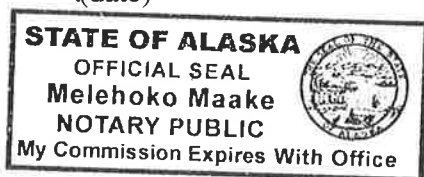
1/6/2021



Fate Putman, Chair

Subscribed and sworn to before me at
January 6, 2021
(date)

Juneau, Alaska on



Notary Public in and for the State of Alaska

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270208 ST OF AK/COMM FISHING ENTRY
PO BOX 110302, JUNEAU, AK 99811-0302

Order #: W0018843

Cost: \$572.74

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

11/05/2020

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed



Subscribed and sworn to before me
this 5th day of November 2020.

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

4/14/2021

ANGELA M SIMMONS
NOTARY PUBLIC
State of Alaska
My Commission Expires Apr. 14, 2021

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE COMMERCIAL FISHERIES ENTRY COMMISSION

BRIEF DESCRIPTION

The Commercial Fisheries Entry Commission proposes to change regulations to correct a cross-reference in a regulation about fee adjustments; amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend 20 AAC 05 to adopt a new section to implement the demerit point statute, AS 16.43.850 - 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery; amend the emergency transfer regulation that pertains to persons who acquired their permit by right of survivorship, designation, or inheritance; and repeal the definition of illness which applies to permit transfers.

The Alaska Commercial Fisheries Entry Commission proposes to adopt regulation changes in Title 20, Chapter 05 of the Alaska Administrative Code, as follows:

- (1) Amend 20 AAC 05.245(a)(3) to correct a cross-reference to another regulation;
- (2) Amend 20 AAC 05.290 to clarify the definition of residency by adding a definition of domicile;
- (3) Repeal and readopt 20 AAC 05.425(c) to clarify the regulation regarding the refund of interim-use permit fees;
- (4) Repeal and readopt 20 AAC 05.560(d) to clarify the regulation regarding the refund of limited entry permit fees;
- (5) Adopt a new section, 20 AAC 05.197.1, to implement the demerit point statute, AS 16.43.850 - 16.43.895, a statute that provides for the suspension of a limited entry permit for frequent violations of commercial fishing laws in a salmon fishery;
- (6) Amend 20 AAC 05.1750(f) to provide an opportunity for additional emergency transfers to a person who acquired a permit by right of survivorship, designation, or inheritance; and
- (7) Repeal 20 AAC 05.1770(a)(9), the definition of illness which applies to permit transfers.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jason Kampman at Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302 or by email: Jason.Kampman@alaska.gov. The comments must be received not later than 5:00 p.m. on December 9, 2020.

You may submit written questions relevant to the proposed action to Jason Kampman at Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302 or by email: Jason.Kampman@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Commercial Fisheries Entry Commission will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and at <http://www.cfec.state.ak.us>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jason Kampman at (907)790-6940 or Jason.Kampman@alaska.gov no later than December 1, 2020, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available online at the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx> or at the Commercial Fisheries Entry Commission webpage at <http://www.cfec.state.ak.us>; or you may contact Jason Kampman, Law Specialist, Commercial Fisheries Entry Commission, P.O. Box 110302, Juneau, AK 99811-0302, (907)790-6940, email Jason.Kampman@alaska.gov.

After the public comment period ends, the Commercial Fisheries Entry Commission will either adopt these or other provisions dealing with the same subject without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 16.43.100; AS 16.43.110

Statutes being implemented, interpreted, or made specific: AS 01.10.055; AS 16.43.100; AS 16.43.110; AS 16.43.140; AS 16.43.150; AS 16.43.160; AS 16.43.170; AS 16.43.180; AS 16.43.220; AS 16.43.850 - 16.43.895; AS 16.43.990

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Under the Open Meetings Act (AS 44.62.310), the Commission will conduct a public meeting in the Commission's Conference Room, 8800 Glacier Highway, Suite 109, Juneau, Alaska, on January 4, 2021 at 2:00 p.m. to consider action upon the proposed regulations. You can contact Jason Kampman for a copy of the agenda on the Friday before the scheduled meeting. No public testimony will be accepted at this meeting.

The Commission keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Commission's Notice of Proposed Regulation Changes. To be added to or removed from the list, send a request to CFEC at P.O. Box 110302, Juneau, AK 99811-0302, or email: Jason.Kampman@alaska.gov and provide your name and preferred contact method for receiving notices.

