Estates

If the permit holder dies during a fishery opening, can the boat and crew continue to fish?

Yes, if the permit is transferred to another person on an emergency basis due to the holder's death. The spouse or next of kin must complete and sign a request for emergency transfer form and submit documentation of the holder's death. The emergency transfer would be valid for the rest of the fishing season.

Can the permit holder make plans for someone to receive the permit in the case of his or her death?

Yes, in most cases. As long as the permit holder has a transferable permit, it may be bequeathed to an heir named in a will. Additionally, an unmarried permit holder may file a form, "Designation of Permit Recipient Upon Permit Holder's Death", with the commission, designating the intended recipient of the permit. (See more information below.)

What happens to a permit if the permit holder dies without a will?

Under Alaska law, if the permit holder does NOT leave a will, rights to a transferable permit automatically go to the surviving spouse (if there is one). If there is no spouse, the permit becomes part of the decedent's estate (unless the permit holder had fi led a "Designation of Permit Recipient" form with the commission - see more information below). Permits cannot be held by a Trust.

Can a permit be transferred to the holder's spouse if the permit holder dies?

Transferable limited entry permits survive the death of the permit holder. If the permit holder is survived by a spouse, and there is no will specifying that someone other than the spouse is to receive the permit, it may be transferred directly to the spouse by right of survivorship without the estate being probated, provided the surviving spouse does not already hold a permit in the same fishery. However, there is an exception for the salmon fisheries, where a person may hold two salmon permits but may fish only one. The spouse may also wish to consider probate of the estate including the permit.

How is a permit transferred by "right of survivorship"?

At least 90 days after the death of the permit holder, the spouse may request permanent transfer of the permit by right of survivorship. The spouse must complete and submit to the commission the "Request for Permit Transfer by Right of Survivorship" form along with a copy of the death certificate. If the permit holder left a will, a copy must be submitted to the commission.

Does the spouse have to fish the permit if it is received by right of survivorship?

No. The spouse does not have to be physically able to participate in the fishery to receive the permit by survivorship. However, at the time of the transfer, the spouse must indicate if the spouse is able to participate in the fishery and if the individual personally intends to fish the permit.

What happens if the surviving spouse cannot fish the permit?

In this case, the surviving spouse will be allowed to emergency transfer the permit each year for up to three years after the death of the permit holder. After that time, the person who received the permit by right of survivorship can no longer emergency transfer the permit unless the individual can show an extraordinary circumstance for the emergency transfer. As with any limited entry permit, the permit does not have to be fished but it does have to be renewed each year.

Can the surviving spouse permanently transfer the permit once it is in his or her name?

Yes. The procedure is the same as for any other permanent transfer. First, the spouse must file a "Notice of Intent to Transfer." When the spouse reaches an agreement with a buyer, they must file a "Request for Permanent Transfer" form along with a copy of their transfer agreement.

If there is no surviving spouse, what happens to the permit?

If the permit holder is not survived by a spouse, the permit becomes part of the deceased permit holder's estate. In order to transfer the permit to a person other than the spouse, someone must be appointed by the court to act as personal representative of the estate. The personal representative has the authority to emergency transfer the permit annually until the estate has been probated and a permanent transfer completed.

What is probate?

Probate is the court process to distribute property from a deceased person's estate to those designated as beneficiaries in a will or to those entitled to the property, if the person dies without a will.

If the estate isn't settled yet, can a temporary (emergency) transfer be made?

Yes. The personal representative can request an emergency transfer. The personal representative of the estate can complete and sign the "permit holder" sections on the emergency transfer request form and must also submit a copy of the court appointment.

What if a personal representative hasn't been appointed yet?

The spouse or the next of kin may make a request for an emergency transfer of the deceased permit holder's permit. The commission must verify the relationship before the request for emergency transfer can be granted.

Who signs the permit renewal or transfer forms if the permit holder is deceased?

The personal representative has the authority to renew the permit, as well as to request emergency transfers. The permit does not have to be fished but it must be renewed annually.

If the permit holder leaves a will naming someone to inherit the permit, can the permit automatically be transferred if the commission receives a copy of the will?

No. Normally the estate would have to be probated before the permit could be permanently transferred from the estate to an heir. During probate, the permit may be emergency transferred each year until the estate is settled.

Does the estate have to be probated in order for the permit to be transferred?

Not necessarily, but probate is usually necessary when the permit has been bequeathed in a will. If the permit is going to the spouse by right of survivorship, it may be transferred without waiting for the estate to be probated. Also, the permit holder may avoid probate by filing a "Designation of Permit Recipient" form with the commission, in which the permit holder names the person to receive the permit. However, this designation may take effect only if the permit holder is not survived by a spouse.

How does the "Designation of Permit Recipient" form work?

The holder of a transferable limited entry permit, who is not married at the time of death, may complete this form to name a person to receive the permit in the event of the holder's death. The form must be signed by the permit holder before a person authorized under state law to administer an oath (notary public, postmaster, judge, etc…) or witnessed by two competent persons. The commission acknowledges receipt of the form and maintains the original copy in the permit holder's file. When the commission is notified that the permit holder has died, it must verify that there have been no substantive changes which would void the designation (such as marriage of the permit holder or a will written which designates someone else to receive the permit). After 90 days have elapsed, the permit may be transferred to the named recipient.

Can a permit be placed in a trust?

No. Under Alaska law, an entry permit or interim-use permit can only be held by a living person. Person, as defined under the Limited Entry Act, means a natural person and does not include a corporation, company, partnership, firm, association, organization, business trust, or society.

How long can a permit be held in a deceased permit holder's estate?

Generally, probate proceedings must be commenced within three years from the date of the permit holder's death. Emergency transfers can usually be granted while probate is ongoing. However, emergency transfers will not be granted indefinitely. Probate proceedings should be initiated as soon as possible and, when completed, a permanent transfer can take place.

What about estates valued at less than $50,000?

Under Alaska law, estates valued at less than $50,000 may be settled without going through probate by using an 'Affidavit for Collection of Personal Property of Decedent". Most permits are valued in excess of $50,000, so this provision does not apply to many fisheries. If the estate is less than 50,000, you may wish to consult an attorney or Alaska Legal Services regarding the use of an Affidavit for Collection of Personal Property of Decedent in transferring the permit from the estate.

What happens if no individual heir is named to receive the permit and more than one heir is entitled to inherit the estate?

A permit can only be held by one individual. In the case of multiple heirs, generally an agreement must be reached by the heirs for one of them to hold the permit. Absent an agreement, the permit could be sold and the proceeds divided. Legal advice from an attorney may be helpful in the process.

What happens if a minor child, not old enough to fish, inherits a permit?

The permit could be permanently transferred into the minor's name, and an annual request for emergency transfer of an entry permit held by a person who received that permit by right of survivorship, designation, or inheritance will, in the discretion of the commission, be granted for the three years after the decedent's death, unless the recipient has fished the permit since the death of the holder.

If the recipient is a youth, upon request the commission will, in its discretion, grant annual requests for emergency transfers until the youth has reached the age of presumptive ability to participate as set out in 20 AAC 05.1730(d). [For set net fisheries, the age is ten (10) years; for most other fisheries, the age is sixteen (16) years.] The guardian could also simply renew the permit annually until the child is old enough to participate in the fisher and to receive a permanent transfer of the permit.

This summary information is presented as a courtesy by the CFEC Licensing Section but may not be read to modify or replace the agency's statutory requirements in AS 16.43 or regulatory requirement in Chapter 5, of Title 20, Alaska Administrative Code.

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Revised September 2026

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