



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

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

MEMORANDUM

TO: Sam Cotton
ADF&G Commissioner

DATE: February 23, 2015

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

PHONE: 907-790-6944

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

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

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

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

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

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

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

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

Enclosures

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

Lawson Report, page 28

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

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

One example of court modification is:

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

CFEC Response:

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

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

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

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

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

CFEC Response:

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

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

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

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

CFEC Response:

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

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

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

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

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

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

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

CFEC Response:

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

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

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

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

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

CFEC Response:

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

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

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

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

Lawson Report, page 33

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

CFEC Response:

The examples provided by the Report are unique cases, where communications problems caused delay. The author refers to two cases where hearings have not been conducted. In one case, hearings were scheduled in 1982 and 1993, but the applicant failed to appear. There was a problem with the notice for the 1993 hearing date. The other applicant failed to respond to a hearing officer’s letter attempting to schedule a hearing. For a third applicant, the CFEC made attempts as recently as 2012 to complete the administrative record but the applicant failed to reply. All of these applicants live in rural communities

(Angoon, Myers Chuck, Pelican, Haines, Yakutat). We do not want a literal application of the rules to cause irreparable harm to an Alaskan applicant.

In a number of cases, hearings have been held and the administrative record has been completed, but the hearings were held by a different hearing officer. In these cases, the applicant can request a new hearing. One case needs a supplemental hearing. The two cases where hearings have not been held will require formal notice and scheduling. Applicants must be given at least 30 days advance notice of a hearing. We have always tried to accommodate the applicants' schedules for hearings. Hearings often reveal the need for supplemental evidence, so applicants must be given time to locate and produce it. These due process concerns make a completion deadline at the end of 2016 more realistic. (Please be aware that the Commissioners may find it necessary to remand cases to the hearing officer.)

These were appropriate cases for doing last. None of the applicants were fishing. None were in a fishery that was distressed. In fact, the salmon handtroll and Kodiak herring purse seine fisheries are characterized by a low percentage of permit holders actually fishing.

Lawson Report, page 64

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

CFEC Response:

In permit transfer cases, our overriding concern is to prevent the loss of fishing time. Emergency transfer hearings are usually held within a day or two of the initial denial, and sometimes the same day. A preliminary order allowing the transfer on a provisional basis can be issued immediately after the hearing if the claimant proves the case. A denial requires a written decision by the paralegal within a day or two of the hearing. We believe that the Commission's flexibility, speed and agency expertise make CFEC the best alternative for handling these cases. And transfer cases are not as "minimal" as the author suggests. The stakes can be very high because the immediate right to fish is at issue. See, for example, the *Williams* case, Attachment I, where an elderly resident of a rural village stood to lose \$40,000 of her life savings.

We have approximately 40 permit transfer cases per year, plus miscellaneous cases on such matters as demerit points and permit fee refunds. The emergency transfer cases are usually heard by paralegals.

The recommendation to eliminate the paralegal position is short-sighted. We note that the paralegal was not interviewed in the context of this report. The paralegal does far more than conduct transfer hearings and assist the hearing officer. Among the paralegal's other duties:

- 1. Assist in preparing the administrative record for cases on appeal. The commissioners will be issuing decisions into 2016. Their remaining cases are in lucrative fisheries such as sablefish, roe herring, and crab. It is likely that some of their decisions will be adverse to the applicant and the applicant will appeal to court.**
- 2. Records retention. The paralegal is the primary person at the CFEC for preparing fish tickets for archiving. Typically, there are thousands of fish tickets issued each year.**
- 3. In addition, the CFEC's record retention schedule requires frequent review about whether to retain or destroy records.**
- 4. Information requests. The paralegal is very familiar with CFEC records and resources and is the primary source of information requested by other agencies and the public.**

Even if OAH were to take over transfer and other CFEC appeals, a CFEC liaison would be required to provide them with the administrative record, other evidence that may be needed, and background information such as prior CFEC decisions on similar issues. The paralegal with her unique background would be the ideal person to provide this service.

Lawson Report, page 34, under Recommendation #2

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

CFEC Response:

In fact, court appeals are more likely than not, but the author is absolutely correct about the need to anticipate reversals or remands from the court. The author might have asked the Commissioners for their view as to what is “achievable.” Our best calculation for a reasonable target remains the end of 2016 to complete the cases before us. Writing decisions requires blocks of time, and we do have competing responsibilities. The hiring of an Executive Director may serve to alleviate this problem. The cases that are last in line are some hard cases raising difficult issues—a fact that has not gone unnoticed by at least one Superior Court Judge.

Furthermore, a threat hangs over judicial appeals of Commission decisions. Please see our discussion below in response to Recommendation #19. Reversal of a Commission rule by the court can be applied retroactively to require reopening previously closed applications and allowing new applications for permits long after the application deadline.

Lawson Report, page 42, end of last paragraph

Neither the former or current Research Section Project Leader was ever directed by the Commission to do an optimum number study after completion of the Bristol Bay Optimum Number Report.

CFEC Response:

This statement is false. Last year on September 24, 2014, we directed the Research Project Leader to proceed with optimum number determinations in two fisheries, and we further directed the Leader to fully explore whether these determinations could be achieved without a full optimum number study. The author interviewed the Research Project Leader one week later on October 1st.

Lawson Report, page 43

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

CFEC Response:

We do not fully agree with this statement. The Chair's cautionary words about optimum number studies largely come from a context of warning fishermen desiring a buy-back program as to what they are getting into. There is potential for time, intrusion, and cost. However, two developments suggest the possibility of a more compact approach. First, the Legislature greatly helped the Commission by authorizing more than a single number that would be just right for a fishery. The Legislature has authorized an optimum number to be a range

of numbers, which provides a bigger and safer target. Additionally, the *Simpson* case upheld an optimum number rationale without an optimum number study. In every case, we should be asking whether we need an optimum number study.

Lawson Report, page 44

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

CFEC Response:

We disagree with the suggestion to reduce the concept of an optimum number to a formula, because we believe it is inconsistent with the constitutional authority that is the foundation for limited entry in Alaska. We believe, in the more than 25 years following the *Johns* decision in 1988, if there were a workable formula, someone would have suggested it. In fact, Article VIII, Section 15 of the Alaska Constitution expresses the purposes of limited entry in concepts: serving conservation and preventing economic distress among fishermen and those dependent upon them. Given great differences from fishery to fishery, attempting to turn those concepts into a formula creates a terrible risk. In fact, when the Alaska Supreme Court in *Johns* identified the optimum number as the key to defending the constitutionality of a limited fishery, the Supreme Court provided limited entry with a gift—not a burden. In fact, in *Johns*, we have an Alaska Supreme Court case that we embrace and apply. It would be counterproductive to turn away from this sound guidance and to create a risk of more litigation.

Lawson Report, page 44, second paragraph under Recommendation #6

None of the three optimum numbers has needed revision under the terms of AS 16.43.300.

CFEC Response:

This statement is not accurate. Professor and Director of ISER, Gunnar Knapp provided the future salmon price estimates which served as the foundation for the modeling that contributed to the Bristol Bay optimum number range determination. Today, Gunnar Knapp is the first to admit that his assumptions (during the salmon crisis) were mistaken and that world salmon markets have changed for the better. Knapp, Trends in Alaska and World Salmon Markets (partially updated November 3, 2014).

[Gunnar.Knapp@uaa.alaska.edu]

Lawson Report, page 45, under Staffing and Administration, footnote 81

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

CFEC Response:

Salaries for limited entry Commissioners were initially tied to those for Alaska District Court Judges. The Legislature advanced District Court Judges' salaries over time, but not those of Commissioners. As a footnote, Chair Twomley has always been grateful for his salary, but he did go 25 years without an increase,

and, as a wholly exempt agency, the commission has often frozen salaries to meet budget cuts.

Please examine the *Williams* case, Attachment I. The stakes in this and other cases are sufficiently high that CFEC Commissioners equipped with agency expertise can best decide them.

Lawson Report, page 47

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

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

CFEC Response:

In fact, last fall, as active managers the Commissioners identified an inappropriate salary increase and denied the request. This development prompted our consideration of a new staff manual. To advance this project, the Chair took two on-line courses in writing Administrative Manuals.

CFEC Response to Lawson Report

Lawson Report, page 47

Finding #12: There are no position descriptions.

CFEC Response:

This statement must be a misunderstanding. We have job descriptions in our personnel files.

Lawson Report, page 48

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

CFEC Response:

We disagree. As active managers, the Commissioners review every proposed salary increase. Our reclassifications are reviewed by the Division of Personnel, and CFEC is open to seeking assistance from the Division of Personnel in reclassifying positions.

Lawson Report, page 50, last paragraph

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

CFEC Response:

Questions about the performance of the temporary positions should have been directed to the Commissioners who supervise them. As supervisors, the Commissioners review employees' time sheets and know exactly when and where they work.

Two of the temporaries do perform some of their work outside the office but that does not diminish their valuable contribution to the Commission. One employee was not visible in the office due to a protracted, life threatening injury.

