

**SB**

**54**

<TARGET><BILL>SB 54</BILL><SUBJECT>SB  
54</SUBJECT><COMM>SRES28</COMM></TARGET>

# ALASKA STATE LEGISLATURE

Sen. Cathy Giessel, Chair  
Sen. Fred Dyson, Vice Chair  
Sen. Lesil McGuire  
Sen. Anna Fairclough  
Sen. Click Bishop  
Sen. Peter Micciche  
Sen. Hollis French



State Capitol, Room 427  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871  
800-465-4843

## Senate Resources Committee

Butrovich Room 205  
Monday, March 11, 2013  
3:30-5:00 p.m.

## AGENDA

- SB 54 Extend Hair Crab & Scallop Limited Entry
  
- HB 36 Exempt Discharges From Use of Munitions
  
- SCR 1 State Food Resource Development Group

Teleconference



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

*MEMORANDUM*

To: The Hon. Cathy Giessel  
Senator, District 'N'  
Chairman, Senate Resources Committee  
Alaska State Senate

Date: 26 February 2013

CC: Heather Brakes  
Legislative Director  
Office of the Governor

Telephone: (907) 790-6942 voice  
(907) 790-7042 facsimile

From: <sup>RES.</sup> Benjamin Brown, Commissioner  
Commercial Fisheries Entry Commission

Subject: request for hearing on SB 54

Thank you for having the Senate Resources Committee introduce Senate Bill 54 at the request of the Alaska Commercial Fisheries Entry Commission (CFEC). Now that this legislation is before the Senate I am writing respectfully to request a hearing on SB 54 before the Senate Resources Committee. Attached please find a copy of the bill, a Sponsor Statement, a brief Sectional Analysis, a resolution from the United Fishermen of Alaska in support of the bill, and a letter from the North Pacific Fishery Management Council in support of the bill. I will forward any additional documents to you as soon as I have them, as well as any other supplemental information that may be of benefit to your Committee members as they consider SB 54. I have assessed the potential fiscal impact of SB 54 to CFEC and believe it will result in a "zero" fiscal note, which the Governor's Legislative Office will issue once a hearing has been set and duly noticed.

We are very grateful for your invaluable assistance in getting this bill introduced and heard. Please let me know if you have any questions regarding this request or if CFEC may provide any more information.

# ALASKA STATE LEGISLATURE

Sen. Cathy Giessel, Chair  
Sen. Fred Dyson, Vice Chair  
Sen. Lesil McGuire  
Sen. Anna Fairclough  
Sen. Click Bishop  
Sen. Peter Micciche  
Sen. Hollis French



State Capitol, Room 427  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871  
800-465-4843

## Senate Resources Committee

Sponsor Statement for Senate Bill 54  
By Request of the Commercial Fisheries Entry Commission

Senate Bill 54 will extend for ten years the “sunset” date for Alaska’s vessel-based limited entry fisheries for weathervane scallops and Bering Sea hair crab. Limited entry into the vast majority of Alaska’s commercial fisheries has been implemented with a skipper-based system that awards permits to individual fishermen based on their prior history of participation in and economic dependence on each specific fishery. Vessel-based limited entry is a very narrow exception to the individual-based system, created by the Alaska State Legislature ten years ago.

In 2002 the Legislature amended the Limited Entry Act to allow vessel-based limited entry permits to be given to vessels with a history of fishing for weathervane scallops and Bering Sea hair crab in State waters. Because of concerns that innovation could have a “slippery slope” effect, and lead to vessel-based limited entry in other fisheries, the Legislature put a five-year limit on the new vessel-based limited entry system. When the five-year time limit was about to be reached in 2008, the Legislature extended the program for a further five years. Without the passage of SB 54, vessel-based limited entry for weathervane scallops and Bering Sea hair crab will automatically be stricken from the statute books on the 30<sup>th</sup> of December 2013.

The past ten years have shown that vessel-based limited entry is working well, with a small but efficient fleet of Alaskan vessels successfully harvesting weathervane scallops in State waters in addition to their fishing activity in federal waters. While conservation concerns have not allowed for any commercial openings of the Bering Sea hair crab fishery in the past decade, these permits are still held by vessels that are ready and able to harvest hair crab if and when fisheries managers decide that circumstances permit this fishery to open.

While opponents of vessel-based limited entry have predicted dire consequences if vessel-based limited entry were allowed to become law, none of these negative predictions has come true. Extending the sunset date for vessel-based limited entry within the Limited Entry Act is good policy, as it will allow the weathervane scallop fishery to continue operating as it has and will allow for a potential future opening of the hair crab fishery.



### Sponsor Statement for Senate Bill 54

Senate Bill 54 will extend for ten years the “sunset” date for Alaska’s vessel-based limited entry fisheries for weathervane scallops and Bering Sea hair crab. Limited entry into the vast majority of Alaska’s commercial fisheries has been implemented with a skipper-based system that awards permits to individual fishermen based on their prior history of participation in and economic dependence on each specific fishery. Vessel-based limited entry is a very narrow exception to the individual-based system, created by the Alaska State Legislature ten years ago.

In 2002 the Legislature amended the Limited Entry Act to allow vessel-based limited entry permits to be given to vessels with a history of fishing for weathervane scallops and Bering Sea hair crab in State waters. Because of concerns that innovation could have a “slippery slope” effect, and lead to vessel-based limited entry in other fisheries, the Legislature put a five-year limit on the new vessel-based limited entry system. When the five-year time limit was about to be reached in 2008, the Legislature extended the program for a further five years. Without the passage of SB 54, vessel-based limited entry for weathervane scallops and Bering Sea hair crab will automatically be stricken from the statute books on the 30<sup>th</sup> of December 2013.

The past ten years have shown that vessel-based limited entry is working well, with a small but efficient fleet of Alaskan vessels successfully harvesting weathervane scallops in State waters in addition to their fishing activity in federal waters. While conservation concerns have not allowed for any commercial openings of the Bering Sea hair crab fishery in the past decade, these permits are still held by vessels that are ready and able to harvest hair crab if and when fisheries managers decide that circumstances permit this fishery to open.

While opponents of vessel-based limited entry have predicted dire consequences if vessel-based limited entry were allowed to become law, none of these negative predictions has come true. Extending the sunset date for vessel-based limited entry within the Limited Entry Act is good policy, as it will allow the weathervane scallop fishery to continue operating as it has and will allow for a potential future opening of the hair crab fishery.



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

*MEMORANDUM*

To: The Hon. Cathy Giessel  
Senator, District 'N'  
Chairman, Senate Resources Committee  
Alaska State Senate

Date: 26 February 2013

CC: Heather Brakes  
Legislative Director  
Office of the Governor

Telephone: (907) 790-6942 voice  
(907) 790-7042 facsimile

From: Benjamin Brown, Commissioner  
Commercial Fisheries Entry Commission

Subject: sectional analysis of SB 54

Section 1 of this bill deletes the year (2013) in which ten discrete sections of the Limited Entry Act will be repealed, and replaces it with the year 2023. This will extend the so-called "sunset" date in statute and prolong for ten years the life of the Commercial Fisheries Entry Commission's vessel-based limited entry permit systems for the Alaska weathervane scallop and Bering Sea hair crab fisheries.

