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of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Commercial Fisheries Entry Commission**

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To: Representative Louise Stutes  
Alaska State House of Representatives

Date: February 11, 2025

Thru: Glenn Haight, Commissioner/Chair  
Rick Green, Commissioner

From: Jennifer Findley, Law Specialist

Subject: CFEC Comments on  
Permit Owner Self-  
Financing Proposal

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The Commercial Fisheries Entry Commission's (CFEC, Commission) was requested to comment on the possibility of future statutory amendments to the Limited Entry Act, which would allow an existing limited entry permit holder to sell said permit, finance the cost of the permit for the buyer, and retain a lien on the permit until a purchase contract is satisfied. The CFEC has reviewed the circumstances of the proposed changes, probable obstacles, agency implications and possible outcomes. The CFEC welcomes the question and the opportunity to respond but does not have an official position on the subject.

### [Proposal Overview](#)

The Commission understands that the proposed amendments to Limited Entry Act are directly related to Alaska Statute § 16.43.150(g), which prohibits encumbrances on entry permits. For reference, the specific language reads:

***Section 16.43.150 Terms and conditions of entry permit; annual renewal.***

*(g) Except as provided in AS 16.10.333 – 16.10.338, AS 44.81.215, 44.81.225. and 44.81.231 – 44.81.250, an entry permit may not be*

- (1) pledged, mortgaged, leased, or encumbered in any way;*
- (2) transferred with any retained right of repossession or foreclosure, or on any condition requiring a subsequent transfer; or*
- (3) attached, distrained, or sold on execution of judgment or under any other process or order of any court, except as provided in AS 16.43.170(g) and (h).*

The proposed changes to this statute would establish an exception to the prohibition that would allow the holder of an entry permit to sell that permit to private person through the process of a contractual payment

plan. Under this contract, the seller of the permit would hold a lien on the permit until payment for the permit is satisfied. This action is currently barred under AS § 16.43.150(g)(2). Presently, the only exception to the statutory prohibition of encumbering entry permits is for loans that are obtained through the Commercial Fishing Loan Act established in AS § 16.10, the Commercial Fishing and Agricultural Bank (CFAB) established in AS § 44.81, and, effectively, the Child Support Enforcement Division (CSED) under AS § 25.27. This proposed change would not only allow for the holding of a lien by the seller of an entry permit but would also charge the CFEC with oversight of the resulting administrative processes.

There are numerous practical considerations to discuss when planning for statutory amendments, including legal obstacles, resulting changes to commission processes, and regulatory implications.

### I. Statutory Obstacles

As previously stated, AS § 16.43.150(g) currently prohibits the actions that are contemplated, which means that the Legislature would need to add, or amend, language in the Limited Entry Act to allow for a single, specific exception for individual permit holders to sign a contract for financial compensation with a potential private purchaser to finance the cost of purchasing an entry permit over a set time period. There is some concern that if the language of this exception is not specific and supported by a strong state interest, it could open the door to creditors in general, which could contravene the original intent of the legislature<sup>1</sup>, which “sought to avoid subjecting fishermen to ‘economic coercion’ as a result of holding a valuable license to participate in the fishery” (1984)<sup>2</sup>.

If the exception were to be statutorily granted, it would require the addition of a mechanism by which the contract between the seller and purchaser could be enforced. While review and enforcement of the financial requirements of such an agreement would be a matter for adjudication by the court in civil proceedings, the provisions of AS § 16.43.150(g)(3) appear to constrain the Commission’s ability to comply with a court order that might arise from civil proceedings. It is not clear whether the proposed changes would allow for this specific exception to fall under the transfer provisions of AS § 16.43.170(g). If the exemption is determined to apply to these transfer provisions, this would allow for the CFEC to comply with a court order to transfer a permit back to the original seller, if the buyer is found in default of the contract. However, if it is determined that the new encumbrance exception would not fall under the provisions of this section, then it may also be necessary to amend some portion thereof to allow the CFEC to comply with a court order

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<sup>1</sup> 1973 House Journal pg. 504; Committee Substitute for House Bill 126; House Judiciary Committee meeting minutes March 6, 1973, pgs. 75-78; House Finance Committee meeting minutes March 20, 1973, pg. 210; House Finance Committee meeting minutes March 21, 1973, pgs. 212-220.