The Operations Manager works early hours to secure uninterrupted time to complete CFEC projects. Nonetheless, she posts her cell phone number of her office door so that anyone can reach her anytime, and she comes to the office at any time she is needed.

Lawson Report, page 51

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

CFEC Response:

This finding surprises the Chair and others who were face-to-face with the author, because we thought the author understood that temporary positions were very appropriate to CFEC's current situation. And this would be an inopportune time to be terminating temporary staff and attempting to recruit permanent employees. Most temporaries are working on an as-needed basis, they are saving the state a significant amount of money, and they are doing essential work. The author at our conversation agreed that we were getting excellence at a bargain. For example, the Adjudications Section Leader has more than 30 year's experience and is one of the best hearing officers in the state.

At CFEC, agency expertise is critical. As a testament to agency expertise please review our Attachment I, the *Williams* case. In that case our prompt action and agency expertise prevented an elderly woman in a rural village from losing some \$40,000 of her life savings. The vast experience of our temporary employees embodies our agency's expertise.

For example, in one instance, a temporary employee with almost 25 years' experience with CFEC suffered a protracted and life-threatening health

emergency. The individual was in hospitals and at home recovering and, therefore, not in the office.

Lawson Report, page 51

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

CFEC Response:

CFEC has already undertaken this task and would be happy to pursue this goal.

Lawson Report, page 51

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

CFEC Response:

We have job descriptions in our personnel files. We will review them to ensure that they are satisfactory.

Lawson Report, page 52

Recommendation #9: Terminate the practice of hiring retired employees in long term, nonpermanent positions: Type: Administrative

CFEC Response:

We have a critical need for the employees we have at this time. Our work product would be impaired if we were to terminate them at the end of this fiscal year. Additionally, with respect to the adjudication positions, we believe it is likely we will have a duty to limit one or more additional fisheries during the coming year. Doing so creates an almost instant caseload for which these employees would be needed. We benefit from the employees' experience, and we would hope to retain their services through any transition for as long as they are willing to provide them.

Additionally, however, we are responding favorably to Recommendation #18 (replace the operations manager position with an operations director.)

Lawson Report, page 52

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

CFEC Response:

This is a sound recommendation, and we note that this year we completed CFEC's annual report for 2014 by January 2015.

Lawson Report, page 53, paragraph following Table 11

The operations manager is responsible for preparation of the annual report.

CFEC Response:

This is incorrect. In the past, the content of the report has been the responsibility of the Research Project Leader. The Operations Manager has been responsible only for assembling and publishing the report.

Lawson Report, page 53

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

CFEC Response:

CFEC agrees with the recommendation.

Lawson Report, page 55, second paragraph

The Oracle based rewrite/upgrade of the licensing system never occurred.

CFEC Response:

This statement is not accurate. CFEC did labor under a system with a Btrieve database and programming in COBOL. The project CFEC undertook was to employ a relational database (Oracle) and to program with a more current

computer language (Java). Establishing the hardware and transferring data to the new system represented the bulk of the project.

During 2003, CFEC hired a new IT manager, who was a well-regarded programmer from the Alaska Department of Fish & Game who formerly worked for the Permanent Fund. The moment the programmer examined the CFEC hardware in our server room, he walked away in dismay. The Chair followed him to ask his advice, which was, “do you have a paper alternative?”

Subsequently, CFEC recruited our current IT manager from a private IT corporation, and he undertook the task even though two of his predecessors said that task was impossible and couldn’t be completed. But today, the task is largely complete and Oracle is fully employed with modern programming languages. In other words, the cake is baked, and what remains is to apply icing in the form of improved screen tools for the Licensing staff.

Lawson Report, page 55, third paragraph

Unfortunately, the web-based permit and vessel license renewal, while increasingly popular with fishers, is really nothing more than a data capture screen. On-line, fishers renew permits or license, pay with a credit card, and get a confirmation. In house however, the licensing staff must re-key every data field completed by the fisher into the licensing system

CFEC Response:

In developing the web-based permit and vessel license renewal program, our IT manager originally programmed for automatic data collection that relieved

licensing staff of the need to re-key data already entered by the fisher. The Licensing Project Leader declined this offer to maintain the licensing practice of re-keying.

Lawson Report, page 56

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

CFEC Response:

The final stages of the conversion (including improved screen tools for the licensing section) will be completed during 2016. Some development and implementation cannot go forward during the months that constitute the 2 yearly peak licensing seasons

Lawson Report, page 57

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

CFEC Response:

IT has nearly completed this task which will be live shortly.

Lawson Report, page 58, first paragraph

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

CFEC Response:

This may not be a sound comparison. If one considers a denominator that includes all of ADF&G and CFEC, the numerator that produces a 5.5% ratio must be gigantic. The case for CFEC, however, is the complexity of the tasks IT must perform and the very high level of service IT provides to the licensing section that warrants additional IT staff.

Lawson Report, page 59

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

CFEC Response:

The Licensing Project Leader has not brought any current conflicts to the attention of the commissioners. The commissioners note that there is a great deal of direct service provided by IT to the Licensing section not reflected in the report. The level of staffing in the IT section ensures continuation of this service.

Lawson Report, page 59, first paragraph under Finding #21

Further, all on-line renewals must be re-keyed as if they were paper application. Errors have to be corrected by IT staff.

CFEC Response:

The IT Section Leader programmed the original online renewal system so that renewals would not have to be re-keyed by Licensing employees as if they were paper applications. The Licensing Project Leader declined the offer.

Lawson Report, page 59, second paragraph under Finding #21

Most interviewees acknowledged the conflicts between the IT and Licensing Sections.

CFEC Response:

We are aware of past conflicts between some members of Licensing and IT in which Licensing bore its share of responsibility. This finding encroaches on some personnel issues on which the commissioners cannot comment. Additional, but confidential, information would be needed to fully evaluate or discuss this claim.

Lawson Report, page 59

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

CFEC Response:

We disagree.

In 2013, there were 6 employees in the licensing section after the Licensing Project Leader decided not to fill a vacant position. By the time of the peak spring licensing season (April, May, and June), an employee was on extended leave, leaving 5 staff members.

By available measures, the 2013 spring licensing season made more demands on a licensing staff than those of 2014. For example, in April, May, and June, more permanent and emergency transfer requests were submitted in 2013 than in 2014.

In the fall of 2013, the Licensing Project Leader knew that another employee would be on extended leave during the 2014 spring licensing season. Yet, in January 2014, when we asked the Licensing Project Leader and other managers if they had any unbudgeted needs that we could try to address, we heard nothing from the Licensing Project Leader about the coming season, and so we responded to other requests to commit the available dollars. Then, in April, the Licensing Project Leader came to the Commissioners and asked for a new

permanent position in licensing. The commissioners offered to employ a new seasonal position in the licensing section. The Licensing Project Leader declined our offer.

In response to a request from the Licensing Project Leader, the Commissioners reassigned an employee from another section to act as receptionist and answer the phone in order to free up more licensing staff. Additionally, we offered to train the individual acting as receptionist so that the individual could respond to a greater range of questions from fishermen and thereby further relieve licensing staff. The Licensing Project Leader did not accept our offer.

The Commissioners on their own initiative offered eligible licensing employees overtime for the spring licensing season and further directed all staff to avoid making any unnecessary requests upon licensing staff until the seasonal pressures had subsided. Finally, the Commissioners excused the Licensing Project Leader from attending CFEC management council meetings during the peak season.

The level of staffing in the licensing section was the same in 2013 as it was in 2014, and the collective experience of the employees who worked in April, May, and June of the two years was the same.

Additionally, other staff members volunteered to help. For example, a large Community Development Quota (CDQ) organization began financing the purchase of limited entry permits and submitted contracts purporting to take

the limited entry permits as collateral to secure the loans, which violated the Limited Entry Act. The Chair had worked in the area and knew some of the Board members of the CDQ. To relieve licensing staff of the burden, the Chair began calling executives (most of whom were out of the State of the time) and taking return calls. After a day of such calls, by 6:30 in the evening, the Chair was able to email a key individual and dictate language for the CDQ to use to release the entry permits from all of their security agreements. It was after 10 in the evening, when the Chair got an email confirmation from the CDQ that they would be submitting rewritten contracts the following morning.

In short, the Commissioners respectfully disagree with the claim that they failed to support the licensing section during the 2014 spring licensing season.

Finally, we note that for the current fiscal year beginning last July we have added an additional employee to the licensing section bringing their staff total to 7.

Lawson Report, page 64, fourth paragraph under Recommendation 16

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

CFEC Response:

We wholly concur with this observation. We have instructed our research staff to monitor more than one fishery for possible limitation. When the record shows that limiting a fishery will serve conservation and help prevent economic

distress among fishermen and those dependent upon them, we have an affirmative duty under the Limited Entry Act to go forward with a limitation. It is likely we will limit one or more fisheries during the next calendar year and that is a principal reason for not eliminating the hearing officers at this time.