Section 2 of the proposed legislation provides for this legislation to take effect retroactively if the bill does not take effect before the 30<sup>th</sup> of December 2013, the current "sunset" date.

Please accept my analysis of this legislation with the cautionary reminder that a bill itself is always the best statement of its own contents and effects.

# ALASKA STATE LEGISLATURE

Sen. Cathy Giessel, Chair  
Sen. Fred Dyson, Vice Chair  
Sen. Lesil McGuire  
Sen. Anna Fairclough  
Sen. Click Bishop  
Sen. Peter Micciche  
Sen. Hollis French



State Capitol, Room 427  
Juneau AK 99801-1182  
907-465-4843  
Fax: 907-465-3871  
800-465-4843

## Senate Resources Committee

### Sectional Analysis for Senate Bill 54 By Request of the Commercial Fisheries Entry Commission

Section 1 of this bill deletes the year (2013) in which ten discrete sections of the Limited Entry Act will be repealed, and replaces it with the year 2023. This will extend the so-called "sunset" date in statute and prolong for ten years the life of the Commercial Fisheries Entry Commission's vessel-based limited entry permit systems for the Alaska weathervane scallop and Bering Sea hair crab fisheries.

Section 2 of the proposed legislation provides for this legislation to take effect retroactively if the bill does not take effect before the 30<sup>th</sup> of December 2013, the current "sunset" date.

Please accept my analysis of this legislation with the cautionary reminder that a bill itself is always the best statement of its own contents and effects.

**CS FOR SENATE BILL NO. 54(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RESOURCES COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the termination date of the authority of the Commercial Fisheries  
2 Entry Commission to maintain a vessel-based limited entry fisheries system for the  
3 weathervane scallop and Bering Sea hair crab fisheries; and providing for an effective  
4 date by amending the effective date under sec. 28, ch. 137, SLA 2002."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* **Section 1.** Section 28, ch. 137, SLA 2002, as amended by sec. 3, ch. 69, SLA 2008, is  
7 amended to read:

8           Sec. 28. Sections 5, 10, 12, 14, 16, 18, 21, 23, and 27 of this Act take effect  
9           December 30, 2018 [2013].

10 \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12           **RETROACTIVITY.** If sec. 1 of this Act takes effect on or after December 30, 2013, it  
13 is retroactive to December 30, 2013.

# Fiscal Note

State of Alaska  
2013 Legislative Session

Bill Version: SB 54  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SB54-DFG-CFEC-03.04.13  
Title: EXTEND HAIR CRAB & SCALLOP LIMITED ENTRY  
Sponsor: RESOURCES  
Requester: Commerical Fisheries Entry Commission

Department: Department of Fish and Game  
Appropriation: Commercial Fisheries Entry Commission  
Allocation: Commercial Fisheries Entry Commission  
OMB Component Number: 471

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2014<br>Appropriation<br>Requested | Included in<br>Governor's<br>FY2014<br>Request | Out-Year Cost Estimates |            |            |            |            |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|
|                               |                                      |  | FY 2015                 | FY 2016    | FY 2017    | FY 2018    | FY 2019    |
| <b>OPERATING EXPENDITURES</b> | <b>FY 2014</b>                       | <b>FY 2014</b>                                 |                         |            |            |            |            |
| Personal Services             |                                      |  |                         |            |            |            |            |
| Travel                        |                                      |  |                         |            |            |            |            |
| Services                      |                                      |  |                         |            |            |            |            |
| Commodities                   |                                      |  |                         |            |            |            |            |
| Capital Outlay                |                                      |  |                         |            |            |            |            |
| Grants & Benefits             |                                      |  |                         |            |            |            |            |
| Miscellaneous                 |                                      |  |                         |            |            |            |            |
| <b>Total Operating</b>        | <b>0.0</b>                           | <b>0.0</b>                                     | <b>0.0</b>              | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Fund Source (Operating Only)**

|              |            |            |            |            |            |            |            |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| None         |            |            |            |            |            |            |            |
| <b>Total</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Positions**

|           |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |

|                           |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|
| <b>Change in Revenues</b> |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version:**

This is the first version of a fiscal note for this legislation.

|              |                                       |        |                     |
|--------------|---------------------------------------|--------|---------------------|
| Prepared By: | Shirley Penrose, Operations Manager   | Phone: | (907)790-6960       |
| Division     | Commercial Fisheries Entry Commission | Date:  | 03/01/2013 01:00 PM |
| Approved By: | Benjamin Brown, Commissioner          | Date:  | 03/01/2013          |
|              | Commercial Fisheries Entry Commission |        |                     |

- Brendan Harrington  
state waters  
support  
Belkenny  
(independent boat)  
4th boat  
fisher  
Lijelong at  
diverse at crew  
"new generation" - avoid boom bust  
smarter approach

- Henry Mitchell  
fishery consultant  
participate in fishery  
CDQ  
supports

- Steve Branson  
opposes  
not local crews  
shorten extension to 210 yrs.

Shirley Minio  
Provider vessel  
supports

Mark Hulse  
Cafe River process plant  
supports

Glen McKelison 34 yr fisher  
3 generations  
Kodiak boat lift helped maintenance  
\$1.6 m for crew shakes

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. Senate Bill 54

**Analysis**

There are no significant fiscal impacts for CFEC associated with this legislation.

# Fiscal Note

State of Alaska  
2013 Legislative Session

Bill Version: SB 54  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: SB54-DFG-CFD-02-28-13  
Title: EXTEND HAIR CRAB & SCALLOP LIMITED  
ENTRY  
Sponsor: RESOURCES  
Requester: Senate Resources Committee

Department: Department of Fish and Game  
Appropriation: Commercial Fisheries  
Allocation: Westward Region Fisheries Management  
OMB Component Number: 2170

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

|                               | FY2014<br>Appropriation<br>Requested | Included in<br>Governor's<br>FY2014<br>Request | Out-Year Cost Estimates |            |            |            |            |            |
|-------------------------------|--------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
|                               |                                      |  | FY 2014                 | FY 2015    | FY 2016    | FY 2017    | FY 2018    | FY 2019    |
| <b>OPERATING EXPENDITURES</b> |                                      |  |                         |            |            |            |            |            |
| Personal Services             |                                      |  |                         |            |            |            |            |            |
| Travel                        |                                      |  |                         |            |            |            |            |            |
| Services                      |                                      |  |                         |            |            |            |            |            |
| Commodities                   |                                      |  |                         |            |            |            |            |            |
| Capital Outlay                |                                      |  |                         |            |            |            |            |            |
| Grants & Benefits             |                                      |  |                         |            |            |            |            |            |
| Miscellaneous                 |                                      |  |                         |            |            |            |            |            |
| <b>Total Operating</b>        | <b>0.0</b>                           | <b>0.0</b>                                     | <b>0.0</b>              | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Fund Source (Operating Only)**

|              |            |            |            |            |            |            |            |            |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| None         |            |            |            |            |            |            |            |            |
| <b>Total</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

**Positions**

|           |  |  |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |  |  |

|                           |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|
| <b>Change in Revenues</b> |  |  |  |  |  |  |  |  |
|---------------------------|--|--|--|--|--|--|--|--|

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial fiscal note.