Date: November 3, 2020

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION
Fate Putman, Chair
Dale Kelley, Commissioner
/s/ Fate Putman

Published: November 5, 2020

COMMERCIAL FISHERIES ENTRY COMMISSION

Transcript of Public Meeting

January 4, 2021

CHAIR FATE PUTMAN: My name is Fate Putman, I am the Chair of the Limited Entry Commission. It is 2pm on January 4, 2021. And this is the date and time for the public meeting regarding the proposed changes to Title 20, Chapter Five of the Alaska Administrative Code.

Specifically, the proposed changes apply to the following regulations: 20 AAC 05... and I won't repeat that so it's 20 AAC 05.245(a)(3), it's also .290, it's also 20 AAC 05.425(c), it's also 20 AAC 05.560(d), it's also 20 AAC 05.1750(f), it's also 20 AAC 05.1770(a)(9) and we're also adding... 20 AAC 05.1971 in the regulation package.

The proposed changes would correct a cross-reference in a regulation about fee adjustments; it would amend the definition of residency; repeal and readopt regulations regarding the refund of interim-use and limited entry permits; amend the emergency transfer regulations that pertain to persons who acquired their permits by right of survivorship, designation, or inheritance; repeal the definition of illness which applies to permit transfers; and amend 20 AAC 05 to adopt a new section to implement the demerit point statute, a statute that provides for the suspension of limited entry permits for frequent violations of commercial fishing salmon laws.

As Chair, I would like to present these proposals to the Commission and to Commissioner Kelley. Together, we constitute a quorum of the Commission. No comments will be heard today in person, but we are willing to welcome any interested party who wants to listen in on this meeting ... welcome today... and as we consider taking action on these regulations.

The Commission received seven public comments or questions on these proposed regulations prior to the comment deadline. I would like to briefly address each of these comments for your edification.

The first comment pertains to the proposed change to 20 AAC 05... (a)(3); essentially the concern was that the proposal would change the means by which annual base fees are calculated or modified. This is not the case; the current proposed change would correct a typo in the regulation, which incorrectly references section... subsection (e) of AS 16.43.160. Due to a subsequent legislative change of that statute, CFEC's regulations should have been changed to reference AS 16.43.160(c), and not (e). This proposed change is to correct that statutory reference.

The next comment we heard...from... pertains to the proposed changes to regulation 20 AAC 05.1750(f) involving emergency transfers. The question was whether the proposed change would allow an owner of a permit to indefinitely transfer a limited entry permit year-after-year to

someone else if the... limited... if the permit owner does not wish to fish the permit. This might be referred to as leasing. This type of leasing was specifically prohibited when the original CFEC statutes were adopted, so the short answer is no. The proposed change to this emergency transfer regulation is not intended to fundamentally change the emergency transfer system or alter the basic rules governing permit ownership.

The third comment we heard pertains to the proposed new regulations implementing the demerit point statute that was passed by the legislature. The commenter expressed concerns about the regulation that it would make certain types of fishing activities illegal. The draft regulations do not create a new category of criminal conduct. Neither the demerit point statute nor draft regulations actually criminalizes specific commercial fishing practices or conduct. Under the demerit point statute, a conviction of a commercial fishing law issued by the court is a necessary prerequisite for the assessment of demerit points. The proposal will not change this legal procedural process. Secondly, the commenter offered some suggestions about the wording of the proposed regulations to add clarity. I have reviewed these suggestions very carefully and I believe the current proposed wording provides adequate guidance with respect to how CFEC interprets the demerit point statute.

The fourth comment that we received pertains to the proposed repeal of the definition of illness under 1770(a)(9). The commenter expressed concern that repealing the definition would result in a significant change to emergency transfer rules and again would... result in permit leasing that would change the limited entry system. In reviewing this concern, it is my opinion that the proposed change would merely remove the outdated and obscure definition that no longer is necessary. The proposed change would not substantively change the emergency transfer rules. Illness...the term illness would remain a basis for an emergency transfer and an applicant who requested an emergency transfer on such a basis would still be required to prove that the illness was of such a severity that it prevented him or her from participating in the fishery. Also, in my opinion, the proposed change would not result in an increase in permit -quote unquote- leasing. The proposed change would not alter the basic rules governing permit ownership, including the statutory rule that prohibits the leasing of permits.