Lawson Report, page 65

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

CFEC Response:

The time taken to adjudicate applications for entry permits was simply the result of the magnitude and complexity of the task. The Chair represented plaintiffs in the *Molly Hootch* class action which went on for decades. Similarly, the Chair was a respondent in the *Carlson* class action, which went on for decades. In the Chair's view, the limited entry project, with 68 limited fisheries and different point systems for evaluating applicants is more complex and more labor intensive than either of those class actions. With almost 23,000 applications, it is a given that some applicants will be last in line. The larger class of cases to be adjudicated is the yearly onslaught of transfer cases, where the immediate right to fish is at stake. We have always made these cases the highest priority to avoid unnecessary loss of fishing time. CFEC can turn these cases around in a matter of days, which is a function of agency expertise and our making these cases an absolute priority. We believe we can demonstrate that CFEC, as is, beats the alternatives for handling these cases.

Lawson Report, page 65

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

CFEC Response:

In the Commissioners view, most staff do not experience a lack of leadership or low morale overall. Since the loss of the Executive Director, the Commissioners have served as administrative law judges and as hands-on managers. The Commissioners, as managers, were required to give direction and perform personnel actions.

As we note below we are inclined to accept Recommendation #18 to restore the position of Executive Director.

The Commissioners are not reticent about giving direction when necessary.

For example, the Commissioners in 2014 directed staff to monitor more than one fishery for proposed limitation and to develop proposals for optimum numbers in two fisheries.

In 2013, when the Commission began to implement an open access state scallop fishery, the Commissioners gave direction to appropriate staff about how to calculate permit fees for the new open access fishery. When our proposal did not appear among the alternatives presented by research, we rejected their

proposals and insisted that fees be developed that would be more fair to fishermen by taking account of the open access history of the fishery and thereby initially reduce the fees.

Earlier, the Chair took the initiative and drafted an optimum number rationale for the Northern Southeast inside sablefish longline fishery without waiting for an optimum number study from research. This rationale and the resulting optimum number were upheld by the Alaska Supreme Court in the *Simpson* case.

In 2014, when we found that some members of the licensing section were misinterpreting and misapplying our new regulation for reinstatement of entry permits that had been cancelled for nonpayment of fees, we called for face-to-face meetings with staff in order to work through some cases together and offer instructions on how to understand and apply the regulation.

Also in 2014, when the Chair learned that a member of the licensing staff was requiring a fisherman to go through extra bureaucratic hoops not required by CFEC regs, he promptly intervened to spare the fisherman and to spare licensing staff unnecessary work.

Additionally, in 2014, when the Chair learned that an elderly woman in a rural village stood to lose \$40,000 of her life savings, the Commissioners promptly intervened and took jurisdiction of the matter resulting in the *Williams* case appended as Attachment I.

In the fall of 2014, the Commissioners did not approve a proposed raise they found to be unwarranted.

The notion that the agency lacks leadership and accountability is inaccurate.

Lawson Report, page 66

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

CFEC Response:

We are inclined to accept this recommendation. However, we believe it would be wise to get to the end of this legislative session to assess where we stand before making the change.

Lawson Report, page 67

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

CFEC Response:

This is a sound recommendation. However, we believe our assessment that we will make every effort to have completed decisions by the end of 2016 is more reasonable.

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

Recently, the commission decided the *Kuzmin* cases, which denied two applicants, who did not appeal to the courts. This complex case illustrates where the commission is in the adjudication process and the fact that few easy cases are left before the commission at this point.

Because we are nearing the end of the process, cases like *Kuzmin* can have much more impact than the denial of two applicants. The commission had long completed the cases of 13 other applicants for the same fishery who remained pending at the same 6-point level. Whether they would be issued permits depended on the outcome of other cases like *Kuzmin*. Denial of the *Kuzmin* applications allowed the commission to issue permits at 6 points, but 13 exceeded the maximum number for the fishery, which normally would have propelled the commission to conduct a lottery creating winners and losers among the group. Mercifully, the legislature was foresighted and assigned to the commission a statutory duty to issue all 13 permits when doing so would not exceed the maximum number by more than 5% or 10 permits – whichever is greater. All 13 became winners, and CFEC closed out the entire fishery.

But CFEC cannot always reach such a favorable conclusion, and a serious threat hangs over all remaining adjudications.

Based on the principle that all applicants should be treated alike, the *Byayuk* case required the commission to apply a Supreme Court reversal retroactively to reopen previously closed applications. Subsequently, the *Cashen* case applied the same principle to require the commission to accept new applications for the first time long after original deadlines. The *Byayuk* retroactive principle required more adjudication and left the commission without a margin for error in its decisions. A reversible error by the commission could undo the limitation of a fishery upon which Alaskan fishermen rely for their livelihood. Therefore, in adjudicating individual cases, the commission could never afford to pursue quantity at the expense of quality.

The risk of retroactive application has been present since 1984, but the stakes are unusually high at this stage of near completion of 68 limited fisheries.

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



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission
8800 Glacier Highway, Suite 1C
PO Box 1103C
Juneau, Alaska 99811-03C
Main: 907.789.616
Licensing: 907.789.615
Fax: 907.789.617

September 2, 2014

CERTIFIED RETURN RECEIPT

Lisa M. Williams
Box 363
Naknek, AK 99633

John B. Roehl
Box 104
Naknek, AK 99633

Violet Willson
Box 104
Naknek, AK 99633

Brad D. De Noble, Attorney for John B. Roehl & Violet Willson
De Noble Law Offices, LLC
11517 Old Glenn Hwy., Suite 202
Eagle River, AK 99577

Re: Provisional Decision and Order
Lisa Williams Permanent Transfer of Limited Entry Permit
S04T 65633 to John B. Roehl
CFEC# 14-053-P

Dear Parties to this Request for Permanent Transfer:

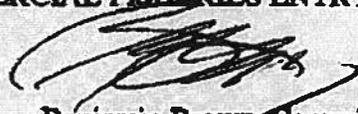
Enclosed is our Provisional Decision and Order approving the requested transfer. Our approval is provisional, because (as set forth in the decision) it is subject to the payment of the \$50.00 transfer fee, the sworn submission we requested from the transferee and his mother, Violet Willson, concerning their agreement with respect to her payment of the purchase price for the permit, and the sworn statement from Violet Willson detailing her payments to the transferor.

ATTACHMENT I
(pages 1 of 32)

This decision and order are provisional, because the parties, Lisa M. Williams (transferor), John B. Rochl (transferee), and Violet Willson, may submit written comments and proposed written evidence for inclusion in this record, provided such items are received by the commission within 60 days from the date of this letter and the Provisional Decision and Order. Additionally, any of the parties may request an evidentiary hearing provided such request is supported by a detailed offer of proof and received by the commission within 60 days from the date of this letter and Provisional Decision and Order.

Questions about this procedure may be addressed to commissioners Twomley or Brown.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner
Bruce Twomley, Chairman

**STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION**

In Re the Application of

Lisa M. Williams

for Permanent Transfer of Entry Permit
S04T 65633 to John B. Roehl

CFEC# 14-053-P

COMMISSION PROVISIONAL DECISION AND ORDER

Counsel

Brad D. De Noble, De Noble Law office LLC, 11517 Old Glenn
Hwy., Suite 202, Eagle River, AK 99577, attorney for John B. Roehl
and Violet Willson

Procedural and Factual Background

On October 11, 2010, the Commercial Fisheries Entry Commission (CFEC) approved Walter E. Wassillie's transfer of Bristol Bay salmon set net Entry Permit S04T 65633 (the subject of this proceeding and hereinafter the Entry Permit) to Lisa Marie Williams.¹

¹ Lisa Marie Williams received and subsequently transferred another permit that is not a subject of this administrative proceeding. On February 14, 2011, her husband, Earl A. Williams transferred Bristol Bay salmon set net entry permit S04T 60941 to Ms. Williams. On May 31, 2011, Ms. Williams transferred this permit to her niece, Shannon Marie Eldridge.

On July 9, 2013, Lisa M. Williams (hereinafter, the transferor) executed and faxed to CFEC her Notice of Intent to Permanently Transfer the Entry Permit. On the form the CFEC Licensing Project Leader duly noted its July 9, 2013 filing date, its September 7, 2013 effective date, and its July 9, 2014 expiration date,² as required by AS 16.43.170(b) and 20 AAC 05.1710(a).

AS 16.43.170(b) provides in relevant part as follows:

[T]he holder of an entry permit may transfer the permit to another person or to the commission upon 60-day notice of intent to transfer under regulations adopted by the commission. No sooner than 60 days nor later than 12 months from the date of notice to the commission, the holder of an entry permit may transfer the permit.

Commission regulation 20 AAC 05.1710(a) provides in relevant part as follow:

The holder of an entry permit . . . may establish a filing date, effective date, and expiration date for the permanent transfer under AS 16.43.170(b) of the holder's entry permit by filing a completed and signed notice with the commission on the form designated Holder's Notice of Intent to Permanently Transfer Entry Permit, provided by the commission The commission will return to the holder a copy of the notice form that states the filing date, effective date, and expiration date for permanent transfer of the entry permit by the holder.