Prepared By: Geron Bruce, Assistant Director  
Division: Commercial Fisheries

Approved By: Kevin Brooks, Deputy Commissioner  
Department of Fish and Game

Phone: (907)465-6151  
Date: 02/21/2013 11:45 AM  
Date: 02/28/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. SB 54

**Analysis**

Senate Bill 54 extends existing law authorizing the Commercial Fisheries Entry Commission to maintain a vessel-based limited entry system for the weathervane scallop and Bering Sea hair crab fisheries. Passage of this legislation will have no fiscal impact on the Division of Commercial Fisheries.

# North Pacific Fishery Management Council

Eric A. Olson, Chairman  
Chris Oliver, Executive Director

Telephone (907) 271-2809



605 W. 4th Avenue, Suite 306  
Anchorage, AK 99501-2252

Fax (907) 271-2817

Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

February 25, 2013

Senator Cathy Giessel  
Chair Senate Resources Committee  
State Capitol Room 427  
Juneau, AK 99801-1182

Sent by email: [Senator.Cathy.Giessel@akleg.gov](mailto:Senator.Cathy.Giessel@akleg.gov)

Dear Senator Giessel;

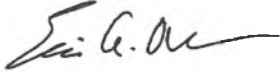
The North Pacific Fishery Management Council (Council) supports the State of Alaska extending the current limited entry program for the Weathervane scallop fishery in state waters. The Council delegated authority to the State of Alaska to manage all aspects of the scallop fishery in federal waters off Alaska, except limited access, which remained a federal responsibility. The Fishery Management Plan for the Scallop Fishery off Alaska (FMP) established a license limitation program (LLP) in federal waters, effective January 16, 2001. The Alaska Legislature, as you know, also established a four-year vessel moratorium in 1997 that was first extended an additional three years until June 10, 2004, and then replaced with a vessel-based limited entry program that was scheduled to expire in 2008. At that time the legislature extended that expiration until the end of 2013. The Council is currently concerned that if this program is allowed to expire, the potential exists for an open-access fishery in State waters that is inconsistent with management measures to limit effort in federal waters.

Conservation concerns with crab bycatch and the overharvest of scallops in the early 1990s prompted the Council and the Alaska Board of Fisheries (BOF) to work cooperatively to reduce scallop fishing effort in the overcapitalized Weathervane scallop fishery. In several areas of the state, Kodiak and Yakutat for example, scallop beds are bisected by the 3-mile boundary line separating state from federal waters. In these areas, the majority (80% or more) of the scallop harvest is taken from the federal waters portion of the scallop beds. Guideline harvest ranges established by the Alaska Department of Fish and Game (ADF&G) are applied to the entire registration area, and are not apportioned to either state waters or federal waters. If the state waters portion of the fishery reverted to open access, additional vessels with unrestricted fishing capacity could target scallops in state waters. Disproportionate harvest of the scallop beds could lead to stock conservation concerns; including that portion of the stock in federal waters. Two additional concerns result from a bifurcated management regime. First, regulatory enforcement along the 3-mile line would be problematic. Second, Tanner and red king crab bycatch would likely increase as a result of increased fishing effort within a restricted portion of the scallop bed. Weathervane scallop stocks in Alaska are small. Concerns with overcapitalization, and the resulting stock conservation and crab bycatch concerns have largely been addressed through complementary federal and state limited entry/access programs. The Council encourages the Alaska Legislature to extend the Weathervane Scallop limited entry program in state waters to coordinate with the federal program implemented by this Council.

If you need any additional information relative to this issue, please feel free to contact the Council's Executive Director, Chris Oliver.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric A. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eric A. Olson, Chair  
North Pacific Fishery Management Council

Cc: Ben Brown, Commissioner CFEC



# UNITED FISHERMEN OF ALASKA

**Mailing Address:** PO Box 20229, Juneau AK 99802-0229

**Physical Address:** 410 Calhoun Ave Ste 101, Juneau AK 99801

**Phone:** (907)586-2820 **Fax:** (907) 463-2545

**Email:** [ufa@ufa-fish.org](mailto:ufa@ufa-fish.org) **Website:** [www.ufa-fish.org](http://www.ufa-fish.org)

## UFA Resolution 2013 - 02

### **A Resolution by the United Fishermen of Alaska to Support continuation of the vessel-based limited entry in the the weathervane scallop and Bering Sea hair crab fisheries.**

**Whereas,** the people of Alaska amended the Alaska Constitution in 1972 to allow for limitation of entry into commercial fisheries for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood, and to promote the efficient development of aquaculture in Alaska; and,

**Whereas,** the Alaska State Legislature in 1973 passed into law the Limited Entry Act to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants and vessels into the commercial fisheries in the public interest and without unjust discrimination; and,

**Whereas,** in enacting the Limited Entry Act, the Alaska State Legislature found that commercial fishing for fishery resources had reached participation levels that were impairing the economic welfare of the fisheries of Alaska, the efficiency of the harvest, and the sustained yield management of the fishery resource; and,

**Whereas,** in the 1980s and 1990s the Alaska weathervane scallop fishery saw rapid growth in participation, with vessels coming to Alaska from other parts of the United States to harvest this resource with increasing aggression, while there was no federal fishery management plan for the fishery in federal waters, and the fishery was open-access in State waters; and,

**Whereas,** in response to the unsustainable levels of participation in the Alaska weathervane scallop fishery, the Alaska Legislature unanimously enacted a moratorium on new entrants in 1997, at the same time making findings about the biological, ecological, and technological realities of this fishery, envisioning a vessel-based limited entry system for this fishery, and allowing the State of Alaska to manage fisheries in federal waters; and,

**Whereas,** the United States North Pacific Fishery Management Council (NPFMC) implemented a moratorium in federal waters in 1997 on new entrants into the weathervane scallop fishery for the same reasons as the Alaska Legislature; and,

**Whereas,** the NPFMC instituted a License Limitation Program to assign limited fishing privileges to participants in the weathervane scallop fishery in 2001; and,

**Whereas,** the Alaska State Legislature enacted House Bill 206 in 2002, which allowed the Alaska Commercial Fisheries Entry Commission (CFEC) to create and implement a vessel-based limited entry system for the weathervane scallop and Bering Sea hair crab fisheries, in order to

allow these fisheries to be managed for sustained yield and the well-being of the fishermen in these fisheries; and,

**Whereas**, CFEC followed the Alaska State Legislature's direction, and carefully undertook to limit entry to the weathervane scallop and Bering Sea hair crab fisheries, and in accordance with the law, the Legislature's intent, and the facts pertaining to these fisheries, issued vessel-based limited entry permits in these two fisheries; and,

**Whereas**, in 2008 the Alaska State Legislature extended the life of the vessel-based limited entry systems until the end of 2013; and,

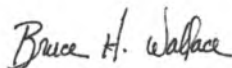
**Whereas**, CFEC, in conjunction with the Alaska Department of Fish & Game (ADF&G), has overseen the successful, stable, sustainable management of the weathervane scallop fishery for the past decade, in compliance with the Alaska Constitution and the Limited Entry Act; and,

**Whereas**, allowing the vessel-based limited entry systems to expire at the end of 2013 would prevent the sustained yield management of these fisheries, and would significantly harm those who hold permits for these fisheries and those employed in these fisheries; and,

**Whereas**, allowing the vessel-based limited entry systems to expire at the end of 2013 would benefit no one, and would cause loss of opportunity and economic harm;

**Therefore Be It Resolved by the United Fishermen of Alaska Board of Directors** that UFA strongly supports the swift passage of Senate Bill 54 in the first regular session of the 28<sup>th</sup> Alaska Legislature, based on the firm belief that vessel-based limited entry is a fair, legal, logical, and prudent way to limit entry to the weathervane scallop and Bering Sea hair crab fisheries. UFA notes that this is the only fishery in which we support vessel-based limited entry.

