

**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.