On July 23, 2013, the transferor faxed a new Notice of Intent to Permanently Transfer the Entry Permit executed by her on July 19, 2013.³ However, contrary to 20 AAC 05.1710(a) and

² Exhibit A.
³ Exhibit B.

without explanation, the Licensing Project Leader failed to note the filing, effective, and expiration dates on this second Notice of Intent and to return a copy to the transferor. However, under AS 16.43.170(b) and 20 AAC 05.1710(a), a Notice of Intent takes effect by operation of law upon its filing with the commission.

With her second Notice of Intent, and despite the fact that the Commission had received no such paperwork, the transferor included her notarized statement asking the commission to disregard any proposed transfer of her Entry Permit to Aaron Roberts or Kern Roberts.⁴ Nothing more related to Aaron or Kern Roberts appears in Ms. Williams' CFEC file.

On November 8, 2013, on behalf of Violet Willson, the Alaska Dept. of Fish & Game King Salmon Area Office faxed to CFEC the first page of an executed and notarized Request for Permanent Transfer of the Entry Permit from the transferor to John Roehl (Violet Willson's son, and, hereinafter, the transferee).⁵ This fax also included the second Notice of Intent to Permanently Transfer the Entry Permit executed by the transferor on July 19, 2013.⁶

The November 8, 2013 fax also included a photocopy of an \$18,000 cashier's check by the Wells Fargo Bank branch in King Salmon to transferor with the note "payment on half set net permit Violet Willson." The Cashier's check is dated July 26, 2013.

The November 8, 2013 fax further included Violet Willson's written October 24, 2013 statement reciting that the transferor had called needing some money because they would have to move out of the Coast International Hotel. Ms. Willson stated that she had a friend go over and give them \$500.00 for the room and food. She then transferred \$2,000 into their Wells Fargo account. Ms. Willson further stated that later she told them she would pay off the remainder owed for the permit and made a bank transfer. The written statement is accompanied by a copy of a bank statement apparently from Wells Fargo showing an October 24, 2013 withdrawal of \$2,000.00, followed by an October 29, 2013 withdrawal of \$17,500.00. Ms. Willson

⁴ Exhibit C, hereinafter the Roberts Statement.

⁵ This fax included only the first page of the Request for Permanent Transfer of Entry Permit form, executed and notarized on July 26, 2013, at Naknek, Alaska. The fax did not include the information survey on the following page of the form.

⁶ Again, the Licensing Project Leader did not note the filing, effective, or expiration dates on this second Notice of Intent.

summarized her payment of the last \$20,000.00 she paid for the permit as follows: \$500.00 delivered by a friend, \$2,000 by bank transfer, and \$17,500 by bank transfer.

Finally, the November 8, 2013 fax included a Sale Agreement reciting that a \$20,000 down payment was due by July 31, 2013, and \$20,000 final and complete payment was due by December 31, 2013, for a total of \$40,000. On the face of the sale agreement is a receipt for the first \$20,000. The Sale Agreement is signed, on July 26, 2013, by the transferor and transferee whose signatures are notarized on that date.

The Licensing Project Leader sent notices dated November 12, 2013, to the transferor, with a copy to the transferee and Violet Willson, stating five reasons why she would not approve the transfer and requiring more information as set forth in the notices.⁷ Her Denial Notice failed to inform the parties of the time limit for submitting the requested information, required by 20 AAC 05.1707(b) as follows:

A request for permanent transfer of an entry permit must be supported by documentation and such other supporting information as is required by the commission. If the required documentation or information in support of a request for permanent transfer is not submitted to the commission within 60 days after notification by the commission that the information is required, the commission will deny the request for permanent transfer of the entry permit.

On January 8, 2014, the Licensing Project Leader notified the transferor, transferee, and Ms. Willson that she was denying the Request for Permanent Transfer, because the transferor had failed to supply the requested information within the 60-day time limit following the notification as required by 20 AAC 05.1707(b). The notice further informed the parties of their

⁷ Hereinafter the Denial Notices, Exhibit D. The content of both notices is identical but one bears the heading "ZND Notice." Both notices bear the same November 12, 2013 mailing date and fail to notify the parties they are under a deadline for supplying the requested information.

right to request a hearing under 20 AAC 05.1805.⁸ The notice is flawed because the 60-day time limit from the original November 12, 2013 request for information had not yet run.

On February 21, 2014, attorney Brad De Noble appeared on behalf of Violet Willson with a timely request to the commission to complete the permanent transfer based upon the July 26, 2013 executed Request for Permanent Transfer of Entry Permit, the signed and notarized July 26, 2013 sale agreement and receipt of payment, and the transferor's July 19, 2013 executed Notice of Intent to Permanently Transfer of Entry Permit. In the alternative, attorney De Noble requested the commission to prohibit the transferor from transferring the permit to any other individual until this matter were resolved.

On February 26, 2014, the Licensing Project Leader wrote to attorney De Noble, enclosed "copies of the letters that were sent to the parties," but, without further explanation advised that the Commission could not act on the Notice of Intent form or the Request for Permanent Transfer form that he submitted but would notify attorney De Noble of any attempt by the transferor to permanently transfer the permit.

On April 1, 2014, a permit broker based in Washington state emailed the Licensing Project Leader indicating that the transferor had requested their help with a sale of her S04T 65633 permit. The Licensing Project Leader duly forwarded this email to attorney De Noble.

As we discuss below, we are treating the attorney's submission as a Petition for Administrative Review by the commissioners of the Licensing Project Leader's denial of the requested permanent transfer, and we assume jurisdiction over this matter.

Discussion

For the reasons discussed below, we believe the record presents a *prima facie* case for the commission to complete the requested transfer of the permit. Therefore we are issuing this Provisional Decision and Order authorizing the requested transfer subject to the parties' opportunity to comment and to propose submission of additional evidence.

⁸ The certified mailing to the transferor was returned by the post office marked "Unclaimed."

We are treating attorney Mr. De Noble's February 21, 2014 request as a Petition for Administrative Review by the commissioners under 20 AAC 05.1845 of the Licensing Project Leader's denial of the requested permanent transfer of the Entry Permit. We also hereby assume jurisdiction over this matter.⁹

This provisional decision represents our view that this record supports a *prima facie* case for completing the transfer. The interested parties, Ms. Williams, Ms. Willson, and Mr. Roehl, or their authorized representatives, will have 60-days from the date of this Provisional Decision and Order to offer written argument or written evidence in response to this Provisional Decision. The interested parties may also have 60 days from the date of this preliminary decision to request an evidentiary hearing, but such request must be supported by a detailed offer of proof.

We view the Licensing Project Leader's January 8, 2014 denial of this transfer as a procedural ruling premised on her perceived lateness of a response from the interested parties. We believe the underlying substance of her views is set forth in her Denial Notices dated November 12, 2013, that state her five reasons for refusing to complete the transfer.¹⁰ Our following discussion will address the Denial Notices.

First, the Denial Notices invoke the 20 AAC 05.1712(d)(3) requirement that a request for a permanent transfer of an entry permit:

must be filed with the commission within 90 days after the Holder's completed and signed Request for Permanent Transfer of Entry Permit form.

The Denial Notices are correct that the request for permanent transfer form was filed more than 90 days after the permit holder's execution of the form, but the letter is mistaken in declaring that the Request for Permanent Transfer and other supporting papers were received by the Entry Commission on November 12, 2013. In fact, the items in support of this permit transfer were received by the commission on November 8, 2013. Friday, October 24, 2013, is the 90th day following the July 26 execution of the Request for Permanent Transfer, and only 15

⁹ *Carls*, 96-003-P (1996); *M.S.*, CFEC 98-089-E (1998).

¹⁰ Exhibit D.

additional days passed before the commission received the Request for Permanent Transfer on November 8.

CFEC's purpose in adopting 20 AAC 05.1712(d)(3) was to create a regulatory obstacle to one form of prohibited lease of an entry permit.¹¹ Early in its history, the commission discovered parties attempting to conceal a lease by having the permit holder request a permanent transfer of the entry permit. However, at the same time, the transferee executed notarized transfer papers, which the transferor could keep in a drawer during the period of the lease. After the period of the lease (normally at least for the length of a season), the original permit holder completed and submitted the executed papers either to get the permit back or to transfer the permit to a third party of his choice. In contrast, the case before us presents no original transfer of the entry permit that could have initiated a lease, and the proposed transfer did not come together until the tail end of the Bristol Bay salmon fishery, leaving no hint of a lease on this record. Reliance on the fact that the transfer papers arrived at the commission shortly after the regulatory deadline creates a meaningless obstacle to this transfer and serves no statutory or public policy purpose.

Additionally, the 90-day requirement is a procedural regulation which the commission has authority to waive when the ends of justice so require.¹² The commission's ability and willingness to waive 20 AAC 05.1712(d)(3) 90-day submission requirement is not a new principle for CFEC.¹³ For example, in the 1995 *Smith* case, the transferor submitted the transfer request forms nearly seven months after he signed them.¹⁴ CFEC commissioners adopted the Hearing Officer's waiver of the 90-day deadline in light of the Hearing Officer's analysis,¹⁵ as follows:

As noted in Forquer v. State, CFEC, 677 P. 2d 1236, 1243 (Alaska 1984):

[I]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it.

¹¹ AS 16.43.150(g).