By UFA Board of Directors, February 21, 2013:



Bruce Wallace  
President  
United Fishermen of Alaska



Attest: Julianne Curry  
Executive Director



# Alaska State Legislature

Please enter into the record my testimony to the SENATE RESOURCES  
committee name

committee on SB 54, dated 4-MAR-2013  
bill/subject

**PLEASE SEE TESTIMONY ATTACHED**

Signed: ALEXUS KWACHKA  
Testifier

Representing (optional)  
326 COPE ST. KODIAK 99615  
Address

Phone number

SB54:

DO NOT SUPPORT THIS BILL BECAUSE:

BAD TEMPLATE AND EXAMPLE FOR STATE OF ALASKA FISHERIES.

DO NOT SUPPORT 10 YEAR EXTENSION 5-YEAR MORE APPROPRIATE.

DO NOT SUPPORT BECAUSE WE HAVE ALREADY SEEN MASSIVE CONSOLIDATION.

THIS IS A MONOPOLY AND DO NOT BE FOOLED.



ALEXUS KWACHKA - 326 COPE ST  
KODIAK, AK 99615

" TAC "

BREAK DOWN THE QUOTA AND LOOK AT PERCENTAGE OF POUNDS CAUGHT STATE WATERS / VERSUS FEDERAL WATERS

3/4/2013

8344 Mary Esther Dr.  
Eagle River, AK 99577

February 27, 2013

Senate Resources Committee  
Juneau, Alaska

This is in regard to scallop SB 54.

My two sons and I hold a statewide Scallop Fishing Vessel Entry Permit # W2BBV85012H, Category:B, Overall Length less than 80'.

Our vessel is the F/V Wayward Wind, ADF&G #23574. We also hold a Federal Scallop Limitation License, SSLP No.004. We were issued these permits due to our *historical participation* in the Alaska Scallop Fishery. My sons and I have been Alaska residents since 1966 and involved in Alaska fisheries since 1979.

Due to the decrease in state scallop quotas and the high cost of fuel and the observer, we have not fished our state permit for the past few years---strictly due to economics. In 2011 we dry docked our scallop vessel for some upgrades, and do plan to participate in the fishery in the near future. Hopefully, the quotas will improve, especially in the Kayak Island areas which have been closed in some years.

It is my understanding should Senate Bill 54 not be passed, and the fishery is open to all comers, there is a great possibility that Fish and Game will close the fishery due to the small quotas and difficulty in management.

Seems fair and logical to me that *historical participation* in a fishery should count for something. Accordingly, I ask the legislation to enact SB 54 and not take my two sons' future in the scallop fishery away.

Sincerely,

Max G. Hulse

Kilkenny, LLC  
Box 8166  
Kodiak, AK 99615

Senate Resources Committee  
Alaska State 28<sup>th</sup> Legislature

Dear Senator Wagoner and Committee Members,

This letter is in support of Senate Bill 54 to extend the vessel-based limited entry system for the Alaska weathervane scallop and Bering Sea hair crab fisheries. My comments are limited to the scallop fishery as the Owner/ Captain of the F/V Kilkenny.

I have extensive experience in the scallop fishery in New England in the 1970s and in Alaska throughout the 1980s. I have operated the F/V Kilkenny since 2009 as an independent business, employing eight to ten crewmembers per season. With the exception of one student, all crew are Alaska residents, young people who have developed the skills to efficiently and sustainably harvest the resource with attention to the future of the stocks. I have trained two capable relief skippers in the past three years.

When I re-entered the scallop fishery in 2009 I was immediately included in resource management discussions with both the Alaska Weathervane Scallop Cooperative and State and Federal managers. I have been impressed with the collaboration between all participants in the industry, with everyone focused on sustainable management of this valuable but limited resource.

I believe the language in SB 54 to extend the current system until 2023 is the best option to maintain the weathervane scallop fishery in a commercially viable form. I truly believe that wide-open access at this point would jeopardize the businesses of those currently invested in the fishery while also failing to provide successful alternatives to potential new entrants. I am also concerned about the effects of more gear on the harvestable beds, and of the state's ability to effectively regulate an open access fishery without greatly expanding the personnel currently assigned to the management of the fishery, at considerable cost. The use of a moratorium will preserve the rights of others to enter the fishery at a later date, if the stocks improve, without total privatization of the resource.

I urge your support for SB54. I would be pleased to provide more information and answer any questions at a public hearing.

Respectfully,

Bill Harrington

cc: Senator Gary Stevens  
Representative Alan Austerman  
Commissioner Benjamin Brown

March 7, 2013

George Hutchings, President  
Americans for Equal Access  
P.O. Box 8242  
Kodiak, AK 99615

Senator Cathy Giessel  
Chair Senate Resources Committee  
State Capitol Room 427  
Juneau, AK 99801-1182

Via email: Sharon.Long@akleg.gov.

RE: SB 54 and the North Pacific Fishery Management Council

Dear members of the Senate Resources Committee:

For the record, my name is George Hutchings and I am a long-term Alaska resident and commercial fisherman based out of Kodiak. When I first came to Kodiak in 1981, the opportunities for a small commercial fisherman were abundant. There was a huge small boat fleet that fished crab, halibut, salmon, and herring. There were also small boats that participated in the trawling, shrimping, and scalloping fisheries; to name a few, F/V *Meridian*, *Sharon W*, *Heidi Kay*, and *Rose-Ann Hess*.

Scallops were the first privatization of public fisheries, followed by the halibut and black cod Individual Fishing Quota programs, the king crab rationalization program in the Bering Sea, Gulf rockfish quotas for trawlers, and now a proposed program to privatize the Gulf trawl quota to match the American Fisheries Act program. The devastation to the Kodiak fleet because of all these actions, and the devastation to the community, is very obvious to any long-term resident or Alaska fisherman and not just myself.

I would like to take this opportunity to inform members of the Senate Resources Committee that I am unhappy with and disappointed by the recent unilateral action taken by the North Pacific Fishery Management Council during staff tasking at its February away-meeting in Portland, Oregon in support of the State scallop fishery as it is currently managed and continuing the vessel-based limited entry program. **During the Council meeting, there was no opportunity for the public to comment on the Council's action on the scallop fishery and no notice to the public because the scallop fishery was not on the meeting agenda.**

After personally spending a large sum of money to attend the Council's away-meeting in Portland for another agenda item, I would have gladly given up a few more days of fishing and stayed through the end of the meeting *if scallops been listed on the agenda*. Being denied notice and an opportunity to be heard, I feel betrayed by the Council taking this action with no public input other than from personal testimony from Mr. Jim Stone, who is the primary player in this game and voiced only his own opinion, which in itself should be illegal. For the Council to draft this letter and mislead the Resources Committee in such in a back-door fashion diminishes the Council's credibility and the public's trust.

