



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

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

March 21, 2013

Andrew Jensen

Managing Editor

[editor@alaskajournal.com](mailto:editor@alaskajournal.com)

Molly Dischner

Reporter

[molly.dischner@alaskajournal.com](mailto:molly.dischner@alaskajournal.com)

Re: *Shell Game* (Alaska Journal of Commerce 3/13/13)

Dear Mr. Jensen and Ms. Dischner:

We appreciate the catchy title *Shell Game* . . . for the article concerning SB 54, pending state legislation to extend the 2013 termination date for the Alaska state waters limited scallop fishery. However, the article confuses the Alaska Commercial Fisheries Entry Commission's limitation of the commercial scallop harvest in state

waters (the sole subject of SB 54) with the federal limitation in federal waters. This confusion leads to a series of misstatements, which we will address in the order they appear.

The article (p. 1) states:

A small group of partners from Washington led by Jim Stone of Lakewood have come to control virtually the entire scallop harvest valued at about \$4.5 million in 2012.

\* \* \*

Including American Seafoods, that core group now controls six of nine state and federal permits for the scallop fishery.

In fact, the group identified holds only a single state waters scallop permit and faces competition in both state and federal waters from Alaskans William J. Harrington and Max Hulse and his family. Additionally, a third set of independent state and federal permits represents potential competition.

The article (p.1) further states:

the Ocean Hunter has harvested scallops in state waters on behalf of the Alaska Scallop Association members with “lease fees” paid to the permit holders who do not associate their permits with a vessel.

In fact, there is only one individual associated with the Alaska Scallop Association who holds a state permit not currently assigned to a vessel: Tom Minio, an Alaska resident, who is an active captain in the scallop fishery.

The article (p. 1-2) also states:

Associated with those federal licenses purchased [by the partners] in 2008 were two state permits that had been relinquished, and a third that is

now under suspension because it has not been assigned to a vessel after being acquired by the partners.

The partners have not acquired a state permit that is not assigned to a vessel. Consistent with state law, the partners hold only one state permit, and the permit is assigned to a vessel.

Only one state permit has ever been relinquished, and the relinquishment had nothing to do with the partners. In 2007, a state permit holder became embroiled in a contract dispute over the permit and relinquished the permit following a discussion with CFEC staff about relinquishment. This single relinquishment of a permit severed the only connection to the fishery this former permit holder ever had.

Before the state limited entry program existed, parties to a 2002 transfer of federal fishing rights agreed to forego and extinguish any rights that might later arise to **apply for** a state waters permit. The state waters limited entry program would not exist until 2004, so there was no permit to relinquish and no certainty there would ever be one. The recipient subsequently transferred their federal rights and no longer participates in the Alaska scallop fishery.

The phrase “under suspension” implies a ministerial act blocking the operation of a permit – which has never occurred. Only two state waters permits are not currently assigned to vessels, but their holders must continue to pay fees, and they can fish the permits whenever they attach them to a vessel. One of the two permits is not connected to the partners.

The article’s treatment of Jim Stone (p.2) shows the confusion generated when the state limitation is lumped together with the federal limitation. The Council’s letter pertained only to extending state limitation in state waters—the sole subject of SB 54 and the sole responsibility of CFEC. Having reviewed CFEC’s licensing files, we believe that the state limited fishery looks very much as it did when the Council wrote its last letter and the legislature extended the program in 2008. No individual or entity holds more than a single state permit, a new Alaskan participant has entered the fishery, and there is competition between permit holders.

The article (p.2) provides an unattributed statement (appearing under the heading ***Seaton questions constitutionality***) as follows:

The scallop fishery is the only vessel-based limited entry program in the state, and it was made vessel-based because assigning permits to individuals with fishing history would have resulted in 10 or 11 permits. That number was greater than the nine determined to be the most vessels the fishery could support.

This statement is misleading. Over the years for establishing vessel eligibility, some 43 individual captains had participated in the fishery and would have been eligible to apply for permits under traditional limited entry. If the commission had implemented traditional limited entry, each of those captains could have brought a new vessel into the fishery during the period of time required to adjudicate their claims to permits (with extreme luck, at least 6 years). In good conscience, the commission could not have risked visiting that much fishing power on (in the words of Commissioner Campbell) “a hard bottom dredging” fishery which could potentially do terrible damage if not very carefully controlled. The possibility of 43 vessels (or even a substantial portion of them) compared to 9 participating vessels presented a stark choice to the commission.

The article attributes the following statement to Rep. Paul Seaton:

“For several years there seems to have been a philosophy at the CFEC that they are the chief supporters of a position of policy instead of implementing the policy that is set by the legislature,” shortly after SB 54 was introduced. “Although they were implementing the policy, to oppose a change in policy by the legislature is, I believe, beyond their real mission.”

Some years ago during the course of a hearing, Rep. Bill Hudson made a somewhat parallel comment to the commission, but in the form of praise for being “proactive.”

The comment attributed to Rep. Seaton fails to acknowledge that the commission’s actions are solidly grounded in specific direction from the legislature and the Alaska Constitution.

The article correctly cites *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1266 (Alaska 1988), for the proposition that the Limited Entry Act directed CFEC to determine an optimum number to ensure that a limited fishery was not too exclusive:

The optimum number provision of the Limited Entry Act is the mechanism by which limited entry is meant to be restricted to its constitutional purposes. Without the mechanism, limited entry has the potential to be a system which has the effect of creating an exclusive fishery to ensure the wealth of permit holders and permit values, while exceeding the constitutional purposes of limited entry.

CFEC agrees and requests the opportunity to examine an optimum number for the state scallop limitation. That opportunity will be destroyed if the limited fishery terminates at the end of 2013. Preserving our statutory opportunity to perform an optimum number determination is a principal reason the commission supports extending the termination date for the fishery. The procedure would also be fair to Mr. Harrington, Mr. Hulse, and the other permit holders.

Those advocating termination of state scallop limited entry know that termination would create a risk that the resulting open-to-entry scallop fishery may have to be closed to protect the stocks. Risking such a closure would be reckless and is wholly unnecessary.

Current management of the fishery under limited entry has earned high marks. The Monterey Bay Aquarium Seafood Watch has bestowed upon Alaska Weathervane Scallops their “**Best Choice**” award based on a showing that the Alaska scallop resource is abundant, well-managed and caught in an environmentally friendly way.

Those who advocate for an unlimited fishery should bear the burden of explaining what exactly would be improved. If they cavalierly accept the risk that the fishery might close, they should reacquaint themselves with Article VIII, Section 4, of the Alaska Constitution, which requires of the legislature and state managers alike that “Fish . . . and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle . . . .”

**CFEC is not willing to assume the risk of a closure. CFEC would examine the optimum number for the fishery, if it is afforded that opportunity by extending the termination date of the State scallop limitation.**

**Yours truly**

**Alaska Commercial Fisheries Entry Commission**

**Bruce Twomley, Chair**

**Benjamin Brown, Commissioner**