¹² *Forquer v. State, CFEC*, 677 P.2d 1236, 1243-1245 (Alaska 1984).

¹³ See, for example, *Smith*, CFEC 95-003-P (1995 Hearing Officer dec. at 1, 5-6).

¹⁴ *Id.*

¹⁵ *Id.*

20 MC [sic] 05.1712(d)(3), which sets the 90 day deadline for filing permit transfer forms, is unquestionably procedural. Accordingly, the CFEC can consider relaxing the 90 day filing rule if, in this case, "the ends of justice require it." Id.

The purpose of the 90 day filing deadline is more to serve the interests of the CFEC than the interests of the parties to a transfer. In its effort to enforce AS 16.43.150(g), the deadline serves to screen and locate transfers that may contain prohibited leases or retained rights of repossession. There is nothing on record suggesting that the proposed transfer violates the prohibitions of leases or retained rights of repossession. As the record demonstrates, the proposed transfer stems from unfortunate domestic and financial difficulties in the Smith family .

...

As between the parties to a proposed transfer, other CFEC regulations establish rules for withdrawing notices of intent and permit transfer requests. The 60 day notice of intent period had already run when the CFEC received the request for the permanent transfer of Permit I, so it could not be withdrawn unilaterally by [transferor] Lyle J. Smith. 20 AAC 05.1710(b). Since the permit transfer request was filed with the CFEC, it could be withdrawn only by the written consent of both the holder and the proposed transferee. 20 AAC 05.1712(e). In this case, Lyle J. Smith would be able to circumvent the rules governing withdrawals of permit transfer requests if this proposed transfer was not approved.

The proposed transfer of the Entry Permit now before the commission is supported by substantially complete documentation, and the record indicates one of the parties paid the full \$40,000.00 purchase price last December. We are approaching the end of August, and the transferee has missed an entire salmon season. We believe this record amply supports our waiver of this procedural deadline to serve the interests of justice by allowing the commission to rule on the merits of this proposed transfer.

Second, the Denial Notices point out that a survey page was not submitted with the permanent transfer form, and the \$50.00 processing fee has not been paid.

One of the parties may have a copy of the completed survey page, in which event we would welcome its submission. However, there is sufficient information in the record to

demonstrate that this was an arms length transaction where the purchaser paid the seller the agreed upon purchase price for the permit. Those facts substantially cover the most important information to be gathered by the survey page. We would find substantial compliance and waive submission of the survey page, if it cannot be found and submitted. Additionally, we would conclude that the transfer complies with the Limited Entry Act subject to the condition that the \$50.00 transfer fee be paid (and the terms of the fourth requirement discussed below must be met) before CFEC finally approves the transfer.

Third, the Denial Notices transmitted a new transfer form and required both the transferor and transferee to complete and return the form. We do not believe that this requirement would produce substantially more information for the commission than we already have. Therefore, we waive this requirement.

The Denial Notices also stated as follows:

Please note that we have received the bill of sale which shows that Violet Willson has paid you [Lisa Williams] in full for the permit sale. This bill of sale is signed by both you and John.

These observations suggest that the interests of justice would be served by not erecting any unnecessary obstacles to the completion of this permanent transfer.

As a fourth requirement, the Denial Notices called for the following:

Additionally our office will need to have a written agreement between John [transferee] and [his mother] Violet [who paid the purchase price], indicating if the money is to be paid back to Violet and if so their terms.

This requirement paraphrases question 5 of the transfer survey on page 3 of the transfer form. Along with the payment of the \$50.00 transfer fee, the requested agreement between the transferee and his mother must be sworn to, notarized, reviewed and approved before the transfer

can be completed. In this sworn document (or a separate sworn statement), we request Violet Willson to specify the amount she has paid to the transferor.

Fifth and finally, the Denial Notices state as follows:

Our records show that you [Lisa Williams] do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

In fact, the file contains two Notices of Intent that the transferor executed and faxed to CPEC. The Licensing Project Leader noted filing, effective, and expiration dates on the transferor's first, July 9 Notice of Intent acknowledging its full force at the time. Contrary to the requirements of 20 AAC 05.1710(a) and without explanation, the Licensing Project Leader neglected to note filing, effective, and expiration dates on the second Notice of Intent submitted by the transferor.

The transferor's Roberts Statement¹⁶ refers to her July 9 Notice of Intent¹⁷ and could be construed as her request to revoke her first Notice of Intent in order to block any proposed transfer of her Entry Permit to Aaron Roberts or Kern Roberts. This view is reinforced by the transferor's filing of her second Notice of Intent dated July 19, 2013,¹⁸ at the same time she submitted the Roberts Statement on July 23, 2013. The second Notice of Intent satisfies the requirements of AS 16.43.170 and 20 AAC 05.1710. Therefore, we believe that the second properly filed Notice of Intent was in full force and effect by law when the commission received the parties' Request for Permanent Transfer on November 8, 2013.

¹⁶ Exhibit B.

¹⁷ Exhibit A.

¹⁸ Exhibit B.

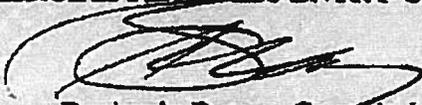
Conclusion

For the reasons stated, by this Provisional Decision and Order, we conclude that the proposed transfer of Bristol Bay salmon set net entry permit S04T 65633 should be provisionally approved, subject to the payment of the \$50.00 transfer fee and the sworn submission we requested from the transferee and his mother, Violet Willson, concerning their agreement with respect to her payment of the purchase price for the permit. We have also requested a sworn statement from Ms. Willson detailing her payments to the transferor.

The parties to this provisionally-granted transfer, Lisa M. Williams (transferor), John B. Rochl (transferee), and Violet Willson, may submit written comments and propose written evidence for inclusion in this record, provided such items are received by the commission within 60 days from the date of this Provisional Decision and Order. Additionally, any of the parties may request an evidentiary hearing, provided such request is supported by a detailed offer of proof and received within 60 days of this Provisional Decision and Order.

Dated at Juneau this 2nd day of September, 2014.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner
Bruce Twomley, Chairman

RECEIVED
LIBRARY
JUL 09 2013
CFEC

Commercial Fisheries Entry Commission Notice of Intent to Permanently Transfer Entry Permit

2200 Glacier Hwy, #109
P.O. Box 110002, Juneau, AK, 99811-0302
Phone: 907-789-6150
Fax: 907-789-6170
www.cfec.state.ak.us

This notice must be on file with the Entry Commission for at least 60 days before the permit may be permanently transferred to another person. Filing a Notice of Intent to Transfer does not obligate you to permanently transfer the permit and you need not name a proposed transferee in this notice.

This notice expires one year from the date of filing. If a new Notice of Intent is received prior to the expiration date, it will be effective immediately without an additional waiting period. Name, address and licenses held are public information that may be released.

A Notice of Intent to Transfer is not required if a permit is being transferred from the Estate of a permit holder who is deceased.

I, LISA WILLIAMS hereby notify the Entry Commission that I intend to permanently transfer my
Permit holder's name (please print)
entry permit, 504T68633B for the BRYSTOL BAY fishery.
Permit number Fishery resource, gear and area

___ Check the space at left if you wish to have the Entry Commission include your name and mailing address in its list of permit holders who intend to transfer a permit. This list is available to the public and may be requested by persons interested in purchasing a permit.
Please provide your phone number if you wish to have it listed: _____

___ If you would like the Entry Commission to send you the Permanent Transfer form with your copy of this Notice of Intent, please check the space at left. These forms are available at Department of Fish and Game offices throughout Alaska and on the Entry Commission's website listed above.

[Signature] _____ Date 7/9/2013
Permit holder's signature* Date
Social security number _____ Date of birth
P.O. Box 363
Permanent mailing address
Naknek AK 99633
City State Zip code

* Authorization must be attached if not signed by the permit holder.

COMMISSION USE ONLY

DATE FILED: 7-9-13
EFFECTIVE DATE: 9-7-13
EXPIRATION DATE: 7-9-14

Commercial Fisheries Entry Commission Notice of Intent to Permanently Transfer Entry Permit

6800 Glacier Hwy, #100
P.O. Box 110502, Juneau, AK 99811-0502
Phone: 907-789-6180
Fax: 907-789-6170
www.dec.state.ak.us

This notice must be on file with the Entry Commission for at least 60 days before the permit may be permanently transferred to another person. Filing a Notice of Intent to Transfer does not obligate you to permanently transfer the permit and you need not name a proposed transferee in this notice.

This notice expires one year from the date of filing. If a new Notice of Intent is received prior to the expiration date, it will be effective immediately without an additional waiting period. Name, address and licenses held are public information that may be released.

A Notice of Intent to Transfer is not required if a permit is being transferred from the Estate of a permit holder who is deceased.