I have read the Council's letter to Senator Cathy Giessel and the Resources Committee and disagree with many of the substantive points the Council makes. I was not, however, permitted

an opportunity to either counter Mr. Stone's perspective to the Council or to review the Council's letter as a stakeholder. For example, there should be a parallel fishery inside State waters, in addition to the State waters and Federal scallop fisheries. The scallop fishery has a much lower quota today. The players are very limited and able to save only the nicest size to shuck, and therefore bring top dollar, while returning smaller, less desirable scallops back to sea. If State scallop fishery is allowed to revert to open access, new participants that are motivated to fish more cleanly could target scallops. The same folks that want to keep other participants out of their regulation-created monopoly have overblown the fears of unrestricted fishing and disproportionate harvests.

I wish I had the financial resources of larger fishing-processing entities or fishing associations, like Trident, so that I could appeal the unilateral practices of the Council and meeting outcomes to the State and Federal Court systems. The Commissioners and Department of Fish and Game are on a trend here with these vessel-based limited entry fisheries that is unconstitutional, immoral, and ethically wrong. I would support limiting the fishery through catch shares in a non-privatized, non-monetary form, but as Emil Christiansen, President of Old Harbor Native Corporation, stated to the Council at the February meeting, the time when fish were caught by fisherman and their boats is in the past; those entities were paid for those fish and that does not constitute a future give-away right.

Sincerely,  
George Hutchings  
Kodiak fisherman  
President, Americans for Equal Access

# Limited Entry in the Alaska Weathervane Scallop Fishery

## Introduction

In 2001, the National Marine Fisheries Service (NMFS) issued limited entry licenses for scallop fishing in federal waters under the Scallop License Limitation Program (SLLP). This was followed by a limited entry program for scallops in state waters in 2004, when the Commercial Fisheries Entry Commission (CFECC) issued vessel limited entry permits.

The state and federal programs differ in that state licenses were issued to qualifying *vessels*, whereas NMFS SLLP licenses were issued to *vessel owners*. The SLLP licenses may be fished on any federally-permitted boat, subject to the restrictions applied to the permit. Both the state and federal licenses established two fishery areas: the Cook Inlet area and a 'statewide area' encompassing waters in the Bering Sea and in the Gulf of Alaska outside of Cook Inlet.

Nine individual fishing operations qualified for state and federal permits. Each qualifying operation originally consisted of a vessel, a state permit, and a corresponding federal license. This structure allowed operations to fish seamlessly across scallop beds that are bisected by state and federal waters.

Between initial issuance and the present time, many changes have occurred with respect to permit and vessel ownership. The following sections describe the initial permit allocations and the subsequent changes.

## Federal Moratorium and License Limitation Program

In February 1999, the North Pacific Fishery Management Council (NPFMC or Council) recommended replacing a federal moratorium program with a license limitation program. This action became Amendment 4 to the federal scallop Fishery Management Plan (FMP). The federal moratorium expired June 30, 2000, and was replaced by the Scallop License Limitation Program that became effective on January 16, 2001. Between June 30, 2000 and January 16, 2001 the fishery was in open access status, although no additional vessels entered the fishery. Initial issuance of SLLP licenses by National Marine Fisheries Service occurred in April, 2001.

Initially, eight entities received permanent licenses, while two entities received interim licenses, pending the respective adjudication of their license applications. Interim SLLP 002 belonging to Forum Star Inc. was later adjudicated to be eligible for a permanent, transferable SLLP license. The application for Interim SLLP 001 was eventually denied. The vessel owners associated with the initial issuance of SLLP licenses are shown in Table 1.

One SLLP license was issued with a single 6-foot dredge restriction (License 001 came with a similar restriction, but the application for this license was eventually denied). The fishing histories associated with these licenses consisted of harvests only from the Cook Inlet registration area. To prevent further increases in fishing capacity, the licenses were restricted to a dredge capacity no greater than what was used during the qualifying years. They could be used to fish outside of Cook Inlet, but only with a 6-foot dredge.

The Council established ownership caps on licenses. No person, corporation, or entity can hold or control more than two scallop licenses. The Council determined that ownership greater than two licenses would constitute an excessive share of harvest privileges in this fishery.<sup>1</sup> SLLP licenses were also issued with vessel length constraints, which correspond to the size of the harvesting boats used during the qualifying years.

<sup>1</sup> License Limitation Program for the Scallop Fishery; 50 CFR 679 (14 December, 2000); pp 78113.

non-confidential report  
Commercial Fisheries Entry Commission

Coop - yes  
illegal? no  
Seas  
Aut. +  
Preserves  
the fishery  
500  
3rd  
time

**Table 1. Initial Issuance of Federal Scallop License Limitation Permits  
By the National Marine Fisheries Service.**

| License | License Holder                         | MLOA | Transferable | Gear Restrictions           |
|---------|--|------|--------------|-----------------------------|
| 002     | Forum Star, Inc.                       | 97'  | No - Interim | None                        |
| 003     | Hogan, Thomas C.                       | 75'  | Yes          | Single 6ft scallop dredge * |
| 004     | Hulse, Max et al.                      | 79'  | Yes          | Single 6ft scallop dredge * |
| 005     | Ocean Fisheries LLC                    | 100' | Yes          | None                        |
| 006     | Oceanic Research Services, Inc.        | 70'  | Yes          | None                        |
| 007     | Pursuit, Inc.                          | 101' | Yes          | None                        |
| 008     | Provider, Inc.                         | 124' | Yes          | None                        |
| 009     | Carolina Boy, Inc.                     | 95'  | Yes          | None                        |
| 010     | Carolina Girl II, Inc.                 | 96'  | Yes          | None                        |
| 001     | Asp, Svend, Maxine (eventually denied) | 98'  | No - Interim | Single 6ft scallop dredge   |

*\* Gear restrictions were subsequently amended in 2005 (see Table 4)*

### Transfers of Federal SLLP Licenses

There have been a total of twelve transfers of SLLP licenses since initial issuance. Table 2 provides the current holdings of SLLP licenses.<sup>2</sup>

- SLLP 002 from Forum Star, Inc. to American Seafoods Co. LLC; November 5, 2005.
- SLLP 003 from Thomas C. Hogan to William J. Harrington; December 10, 2009.
- SLLP 005 from Ocean Fisheries LLC to Arctic Hunter LLC; October 31, 2008.
- SLLP 006 from Oceanic Research Services, Inc. to Thomas J. Gilmartin; April 18, 2001.  
SLLP 006 subsequently transferred from Gilmartin to EWT LLC; January 9, 2012.  
SLLP 006 subsequently transferred from EWT LLC (Mass.) to EWT LLC (Alaska); July 12, 2012.
- SLLP 007 from Pursuit, Inc. to Arctic Hunter LLC; June 16, 2008.  
SLLP 007 subsequently transferred from Arctic Hunter LLC to Ocean Fisheries LLC; October 31, 2008.
- SLLP 008 from Provider, Inc. to Provider Fisheries LLC; June 16, 2008.
- SLLP 009 from Carolina Boy, Inc. to Ocean Fisheries, LLC; August 21, 2003.
- SLLP 010 from Carolina Girl II, Inc. to Alaska Scallop LLC; December 23, 2002.  
SLLP010 subsequently transferred from Alaska Scallop LLC to Alaska Scallop Fisheries; June 18, 2008.

