

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

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

This action is not expected to require an increased appropriation.

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

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

Date: 1/6/2021



Fate Putman, Chair

FILING CERTIFICATION

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



Lieutenant Governor

Effective: March 26, 2021

Register: 257, April 2021

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

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

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

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

20 AAC 05.290 is amended to read:

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

Authority: AS 01.10.055 AS 16.43.110 AS 16.43.160
AS 16.43.100

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

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

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

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

Authority: AS 16.43.100 AS 16.43.110 AS 16.43.220

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

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

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

Authority: AS 16.43.110 AS 16.43.150

20 AAC 05.1750(f) is amended to read:

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

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

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

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

(9) repealed 3 / 26 / 2021;

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

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

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

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

(1) fishing in closed waters, including ~~which includes~~ regulations that prohibit salmon fishing in a specified area;

(2) fishing during closed season or period, including ~~which includes~~ regulations that prohibit salmon fishing during specific dates or times;

(3) fishing with more than the legal amount of gear, including ~~which includes~~ regulations that restrict the size or quantity of fishing gear that may be used in a salmon fishery;

(4) fishing with gear not allowed in fishery, including ~~which includes~~

(A) regulations that govern the gear type that may be used in a salmon fishery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Authority: AS 16.43.110 . AS 16.43.850 AS 16.43.855