I, LISA M. WILLIAMS hereby notify the Entry Commission that I intend to permanently transfer my
Permit holder's name (please print)
entry permit S04T65633H for the BRISTOL BAY fishery.
Permit number Fishery resource, gear and area

RECEIVED
JUL 23 2013
CFEC

Check the space at left if you wish to have the Entry Commission include your name and mailing address in its list of permit holders who intend to transfer a permit. This list is available to the public and may be requested by persons interested in purchasing a permit.
Please provide your phone number if you wish to have it listed: _____

If you would like the Entry Commission to send you the Permanent Transfer form with your copy of this Notice of Intent, please check the space at left. These forms are available at Department of Fish and Game offices throughout Alaska and on the Entry Commission's website listed above.

LISA M. WILLIAMS July 19, 2013
Permit holder's signature Date
[Redacted] [Redacted]
Social security number
P.O. Box 363
Permanent mailing address
Naknek ALASKA 99633
City State Zip code

* Authorization must be attached if not signed by the permit holder.

COMMISSION USE ONLY

DATE FILED: _____

EFFECTIVE DATE: _____

EXPIRATION DATE: _____

Revised November 2008

ATTACHMENT I
(pages 15 of 32)

EXHIBIT B

09044

COMMERCIAL ENTRY COMMISSION
8800 GLACIER HWY #109
P.O. BOX 110302
JUNEAU, ALASKA
33811-0302

RECEIVED
JUL 23 2013
CFEC

PHONE 907-789-6150
FAX 907-789-6170

ATTENTION EVON,

ON JULY 9TH 2013 INTENDED TO TRANSFER UPON SALESHEET 7 TH 2013 LISA WILLIAMS OWNER OF BRISTOL BAY SET NET PERMIT 50476633H FAXED A "INTENT TO TRANSFER" CONCERNING A AARON ROBERTS TO COMMERCIAL FISHING ENTRY COMMISSION STARTING THE 6 WK REQUIREMENT OF TRANSFER. AT THIS TIME THERE ARE DOCUMENTS IN THE POSSESSION OF KERN ROBERTS NOTORIZED BY ME SUCH AS: A SKIFF FOR DOWNPYM SECURITY TO BE RETURN UPON FINALIZATION OF PERMIT 50476633H A COPY OF IT BEING A GIFT TO ME FROM MY HUSBAND EARL WILLIAMS, INTENT TO TRANSFER, INTENT TO PERMANENT TRANSFER, AGREEMENT AND PROKISARY AND POWER OF ATTORNEY ALLOWING HIM TO SIGN MY NAME OF SKIFF TRANSFER UPON THE PERMANENT TRANSFER OF PERMIT 50476633H DUE TO UNPREDICTABILITY WHERE I MIGHT BE CONCERNING MY HUSBANDS CONDITION) NOTE TO USE AND RETURN MY EXISTING RIGHT WITH A FAIR AND JUST 6 MONTH NOTICE TO DNR AND AARON OR KERN HIMSELF, ALL NOTORIZED AND GIVEN TO KERN ROBERTS.

THE PURPOSE AND REASONING OF THE DISCOUNTED IMMEDIATE SALE OF MY PERMIT WERE GROUNDS OF NECESSITY DUE TO MY HUSBANDS CANCER CARE EXPENSES AND MEDICATIONS, CREDIT CARD DUE AND ON A LIMITED TIME BEFORE OUR CREDIT GOES BAL, LAWYER FEES ALSO ON TIME LIMIT BY JULY 12TH, NO FOOD, ELECTRIC TO GO TO GET CUT OFF, 2013 FISHING EXPENSES AND SO FOR THAT AND THE OPENING OF A SMALL BUSINESS TO ACCOMMODATE MY HUSBANDS ABILITIES TO SUPPORT OUR FAMILY. MY HUSBAND COULD NOT COMPLETE THE SEASON DUE TO "EXTREME" MEDICAL REASON AND WE HAD TO SELL IMMEDIATELY FOR THESE REASONS AND MORE

KERN WAS VERY WELL AWARE OF THESE REASONS AND DUE NECESSITY FOR OVER A MONTH KERN THEN DECIDED TO CHANGE WITHOUT FURTHER REGARD. OUR REQUIREMENT OF A PROMPT AND TIMELY \$5,000.00 DOWNPMT TO 7,500.00 AND WE HAVR TOLD HIM "MANY OF TIMES THIS CANNOT HAPPEN WE NEED OUR MONEY, FULL SELLING POINT AT 31,000.00 MEANING 9,000.00 LESS THEN MARKET VALUE AT THIS POINT WE HAVR DECIDED TO CANCEL THE SALE DUE TO THIS HAS BEEN GOING ON "WAY TO LONG" AND THE "FINANCIAL DAMAGES HAVE TAKEN PLACE" DUE TO KERN NOT TAKING IMMEDIATELY ACTION ON AGREEMENT. WE ALSO FEEL KERN AS NO RESPECT TO THE FACT I AM THE OWNER OF THE PERMIT AND HE IS CALLING SHOTS ON WHAT HE WANTS TO PAY FOR DOWNPMT (NOT CONSIDERING THE REASONS FOR THE MORE THAN FAIR SALE FOR IMMEDIATE NEEDS AND PURPOSE OF THE SALE (MENTIONED ABOVE)

ANY/ALL TRANSACTIONS ARE TO BE GUARDED DUE TO THESE FACTUALLY BASED EVENTS AND THE "SALE TO BE CANCELED"

ANY FURTHER INQUIRIES PLEASE CALL AT 907-493-2611 THIS IS A BORROWED PHONE IF I CANNOT REACH ME PLEASE CONTACT MR AT P.O. BOX 343 NAKNEK, ALASKA 99853.

LISA WILLIAMS

PRINT LISA WILLIAMS

SIGNED [Signature]

DATE 7/23/2013

WITNESSED BY POST OFFICE DEPUTY

NOTARY



[Signature]

DATE 07-23-13

Comm 04 02-14-14

ATTACHMENT I
(pages 16 of 32)

EXHIBIT C



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite
PO Box 11
Juneau, Alaska 99811-
Main: 907.789.
Licensing: 907.789.
Fax: 907.789.

November 12, 2013

File# 098044

Lisa Williams
Box 363
Naknek, AK. 99633

Dear Ms. Williams:

On November 12, 2013, the Entry Commission received the request for permanent transfer of your Bristol Bay salmon permit, S04T 65633H, to John Roehl. Additional information is needed before I can proceed with the transfer.

The transfer request submitted was signed and notarized on July 26, 2013. Entry Commission regulation 20 AAC 05.1712(d) requires that the request be signed, notarized and filed within 90 days of being notarized.

Additionally there was not a survey page submitted nor was there a transfer processing fee of \$50.00.

I have enclosed a new form that both you (Lisa) and John will need to complete and return to our office with the \$50.00 processing fee.

Please note that we have received the bill of sale which shows that Violet Willson has paid you in full for the permit sale. This bill of sale is signed by both you and John.

Additionally our office will need to have a written agreement between John and Violet, indicating if the money is to be paid back to Violet and if so their terms.

Our records show that you do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

Please give this your immediate attention. If you have any questions or need further assistance please phone me directly at 907-790-6952.

By Direction of The
Commercial Fisheries Entry Commission

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

Yvonne Fink
Licensing Project Leader

cc: John Roehl, Violet Willson (VIA ADF&G in King Salmon)

ATTACHMENT I
(pages 17 of 32)

EXHIBIT D (1 OF 2)



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

1/8/13

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite
PO Box 110
Juneau, Alaska 99811-0110
Main: 907.789.4200
Licensing: 907.789.4200
Fax: 907.789.4200

November 12, 2013

File# 098044

Lisa Williams
Box 363
Naknek, AK. 99633

2ND NOTICE

Dear Ms. Williams:

On November 12, 2013, the Entry Commission received the request for permanent transfer of your Bristol Bay salmon permit, S04T 65633H, to John Roehl. Additional information is needed before I can proceed with the transfer.

The transfer request submitted was signed and notarized on July 26, 2013. Entry Commission regulation 20 AAC 05.1712(d) requires that the request be signed, notarized and filed within 90 days of being notarized.

Additionally there was not a survey page submitted nor was there a transfer processing fee of \$50.00.

I have enclosed a new form that both you (Lisa) and John will need to complete and return to our office with the \$50.00 processing fee.

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Additionally, our office will need to have a written agreement between John and Violet, indicating if the money is to be paid back to Violet and if so their terms.

Our records show that you do not have a notice of intent on file, please complete the enclosed form and return with the other requested information.

Please give this your immediate attention. If you have any questions or need further assistance please phone me directly at 907-790-6952.