**Table 2. Federal Scallop License Limitation Permits as of December 2012.**

| License | License Holder                | MLOA | Transferable | Gear Restrictions                                     |
|---------|-------------------------------|------|--------------|---|
| 002     | American Seafoods Co, LLC     | 97'  | Yes          | None  |
| 003     | Harrington, William J.        | 75'  | Yes          | 2 dredges; combined width no more than 20 feet (6.1m) |
| 004     | Hulse, Max                    | 79'  | Yes          | 2 dredges; combined width no more than 20 feet (6.1m) |
| 005     | Arctic Hunter LLC             | 100' | Yes          | None  |
| 006     | EWT LLC                       | 70'  | Yes          | None  |
| 007     | Ocean Fisheries LLC           | 101' | Yes          | None  |
| 008     | Provider Fisheries, Inc.      | 124' | Yes          | None  |
| 009     | Ocean Fisheries LLC           | 95'  | Yes          | None  |
| 010     | Alaska Scallop Fisheries, LLC | 96'  | Yes          | None  |

<sup>2</sup> Source: National Marine Fisheries Service, Restricted Access Division.

## State Moratorium and Vessel Limited Entry Permit Program

In 1997, the Alaska Legislature enacted a four-year vessel moratorium for scallop fishing in state waters.<sup>3</sup> Ten vessels originally qualified for the moratorium. The moratorium was originally set to expire June 30, 2001; however, in 2001 the legislature extended the date to June 30, 2004.

In 2002, the legislature passed a bill that authorized the creation of a vessel-based limited entry program in the state's weathervane scallop and hair crab fisheries.<sup>4</sup> The law included a sunset provision, which called for an end to the program in 2008.<sup>5</sup> In 2008, the legislature extended the sunset date. Unless reauthorized or changed by the legislature, the vessel permit law will expire at the end of 2013.

On May 6, 2004, using the new authority implemented in 2002, the Commercial Fisheries Entry Commission adopted regulations 20 AAC 05.1425 – 20 AAC 05.1444 which established a vessel permit system for the statewide weathervane scallop fishery. To qualify for a vessel entry permit, a vessel must have legally participated in the Alaska weathervane scallop fishery and commercially harvested at least 1,000 pounds (shucked meat) of scallops:

- 1) in at least one calendar year during the time period 1991 through 1996, and in at least three calendar years during the time period 1997 through 2003; or,
- 2) in at least four calendar years during the time period 1997 through 2003.

For a vessel to qualify as having legally participated, that vessel must have satisfied all of the criteria listed below under (1) or (2) for each year used to qualify for a permit:

- 1) In internal waters of the state and territorial sea:
  - Had scallops lawfully harvested from a vessel with a scallop dredge as described in 5 AAC 38.055, 5 AAC 38.076(f) and 5 AAC 38.322 during a fishing period established by the Department of Fish and Game under 5 AAC 38.076(h);
  - Had a person on board the vessel who held an interim-use permit for the fishery from CFEC under AS 16.43.210;
  - Had a vessel license from CFEC under AS 16.05.490;
  - Had a vessel registration from the Department of Fish and Game under 5 AAC 38.076(c); and
  - Been permitted under AS 16.43.906 (CFEC vessel moratorium permit) from July 1, 1997 through 2003, if fished during that time:
- 2) In the Exclusive Economic Zone (EEZ):
  - Had scallops lawfully harvested from a vessel with a scallop dredge as described in 5 AAC 38.055, 5 AAC 38.076(f) and 5 AAC 38.322 during a fishing period established by the Department of Fish and Game under 5 AAC 38.076(h);
  - Had a person on board the vessel who held an interim-use permit for the fishery from CFEC under AS 16.43.210;
  - Had a vessel license from CFEC under AS 16.05.490;
  - Had a vessel registration from the Department of Fish and Game under 5 AAC 38.076(c); and,
  - Had a valid federal permit or license from April 11, 1997 through 2003.

Ownership caps stipulated that a person may not hold an interest in more than one scallop vessel entry permit, unless the person's ownership interest existed at the time of limitation on January 23, 2004.

---

<sup>3</sup> AS 16.43.906 (repealed).

<sup>4</sup> AS 16.43.450–520.

<sup>5</sup> CSHB206 (RLS) am S.

Based on these regulations, the nine vessels listed in Table 3 were eligible for a state limited entry vessel permit. The application period for permits was May 15, 2004 through September 1, 2004. Each of the initial vessel permits was associated with a corresponding federal scallop SLLP, which is also shown.

CFEC regulations established two length categories for vessel permits, based on the maximum length overall (LOA) of the vessel initially used to qualify for the permit. Five permits (type W 2ABV) were issued to vessels greater than 80 feet. These include the fishing vessels Carolina Boy, Forum Star, Ocean Hunter, Provider and Pursuit. For vessels 80 feet or less, three permits (type W 2BBV) were issued. These included the fishing vessels Arctic Storm, Kilkenny and La Brisa.

On December 23, 2002, Carolina Girl II, Inc. transferred its federal SLLP license 010 to Alaska Scallop, LLC. The parties to this sale executed a *Request for Termination of State Moratorium Qualification* with the State of Alaska in January, 2003. Although the F/V Carolina Girl II would have qualified for a permanent vessel permit, Alaska Scallop, LLC thereby relinquished all eligibility rights to the vessel's state scallop moratorium and vessel limited entry permits. Owners of the eight remaining eligible vessels applied for and received CFEC vessel permits. Of the eight, only seven now remain, as the permit associated with the F/V Pursuit was relinquished on August 17, 2007 (the federal fishing rights formerly associated with the Pursuit are now used on the F/V Arctic Hunter).

**Table 3. Vessels Initially Eligible for a CFEC Limited Entry Vessel Permit.**

| Vessel Name          | ADFG Number | State Waters Vessel Limited Entry Permit  | Corresponding Federal Scallop LLP License    |
|----------------------|-------------|---|--|
| F/V Carolina Girl II | 64111       | Relinquished limited entry eligibility rights on 1/2003   | Initial Issue of SLLP license 010            |
| F/V Ocean Hunter     | 40924       | Initial Issue of state LEP W 2ABV 85007 on 6/17/2004  | Initial Issue of SLLP license 005            |
| F/V Provider         | 58200       | Initial Issue of state LEP W 2ABV 85008 on 6/28/2004  | Initial Issue of SLLP license 008            |
| F/V La Brisa         | 23574       | Initial Issue of state LEP W 2BBV 85012 on 9/23/2004<br>(substituted to F/V Wayward Wind)       | Initial Issue of SLLP license 004            |
| F/V Carolina Boy     | 64110       | Initial Issue of state LEP W 2ABV 85013 on 12/3/2004  | Initial Issue of SLLP license 009            |
| F/V Forum Star       | 59687       | Initial Issue of state LEP W 2ABV 85014 on 12/6/2004  | Initial Issue of SLLP license 002            |
| F/V Kilkenny         | 54966       | Initial Issue of state LEP W 2BBV 85015 on 12/6/2004  | Initial Issue of SLLP license 003            |
| F/V Pursuit          | 40312       | Initial Issue of state LEP W 2ABV 85016 on 12/6/2004<br>(relinquished W2ABV85016Z on 8/17/2007) | Initial Issue of SLLP license 007            |
| F/V Arctic Storm     | 66700       | Initial Issue of state LEP W 2BBV 85018 on 1/6/2005   | Owners purchased SLLP license 006 on 4/18/01 |

## Transfers and Changes

When CFEC vessel permits were issued in 2004 and 2005, each permit was associated with a federal SLLP license. Over time, many of the initial associations have changed. Permits have been transferred, vessels have been substituted, two permits have been relinquished, and owner name changes and/or corporate restructuring have occurred.