<sup>2</sup> *Brown v. Baker* 688 P.2d 943 (Alaska 1984)

regarding the disposition of the limited entry permit.

Also, CFEC authority under AS § 16.43.100, specifically subsection (a)(11), grants the Commission the authority to “provide for the transfer...of entry permits to qualified transferees”. However, this does not necessarily confer authority to the Commission to withhold or deny the transfer of a permit – except under the provisions of AS § 16.43.170 – which would be a necessary step to prevent the sale of a permit after transfer to the purchaser but prior to the financial terms being met. The ability of a purchaser to sell or transfer the permit to a third party while still under contract for payment on the permit could undermine the point of allowing for the contracts.

Overall, the statutory provisions that may be necessary to actuate the proposal could be made as amendments to the individual sections as necessary or could be compiled into a new section that would provide the authorities and requirements of the plan with specificity. Furthermore, there may be additional statutory amendments or steps necessary for implementation which have not currently been contemplated.

## II. Subject History

The question of what constitutes an encumbrance to a limited entry permit is not new, and has been contemplated and opined by the Legislature, the Attorney General and the Alaska Supreme Court both before and after the passing of the Limited Entry Act and creation of the Commercial Fisheries Entry Commission. On August 9, 1979, the Attorney General for the State of Alaska issued an opinion on the question of “whether or not the limited entry fishing permit has acquired the status of a property right”, to which the opinion was that, no, “a limited entry permit has not ‘acquired the status of a property right’”. Alaska Statute § 16.43.150(e) was referred to directly as the basis for the opinion. The section reads:

***Section 16.43.150 Terms and conditions of entry permit; annual renewal.***

*(e) An entry permit constitutes a use privilege that may be modified or revoked by the legislature without compensation.*

The Alaska Supreme Court, in Brown v. Baker (1984), addressed the status of a limited entry permit as a property right, under the definition of “security interest”. In this case, the mortgagor (Brown) purchased a fishing vessel and limited entry permit from the mortgagee (Baker) and subsequently defaulted on the agreed upon payments (1984). The Court held that the

“...mortgagors’ promise to return [the] limited entry permit upon default was intended to

create [a] security interest in the permit, and was thus illegal and unenforceable...” (1984)<sup>3</sup>.

The Court, in this case, defined “security interest”, based on the Uniform Commercial Code under AS § 45.01.201(37), as “an interest in personal property or fixtures which secures payment or performance of an obligation...” (1984); this is also one meaning of the term as defined by the Black’s Law Dictionary.

Beginning in the mid-1980s, the Internal Revenue Service (IRS) began attempting to file liens against limited entry permits with the CFEC, declaring “its intention to seize and force the sale of limited entry permits” (1996)<sup>4</sup>. In 1992, a judge for the United States District Court for the District of Alaska, issued a judgment in Lorentzen v. US ruling that limited entry permits are “...’property or property rights’ within the meaning of 26 U.S.C. § 6321”, specifically, federal tax lien law.<sup>5</sup> While no opinion was issued by the judge in this case, the ruling opened a crack in the contention of the State of Alaska that limited entry permits are not a property right; a crack which was used by the IRS in future years. In 1996, the Commission denied a request for the permanent transfer of a permit by the IRS after the seizure and sale of said permit, asserting that limited entry permits as a “...use privilege authorized under Article VIII, Section 15 [of the Alaska State Constitution]”, and as such, do not “...confer an exclusive right or a special privilege of fishery upon the holders...” (1996). Quoting State v. Hebert (1990)<sup>6</sup>, the commission emphasized that “...no person may assert a property right against the State of Alaska to fishery resources” (1996).