By Direction of The
Commercial Fisheries Entry Commission

Yvonne Fink
Licensing Project Leader

cc: John Roehl, Violet Willson (VIA ADF&G in King Salmon)

ATTACHMENT I
(pages 18 of 32)

EXHIBIT D (2 OF 2)



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

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

December 31, 2014

CERTIFIED RETURN RECEIPT

7003 0500 0002 8883 2226

Mrs. Lisa M. Williams
2603 La Honda Drive
Anchorage, AK 99517

Re: Final Commission Decision on Administrative Review
Lisa Williams Permanent Transfer of Limited Entry Permit
S04T 65633 to John B. Roehl
CFEC 14-053-P

Dear Mrs. Williams:

We are sorry to inform you that the Commission has unanimously decided to approve the requested transfer of Bristol Bay salmon set net permit S04T 65633 and to order the reissuance of the permit to John B. Roehl. Enclosed is a copy of our Final Commission Decision on Administrative Review explaining our reasons

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

ATTACHMENT I
(pages 19 of 32)

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

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner
Frank Homan, Commissioner
Bruce Twomley, Chairman

Enclosures

cc:

Brad D. De Noble, Attorney for John B. Roehl & Violet Willson (7003 0500 0002 8883 2233)
De Noble Law Offices, LLC
11517 Old Glenn Hwy., Suite 202
Eagle River, AK 99577

John B. Roehl (7003 0500 0002 8883 2240)
Box 104
Naknek, AK 99633

Violet Willson (7003 0500 0002 8883 2257)
Box 104
Naknek, AK 99633

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

In Re the Application of

Lisa M. Williams

For Permanent Transfer of Bristol Bay Salmon
Set Net Permit S04T 65633 to John B. Roehl

CFEC 14-053-P

FINAL COMMISSION DECISION ON ADMINISTRATIVE REVIEW

Counsel

Brad D. De Noble, De Noble Law Office LLC, 11517 Old Glenn
Hwy., Suite 202, Eagle River, AK 99577, attorney for John B. Roehl
and Violet Willson

I.

Introduction and Summary

Lisa M. Williams,¹ the holder of the Bristol Bay salmon set net entry permit at issue in this proceeding has in the past participated in three completed transfers of limited entry permits. She received two permits by transfer, and transferred one of the permits away.

Additionally, shortly before the transfer at issue in the current proceeding, on July 9, 2013, the transferor executed and submitted to CFEC a Notice of Intent to Permanently Transfer

¹ Hereinafter, the transferor.

Entry Permit in support of a proposed transfer of the permit.² The transferor subsequently withdrew the Notice of Intent and advised CFEC not to act on any transfer papers that CFEC might receive from the proposed transferee,³ as the holder of an entry permit is entitled to do before the commission receives both parties' Request to Permanently Transfer Entry Permit. Once the parties file the Request for Permanent Transfer, the request can only be withdrawn by agreement between the transferor and transferee.

On July 23rd, 2013, the Commission received the new Notice of Intent executed by the transferor in support of her agreement to transfer the permit to John B. Roehl, the transferee in this proceeding.⁴ The transferor did not attempt to withdraw this Notice of Intent before the commission received the parties' Request for Permanent Transfer of Entry Permit. Both transferor and transferee swore to and signed the Request for Permanent Transfer of Entry Permit. The request stated that their agreement included only the transfer of the permit and did not include the transfer of any site. The transferor accepted full payment of the \$40,000 agreed-upon purchase price prior to their contractual deadline at the end of calendar year 2013.

In the course of reviewing this proposed transfer, the Licensing Project Leader did not acknowledge receipt of the transferor's Notice of Intent⁵ and, on November 12, 2013, requested (among other things) that the transferor file a new Notice of Intent with the commission.⁶ The transferor did not respond to this request.

On April 1, 2014, a permit broker based in Washington State emailed the Licensing Project Leader stating that the transferor had requested his help with a sale of her S04T 65633 permit (the subject of this proceeding).

² Exhibit A (attached to Provisional Decision and Order).

³ Exhibit C (Provisional Decision and Order).

⁴ Exhibit B (Provisional Decision and Order).

⁵ *Id.*

⁶ Exhibit D (Prov. Dec. and Order).

The 2014 Bristol Bay salmon season passed without a transfer of the permit, and no one fished the permit.

The commissioners intervened, took jurisdiction of this transfer, and issued their September 2, 2014 Provisional Decision and Order for permanent transfer of the entry permit based on their finding that the record before the commission demonstrated substantial compliance with the Limited Entry Act. The commissioners have offered the transferor and the transferee two opportunities to submit affidavits and arguments in response to the commission's Provisional Decision and Order. By this decision, the commissioners incorporate by reference and give effect to their Provisional Decision and Order and the commissioners conclude that they have an affirmative duty under AS 16.43.170 to, "...approve the transfer and reissue the entry permit to the transferee...."

II. Proceedings Following Provisional Decision and Order

Representing the transferee (and the transferee's mother who paid \$40,000 cash for the full purchase price of the entry permit), attorney Brad De Noble timely responded to the Provisional Decision and Order and met all the deadlines set forth in the order. His submission included the second and previously missing page of the Request for Permanent Transfer of Entry Permit completed by the parties. From the transferor's affidavit, the transferee's affidavit, and from the handwriting, the transferor filled out the entire Request for Permanent Transfer of Entry Permit form. Both the transferor and the transferee signed sworn statements attesting to the truth of their statements on the form.

The transferor Lisa Williams also submitted a timely response to the Provisional Decision and Order. The transferor made a request for an evidentiary hearing before the commissioners based on her claim that the transaction with Violet Willson and transferee John Roehl included the sale of two shore fishery leases in addition to the permit:

The transaction was not simply a sale of my set net entry permit for the sum of \$40,000, but rather the transaction was a sale of my permit along with two shore fishery leases for the total sum of \$80,000. Due to the fact that John Roehl and Violet Willson did not complete full payment to me in the amount of \$80,000, I do not wish to permanently transfer my set net entry permit to John Roehl.

The transferor supported her claim with her affidavit stating in part as follows:

2. Around the time of July 13, [2013] I began the negotiation with Violet Willson for the purchase of my set net entry permit and two shore leases, which would be transferred and used by her son, John Roehl. We agreed that the permit was worth \$40,000.... We eventually agreed on the price of \$20,000 for each shore lease. Together we agreed on the terms of \$80,000 for the set net entry permit and two shore leases.

3. At that time in July 2013, Violet told me that she could only pay me for the entry permit and that she would sign the paperwork and pay for the shore leases after the end of the year. I drafted the sale agreement for just the entry permit portion of the agreement at this time so that Violet and I could begin the permit transfer process.

4. I also drafted a sales agreement for the shore leases around this time in July to have ready for when Violet could pay for the leases in January. Sometime after the time I drafted this agreement, my home was burglarized and this draft agreement was taken from my home.

* * *

7. Violet has not paid me the remaining \$40,000 as we had agreed upon for the two shore leases. I did file a Notice of Intent to Permanently Transfer the Entry Permit with the Alaska Commercial Fisheries Entry Commission to transfer set net permit S04T 65633 to John, but this transfer was conditioned upon the completion of the full agreement that I had with Violet and John. As

Violet and John had not completed payment to me under the full agreement and are in breach of our contract, I do not wish to transfer my set net entry permit to John.

The transferor also submitted an affidavit by Alexander Joannides stating that:

On or about May 22, 2014, give or take around 7:30 pm I went to pick up Lisa Williams at her residence...in Anchorage. I knocked and she opened the door to let me in. I walked in and Lisa was on the speaker phone with a lady she was referring to as Violet. Lisa and the woman identified as Violet were having a heated conversation which Lisa was asking for payment for her fishing site. Next thing you know, Violet yelled, "I don't have to pay for shit!! Especially now that Dinky is dead!!"

The transferor has not denied that she has been fully and timely paid the agreed upon \$40,000 purchase price for the permit before the end of 2013.

CFEC copied the transferee and his mother with the transferor's submission and vice versa and invited their responses.

On Wednesday, December 3, 2014, the transferor submitted her unsworn email response which, among other things, stated that her husband Earl Williams had been cancer stricken and "could not be left alone" before he died on February 19, 2014. She also characterized the transferee as an incapacitated alcoholic, whom she used to ask to watch over her husband in their home, when she had to leave to run errands. Additionally, the transferor alleged that the agreement to transfer the entry permit that she and the transferee swore to and signed on July 25, 2013, was kept secret from the transferee for some period of time.⁷

⁷ The transferor's December 3, 2014 response is attached hereto as Exhibit E (continuing the letter identification sequence begun with the Commission's September 2, 2014 Provisional Decision and Order).

On Thursday, December 4, 2014, attorney Brad De Noble submitted a second affidavit from Violet Willson and a second affidavit from her son John B. Roehl. In her affidavit, Ms. Willson states as follows:

1. The statements made in the affidavit submitted by Lisa M Williams that her sale of Permit No. S04T 65633 to my son John Roehl included or was conditioned on my purchase of her two shore leases are completely false.

2. At the time I agreed to purchase Ms. Williams' permit, there was absolutely no mention whatsoever of my purchasing her lease sites. The sale agreement, which Ms.

Williams drafted herself and which she signed, accurately reflects the complete terms of our deal and makes no mention of the leases or that the sale of the permit was conditioned on anything other than the payment of \$40,000.

3. It was not until I made the final payment that Ms. Williams mentioned the leases and offered to sell them to me. I told Ms. Williams I was not interested because there were open sites on either side of hers.

4. The statements made in the affidavit submitted by Alexander Joannides concerning an alleged phone call between Lisa Williams and myself on May 22, 2014 are completely false. Not only would I never use such language, I have not spoken with Lisa Williams by telephone since in or around November 2013.