CFEC regulations prohibit the ownership of more than one vessel permit, whereas the ownership cap in the federal program is two SLLP licenses. Also note that state permits were issued to qualifying vessels, whereas the SLLP licenses were issued to vessel owners. SLLP licenses may be fished on any federally-permitted boat, subject to the restrictions applied to the permit.

In addition to the previously noted relinquishment of permit eligibility for the F/V Carolina Girl II, the transfers, ownership changes, and relinquishments that have occurred on state vessel limited entry permits since initial issuance are:

- W2ABV 85008 (F/V Provider) vessel divested from permit; permit transferred from Provider Inc. to Tom Minio, January 30, 2009. No substitute vessel named; permit currently in suspension.
- W2BBV 85012 (F/V LaBrisa) substitution of vessel to F/V Billy D, Sept 23, 2004  
Billy D subsequently re-named to Wayward Wind, April 11, 2005
- W2ABV 85014 (F/V Forum Star) transferred from Forum Star, Inc. to Forum Star LCC; March 16, 2006.
- W2BBV 85015 (F/V Kilkenny) transferred from Thomas C. Hogan to William J. Harrington, December, 9 2009.
- W2ABV85016 (F/V Pursuit) vessel divested from permit, June 8, 2005  
Permit subsequently relinquished by Future Fisheries, August 17, 2007.
- W2BBV 85018 (F/V Arctic Storm) vessel divested from permit; permit transferred from Thomas Gilmartin to EWT LLC, January 12, 2012. No substitute vessel named; permit currently in suspension.

Table 4 compiles the information shown in the previous sections of this report to provide a timeline of changes that have occurred on permits and associated vessels. The table begins with 2004 when CFEC permits were first issued. The vessels that were originally named to the CFEC permits are shown, as are the associated federal SLLPs at the time. Each change that has occurred to the respective vessels and/or licenses is noted under the appropriate year. The table also indicates, with an asterisk, which state and federal licenses are currently associated with the Alaska Scallop Association cooperative.

Table 5 details the ownership of CFEC vessel permits and federal SLLPs as they exist at the time of this writing. To portray ownership in a meaningful manner, the table continues the ownership associations between the CFEC vessel permit and the SLLP license as they existed at initial issuance in Table 6, but updates each to their current status. For example, at initial issuance the fishing vessel Pursuit was associated with permits W2ABV85016 and SLLP007. Although the state permit was relinquished by Future Fisheries, Inc. on August 17, 2007, the associated federal license continues to be valid; the license has new owners, which are shown in the table, and is currently used on the fishing vessel Arctic Hunter.

Note again that two CFEC permits have been relinquished in apparent actions to consolidate fishing rights. Two other CFEC permits are currently held in suspension; although the permits remain valid (not relinquished) the owners have not named vessels to the permits. Of the five active CFEC permits, one is named to the F/V Carolina Boy, which was last licensed in Alaska in 2003 and is listed with a home port of Seaford, Virginia.<sup>6</sup> The other four vessels associated with active CFEC permits are located and licensed in Alaska.

As in Table 4, an asterisk next to the permit number indicates a permit that is associated with the Alaska Scallop Association cooperative. There are ten permits and nine member-groups associated with the cooperative.

To enforce CFEC's prohibition on owning more than one vessel permit, corporations are required to declare all the shareholders who hold more than five percent of the entity's stock. Information on the principal shareholders for federal SLLP permits in Table 4 comes from online government databases.

---

<sup>6</sup> NOAA Fisheries; Vessel Documentation Search by ID: [www.st.nmfs.noaa.gov/st1/CoastGuard/VesselByID.html](http://www.st.nmfs.noaa.gov/st1/CoastGuard/VesselByID.html).

**Table 4. Timeline of Ownership Changes to CFEC Vessel Entry Permits and Associated Licenses from the Federal Limited License Program For the Alaska Weathervane Scallop Fishery, 2004 – 2012.**

| Permits             | Original Holder                                      | Holder on Record                |                                   |      |                |                          |                              |                        |                    |   |                                |
|---------------------|--|---------------------------------|-----------------------------------|------|----------------|--------------------------|------------------------------|------------------------|--------------------|---|--------------------------------|
|                     |  | 2004                            | 2005                              | 2006 | 2007           | 2008                     | 2009                         | 2010                   | 2011               | 2012  |                                |
| W2ABV85007 *        | Vessel F/V Ocean Hunter<br>Owner Ocean Fisheries LLC |                                 |                                   |      |                |                          |                              |                        |                    |   |                                |
| SLLP005 *           | Owner Ocean Fisheries LLC                            |                                 |                                   |      |                |                          |                              | Arctic Hunter LLC      |                    |   |                                |
| W2ABV85008 *        | Vessel F/V Provider<br>Owner Provider, Inc           |                                 |                                   |      |                |                          |                              |                        |                    | F/V Provider divested from CFEC permit<br>Tom Minio |                                |
| SLLP008 *           | Owner Provider, Inc                                  |                                 |                                   |      |                |                          |                              | Provider Fisheries LLC |                    |   |                                |
| W2BBV85012          | Vessel F/V La Brisa<br>Owner La Brisa, Inc           | F/V Billy D                     | F/V Wayward Wind (vessel renamed) |      |                |                          |                              |                        |                    | Alaskan Dream Ventures (name change)                |                                |
| SLLP004             | Owner Hulse et al. (La Brisa Inc)                    |                                 |                                   |      |                |                          |                              |                        |                    |   |                                |
| W2ABV85013 *        | Vessel F/V Carolina Boy<br>Owner Carolina Boy, Inc   |                                 |                                   |      |                |                          |                              |                        |                    |   |                                |
| SLLP009 *           | Owner Ocean Fisheries LLC                            |                                 |                                   |      |                |                          |                              |                        |                    |   |                                |
| W2ABV85014 *        | Vessel F/V Forum Star<br>Owner Forum Star, Inc       |                                 |                                   |      | Forum Star LLC |                          |                              |                        |                    |   |                                |
| SLLP002 *           | Owner Forum Star, Inc                                |                                 | American Seafoods LLC             |      |                |                          |                              |                        |                    |   |                                |
| W2BBV85015          | Vessel F/V Kilkenny<br>Owner Thomas Hogan            |                                 |                                   |      |                |                          |                              |                        | William Harrington |   |                                |
| SLLP003             | Owner Thomas Hogan                                   |                                 |                                   |      |                |                          |                              |                        | William Harrington |   |                                |
| W2BBV85018          | Vessel F/V Arctic Storm<br>Owner Tom Gilmartin       |                                 |                                   |      |                |                          |                              |                        |                    |   | Vessel sold w/o pmt<br>EWT LLC |
| SLLP006             | Owner Tom Gilmartin                                  |                                 |                                   |      |                |                          |                              |                        |                    |   | EWT LLC   EWT LLC              |
| W2ABV85016          | Vessel F/V Pursuit<br>Owner Future Fisheries         |                                 | Vessel sold w/o CFEC permit       |      |                | CFEC permit relinquished |                              |                        |                    |   |                                |
| SLLP007 *           | Owner Pursuit, Inc                                   |                                 |                                   |      |                |                          | Arctic Hunter                | Ocean Fisheries LLC    |                    |   |                                |
| (permit not issued) | Vessel Carolina Girl II<br>Owner Alaska Scallop LLC  | CFEC permit rights relinquished |                                   |      |                |                          |                              |                        |                    |   |                                |
| SLLP010 *           | Owner Alaska Scallop LLC                             |                                 |                                   |      |                |                          | Alaska Scallop Fisheries LLC |                        |                    |   |                                |

\* Indicates a permit that is currently associated with the Alaska Scallop Association cooperative.