The fifth comment we received pertains to the proposed regulation... 20 AAC 05.1750(f). The commentator... expressly endorsed the regulatory proposal to increase the protections for families who depend upon commercial fishing for economic support.

The sixth comment we received pertains to the proposed regulation... changing... the implementation of the demerit point statute. The commenter raised concerns about the basic fairness of the demerit point system... the statute currently applies only to salmon fisheries. The demerit point statute was passed by the legislature in 1998 and expressly requires CFEC to adopt regulations to establish a uniform system for assigning demerit points for violations committed in salmon fisheries. Although I appreciate the comments, the Commission lacks the authority to expand the scope of the statute to include other fisheries. The commenter also expressed concern

about ... that the proposed regulation would streamline the process of suspending permits. In my opinion, the proposed regulation is not intended to streamline the process of suspending permits; it is intended to ensure that the demerit point system rules are uniform. This will ensure that all commercial salmon fishermen will be treated fairly under the current demerit point statutes and administrative regulations.

The seventh and final comment pertains to the proposed repeal and re-adoption of regulations governing refund of interim-use and limited entry permit fees. The commenter expressly supported...expressed support for these proposed changes. The commenter also expressed general support for the proposed changes to 20 AAC 05.1750(f). However, the commentator also expressed concern that the new language could make it more difficult for applicants to obtain an emergency transfer. In my opinion, the proposed changes would not impact the CFEC Emergency Transfer system. CFEC carefully reviews each emergency transfer request on a case-by-case basis to ensure that the request is legitimate and satisfies the statutory requirements of the emergency transfer process. The proposed changes are intended to preserve CFEC's basic oversight function regarding such requests. The other changes to 20 AAC 05.1750(f) are intended to add protection to spouses or heirs of commercial fishermen, so that they will not be forced to permanently transfer a limited entry permit in the event of the death of the commercial fisherman the family relied upon for economic support.

With this statement on the comments on the record... with these statements... on the comments for the public record... I would like to present the motion to adopt the proposed regulations to the Commission for consideration.

COMMISSIONER DALE KELLEY: Thank you Mr. Chairman. I have also carefully reviewed the proposed regulatory changes and the public comments the Commission received on these proposals. I agree with your summary of these comments and generally share the point of view you expressed on each of them.

I do notice that there are two minor errors in the draft regulations posted online at the State of Alaska public notice website and set out in the numbered pages one through eight of the document before us. Regarding the proposed changes to 20 AAC 05.1750(f), there is a typo in the citation to 20 AAC 05.1740(i)(1). The number 20 is missing from the citation. Also, draft regulation 05.1971 is out of numerical order; it should be the final regulation...the final regulation listed in this document.

I propose a corrected draft regulation document to fix these errors, which again you will find in the numbered pages one through eight. This revised document includes the text of the draft regulations that were posted online, as modified to correct the two minor errors I have discussed. I move that we adopt all changes described in this updated draft regulation document.

CHAIR FATE PUTMAN: Thank you Commissioner Kelley. I second that motion. And vote in favor, and with that motion I am going to call a roll. Commissioner Kelley, what is your vote on the proposed regulatory changes?

COMMISSIONER DALE KELLEY: Yea.

CHAIR FATE PUTMAN: And as Chair, I also vote yes. So the motion is adopted and the proposed regulations are therefore also adopted. As there are no further matters to come before the Commission on these proposed regulations, I will adjourn this meeting at approximately 2:15 on January 4th. Thank you all for your participation and attendance at this important meeting.

AFFIDAVIT OF TRANSCRIBER

I, Fate Putman, Chair of the Commercial Fisheries Entry Commission, being duly sworn, state the following:

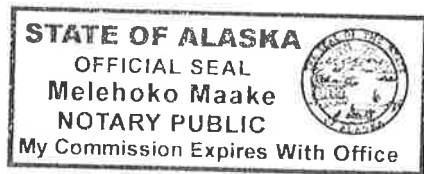
The attached transcript of the Public Meeting of the Commercial Fisheries Entry Commission on January 4, 2021, is a true, accurate, and complete transcript of the proceedings at the Public Meeting, transcribed by me, with assistance from staff, from a copy of the electronic sound recording to the best of my knowledge and ability.

Date: 1/7/2021



Fate Putman, Chair

Subscribed and sworn to before me at Juneau, Alaska on January 6, 2021.


Notary Public in and for State of Alaska