The transferee Mr. Roehl's affidavit states as follows:

1. The statements made in the affidavit submitted by Lisa Williams that her sale of Permit No. S04T 65633 to me included or was conditioned on my mother Violet Willson's purchase of Ms. Williams two shore leases are completely false.

2. Ms. Williams never mentioned the leases to me prior to me signing the sale agreement. The sale agreement, which Ms. Williams drafted herself and which she signed, accurately

reflects the complete terms of our deal and makes no mention of the leases or that the sale of the permit was conditioned on anything other than the payment of \$40,000.

III. Discussion

The transferor has participated in three completed transfers of limited entry permits. She has received two permits by transfer, and she has transferred one of those permits away.

Additionally, shortly before entering the transaction at issue here, the transferor unilaterally withdrew the Notice of Intent she had filed with the commission in support of an earlier transfer of the permit. All permit holders are entitled to unilaterally withdraw a Notice of Intent to nullify a proposed transfer provided the withdrawal occurs before the parties file a Request for Permanent Transfer of Entry Permit. Once the Request for Permanent Transfer of Entry Permit is filed, the proposed transfer cannot be withdrawn unless both parties formally agree to withdraw it.⁸

The transferor did not attempt to withdraw her Notice of Intent to Transfer in support of the transfer at issue here. Instead, she allowed the Request for Permanent Transfer of the Entry Permit to be filed supported by her own sworn statement and the sworn statement of the transferee. The Request for Permanent Transfer affirmatively represented that the agreement between the parties included only the purchase of the limited entry permit and did not include the purchase of a site.

Additionally, the transferor accepted timely payment of the \$40,000 agreed upon purchase price for her entry permit.

⁸ AS 16.43.170; 20 AAC 05.1710.

The transferor stated on the Request for Permanent Transfer that she was “selling permit due to my husband’s cancer need money for bills and care.”

The transferor’s sworn statements on this record (together with those of her transferee) trigger the commission’s affirmative duty to, “... approve the transfer and reissue the entry permit to the transferee...” under AS 16.43.170(b).

The transferor did not respond to the Licensing Project Leader’s November 12, 2013 requests for further information in support of this transfer.⁹

On April 1, 2014, a permit broker based in Washington State emailed the Licensing Project Leader stating that the transferor had requested his help with a sale of her S04T 65633 permit (the same permit at issue in this proceeding).

CFEC did not complete this transfer, and no one fished the permit during the 2014 Bristol Bay salmon season. The commissioners took jurisdiction of this matter and issued their September 2, 2014 Provisional Decision and Order.

Most recently, in her October 31, 2014 response, the transferor objected to completion of the transfer and requested an evidentiary hearing before the commission to prove the existence of a very different agreement from the one the parties swore to on their Request for Permanent Transfer of Entry Permit that called only for the sale of her set net entry permit for \$40,000.

And, as noted, the transferor has accepted timely payment of the \$40,000 agreed-upon purchase price for the permit.

In short, the transferor has requested an evidentiary hearing before the commission to provide her with an opportunity to overcome her own previously sworn statements to the

⁹ Exhibit D (Provisional Decision and Order).

commission. We view the transferor's December 3rd, 2014 submission to the commission¹⁰ as an offer of proof to the commission of the testimony she would provide at an evidentiary hearing, if granted.

We do not believe the transferor has offered a sound basis for the commission to grant an evidentiary hearing. Testimony that she has offered to contradict her previously sworn statements is not going to improve this record. In fact, the transferor's latest December 3rd, 2014 statement suggests her testimony will not be responsive to the issues before the commission and further suggests a willingness to say anything.¹¹

CFEC reviews proposed transfers of entry permits primarily to ensure that the proposed transfer does not violate the Limited Entry Act. Whether or not the parties may also be transferring a shore fishery lease is consistent with the Limited Entry Act either way. The Request for Permanent Transfer of Entry Permit form asks about the value of additional items in a combined transfer (for example, sites) to allow the commission to make a sound estimate of the permit value, when other items are included in the sale.¹² Otherwise, the commission has no authority over the disposition of a shore fishery lease which is wholly under the jurisdiction of the Alaska Department of Natural Resources.¹³

There is no reason for a party to conceal or misrepresent to the commission on their transfer form the existence of a contract for transferring a shore fishery lease. Whether or not such a contract exists is not relevant to the required compliance with the Limited Entry Act in order to complete the transfer of a limited entry permit. When the parties show they have complied with the Limited Entry Act, the commission's duty under AS 16.43.170 to approve the transfer arises.

¹⁰ Exhibit E.

¹¹ Exhibit E.

¹² CFEC's estimates of permit value are employed by administrators of the Commercial Fishing Revolving Loan Fund (AS 16.10.300 and following) and Officers and employees of the Alaska Commercial Fishing and Agriculture Bank (AS 44.81.010 and following).

¹³ AS 38.05.082-38.05.105; 38.05.965(3), (4), & (5).

The parties are in disagreement over whether they entered a contract for the sale of two shore fishery leases. But the commission has no authority to enforce an agreement to purchase a shore fishery lease, even if such an agreement were to be established. At the same time, the transferor may have a civil remedy for breach of contract, if her claim is supported by the facts. We also note that there is an ongoing market for the sale of shore fishery leases.

The parties swore to the terms that apply to the transfer of the entry permit, and their terms show compliance with the Limited Entry Act. Therefore, we believe this agreement creates a statutory duty on the part of the commission to approve the transfer and reissue the permit to the transferee.

We do not believe the commission should conduct an evidentiary hearing to afford the transferor the opportunity to overcome her own previously sworn statements to the commission nor to prove the existence of a contract with respect to shore fishery leases, over which the commission has no jurisdiction. Conducting an evidentiary hearing to adjudicate the existence and effect of a contract for a transfer of two shore fishery leases would serve no statutory or useful purpose under the Limited Entry Act.

Additionally, the applicant's last submission to the commission (alleging in part that the agreement to transfer the entry permit that the transferee signed on July 26, 2013, was kept secret from the transferee and further making allegations about the transferee's health) is non-responsive at best and fails to show that a hearing would improve this record.

Therefore, we deny the transferor's request for an evidentiary hearing and leave her to her civil remedies with respect to her claims of the existence of a contract for the sale of her two shore fishery leases. The permit holder may also sell her shore fishery leases on the open market.

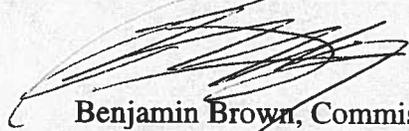
IV. Conclusion

We incorporate by reference and give effect to our September 2nd, 2014 Provisional Decision and Order.

For the reasons stated, we approve the requested transfer of Bristol Bay salmon set net permit S04T 65633 and order the reissuance of the permit to John B. Roehl.

Dated at Juneau this 31st day of December, 2014.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Benjamin Brown, Commissioner
Frank Homan, Commissioner
Bruce Twomley, Chairman

Maake, Mele (CFEC)

From: dinky williams <dinkywilliams1960@gmail.com>
Sent: Wednesday, December 03, 2014 10:18 AM
To: Maake, Mele (CFEC)
Subject: Fwd: Permit. Lisa williams

Mrs L Williams

----- Forwarded message -----
From: "dinky williams" <dinkywilliams1960@gmail.com>
Date: Dec 3, 2014 9:45 AM
Subject: Permit. Lisa williams
To: <bruce.twomley@alaska.gov>
Cc:

I am not going to send a hardcopy although I said I would.
I have been sick an went to hospital.
What I tell u is that the permit an sites we're to be a surprise for John Rhoele from Mother Violet.
John knew nothing of the permit till approx 10 days after the fact.
Violet has a large family an has never wanted anyone around when she does business due to the drama and her bein set in her ways.
All her business is done one on one.
She is a shrewd business woman.
That is common knowledge in Naknek.
The only other person That discussed any numbers with her was my husband Dinky. He passed on Feb 19 2014. They talked over the phone.
Dinky was unable to go much of anywhere and could not be left alone.
JOHN WATCHED HIM WHILE I told him I had errands to run an asked hin to wAtcHing and he did.
He could not be in 2 places at once.
DUE TO THE FACT HE WAS TO KNOW NOTHING OF THE PERMIT AN SITES PER VIOLET BECAUSE SHE WANTED TO SURPRIZE HIM.
JOHN IS A HORRIBLE DISFUNCTIONAL ALCOHOLIC.
HE IS at the liquor store upon openin. Buys. An 18 pack of beer half gallon of tequila an smokes. All that is completely gone by 2 pm. Then he passes out til 5pm. Wakes an go's back to liquor store Buys the exact same thing and passes out til 10 pm. Wakes just before last call an Goes back to the liquor store an buys the exact same thing again an passes out early mornin hrs. Sleepstil 9 an than back to the liqueur store.
Starts the exact same cycle over the next day.
I have never seen John a y different the whole 8 yrs have own him. He spends 300 a day on booze.
Puttin thAt Boy boat is goin to cost people their lives.
Its ashame but true.
I do not know if u made a decision yet.
Please email me at: lw99633@gmail.com

Mrs L Williams

ATTACHMENT I
(pages 32 of 32)

EXHIBIT E