Perhaps more ominous in the minds of legal scholars is the subject of fishing privileges or rights falling under a court finding that they are subject to maritime law and maritime liens. In Gowen Inc. v F/V Quality One (2001), the court held that the vessel Quality One’s fishing permits and history were an appurtenance to the vessel<sup>7</sup>. Appurtenances to a vessel are subject to maritime liens which are governed under the Commercial Instruments and Maritime Lien Act. Maritime liens are rather pernicious in that they are assigned to the vessel and are “secret”, meaning they do not need to rest on a registry. This means the lien can remain attached to a vessel past the sale of the vessel, no matter how many sales it has, and does not need to be made clear to the buyer. Limited entry permits in Alaska, however, are assigned to a person rather than a vessel, which helps to buffer this concern, but a stout review of maritime law is highly encouraged to be sure potential risks are de minimis.

Should a court eventually rule that limited entry permits are property rights and subject to seizure, it would have a chilling effect on the value of these permits, and fisheries management in general. The current market

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<sup>3</sup> *Brown v. Baker* 688 P.2d 943 (Alaska 1984)

<sup>4</sup> CFEC 96-003-P *In Re: Application by the IRS for transfer of entry permit number S01A 58789* (1996)

<sup>5</sup> *Lorentzen v. US* No. A90-446 Civil (D. Alaska Mar. 11, 1992)

<sup>6</sup> *State v. Hebert* 803 P.2d 866 (Alaska 1990)

<sup>7</sup> *Gowen Inc. v F/V Quality One*, 244 F.3d 64 (1<sup>st</sup> Cir.2001)

value of CFEC limited entry permits is approximately \$745 million dollars. If permits were to become a successful target of creditors, it would have an immediate impact on values. This level of risk may severely reduce interest in fishing careers by potential new entrants. Moreover, limited entry and all other privilege or rights-based fisheries management programs are, at the core, critical for resource conservation and serve to create a predictable amount of fishing pressure in a fishery. Large-scale deterioration of these programs could materially impact fisheries management.

### III. Agency Implications

The implementation of new legislation providing for the CFEC to oversee these contracts between permit holders and potential purchasers will certainly increase the number of transfer requests that fall under these parameters. Initial consideration of this increase may require the Commission to increase staffing by a minimum of one person – possibly two – to provide customer service to the parties and handle initial transfer requests specific to these circumstances, as it may be time and cost prohibitive to add these duties onto existing staff. This requires a corresponding increase in the CFEC's budget. Establishing new processes would be necessary for prompt and effective handling of these requests.

### IV. Regulatory Changes by CFEC

Modifications to the Limited Entry Act would also necessitate action by the Commission to conform several existing regulations, or create new regulations, to align with the statutory changes. The specific changes which may be necessary will depend upon the full extent of the statutory changes, but there are certain to be many moving parts once practical application becomes imminent. The regulations that would most likely require amendment, or the drafting of a new section that deals with this exception, include the regulations regarding the permanent transfer of permits. While it may be a straightforward regulatory project, it is very possible that multiple changes across several sections may be necessary to ensure there are no conflicts within regulations that might undermine the intent of the legislation.

### Conclusion

The CFEC is open to further discussion on this subject and any proposed statutory amendments as there are many nuances that may affect the functionality and practicality of the possible changes, this includes the willingness and ability to assist the legislative legal department with the drafting of proposed statutes. There are undoubtedly several paths forward in which the general intent of the proposal can be accomplished, both legislatively and internally. The Commission appreciates the request to review this matter and to offer comments on the possibilities for allowing an alternative permit transfer path for commercial fishermen. We hope that this document is informative and useful in future discussions.

Should there be any questions or need for further clarification or discussion, please feel free to contact me at your convenience; [jennifer.findley@alaska.gov](mailto:jennifer.findley@alaska.gov) or 907-790-6940.