**Table 5. Ownership of State (W2ABV And W2BBV) and Federal (SLLP) Scallop Limited Entry Permits, Including Relinquished Permits or Eligibility, as of December 2012.**

|                            | Permit   | Named Vessel   | Listed Owner  | Principal Shareholders   |
|----------------------------|--|--|---|--|
| Active CFEC Vessel Permits | W2ABV85007 *<br><i>state</i>                                       | Ocean Hunter   | Ocean Fisheries LLC                                 | Jim Stone<br>Glenn Mikkelsen<br>Egil Mikkelsen<br>John Lemar<br>Stein Nyhammer                       |
|                            | SLLP005 *  |  | Arctic Hunter LLC                                   | James H. Stone   |
|                            | W2BBV85012   | Wayward Wind   | Alaskan Dream Ventures, Inc.                        | Max Hulse<br>Robert Hulse<br>Mary Hulse<br>Denise Hulse  |
|                            | SLLP004  |  | Max G. Hulse  | n/a  |
|                            | W2ABV85013 *<br>SLLP009 *<br><i>federal</i>                        | Carolina Boy   | Carolina Boy, Inc.<br>Ocean Fisheries LLC           | William Wells, Jr.<br>Jim Stone<br>Glenn Mikkelsen<br>Egil Mikkelsen<br>John Lemar<br>Stein Nyhammer |
|                            | W2ABV85014 *<br>SLLP002 *  | Forum Star   | Forum Star LLC<br>American Seafoods Co. LLC         | Bernt Bodal<br>Jeff Davis<br>Coastal Bering Sea Fish Assoc Management<br>(unavailable)               |
|                            | W2BBV85015<br>SLLP003  | Kilkenny   | William J. Harrington<br>William J. Harrington      | n/a<br>n/a   |
|                            | W2ABV85008 *<br>SLLP008 *  | (formerly Provider)<br>(currently fished on F/V Provider)  | Thomas Minio<br>Provider Fisheries LLC              | n/a<br>Jim Stone<br>Glenn Mikkelsen<br>Egil Mikkelsen<br>John Lemar<br>Tom Minio<br>Stone Management |
|                            | W2BBV85018<br>SLLP006  | (formerly Arctic Storm)  | EWT LLC<br>EWT LLC                                  | Erik Orman<br>Warren J Alexander<br>Erik Orman<br>Warren J Alexander                                 |
|                            | Relinquished CFEC Permits or Relinquished Eligibility for a Permit | W2ABV85016<br>SLLP007 *  | -Pursuit<br>(currently fished on F/V Arctic Hunter) | Future Fisheries, Inc<br>(permit relinquished in 2007)<br>Ocean Fisheries LLC                        |
| W2ABV85xxx<br>SLLP010 *    |  | Carolina Girl II<br>(relinquished eligibility rights for a CFEC permit associated with F/V Carolina Girl II) | Alaska Scallop LLC<br>Alaskan Scallop Fisheries     | Jim Stone<br>Glenn Mikkelsen<br>Egil Mikkelsen<br>John Lemar<br>Tom Minio                            |

*Does show as co-op; not illegal*

*independent co-op*

*independent co-op*

*In limbo not attached*

*not a current boat*

*don't have a vessel now*

*Only federal*

Notes: 1) An asterisk (\*) indicates permits that are associated with the Alaska Scallop Association cooperative.  
2) Sources: CFEC vessel limited entry permit files; NMFS SLLP files; the Alaska Division of Corporations, Business & Professional Licensing, online database at [www.commerce.alaska.gov/OCC/Home\\_corporations.html](http://www.commerce.alaska.gov/OCC/Home_corporations.html); and the Washington Secretary of State, Corporations and Charities Division online database at [www.sos.wa.gov/corps](http://www.sos.wa.gov/corps)



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

**Bob Tkacz**

**Laws for the Sea**

**[fishlawsbob@gmail.com](mailto:fishlawsbob@gmail.com)**

**February 21, 2013**

**Dear Bob,**

**We appreciate your fisheries coverage, but we find the February 18th article about SB 54 (extension of sunset date on the state waters limited scallop fishery) confusing. Although based on CFEC's preliminary report in response to a legislative inquiry, the article conflates CFEC's limitation of state waters scallops with the separate federal limitation of federal waters scallops (the larger portion of the overall Alaska scallop fishery).**

**The article fails to make clear that SB 54 addresses only the looming sunset of CFEC's**

**limitation of the state waters scallop fishery. CFEC has no control over the federal limitation.**

**We believe the confusion that results from lumping the two separate limitations together led to a number of misstatements.**

**The article states:**

**consolidation in the control of vessels in the scallop fishery . . . appear[s] to violate the intent . . . of state . . . law . . . .**

**\* \* \***

**[S]tate law allows a legal person to own only one permit.**

**\* \* \***

**CFEC records indicate that over the decade since the system was first authorized, a group of five men own the permits or control the fishing activity of three of the nine existing scallop permits and four of the same group control five permits . . . .**

**In fact, CFEC's report shows that, currently in the state limited scallop fishery, no individual or entity holds an interest in more than a single state scallop permit.**

**The article further states that “nine of the ten vessels included in an entry moratorium that proceeded (sic) the current permitting system have links to the Alaska Scallop Assoc. . . .”**

**In fact, the report shows that only 4 of the current state vessel permits are connected to the Alaska Scallop Association.**

**The article states:**

**The CFEC report says [that four named individuals] are “principle (sic) shareholders” in businesses that own two state . . . permits.**

**In fact, in compliance with state law, the individuals are shareholders in a single corporation that holds a single state scallop permit.**

**Finally, the article states that the “only independent, Alaska-based vessel active in the fishery is the F/V Wayward Wind” (held through a corporation by members of the Hulse family). The statement ignores the vessel and permit held by William J. Harrington of Kodiak, as well as a third independent permit not currently assigned to a vessel.**

**Apart from the article, CFEC's tendency to rush our response to legislative inquiries led to our own misstatement: "two CFEC permits have been relinquished in apparent actions to consolidate fishing rights." Our statement is speculative and without support from the objective information conveyed by CFEC's report.**

**Only a single permit has been relinquished since the inception of the program. The holder sold its vessel and subsequently relinquished the permit well before the original sunset date thereby ending its connection with the fishery.**

**In the other case, an applicant gave up its right to apply for a state permit and thereby complied with state law prohibiting holding more than a single permit. Compliance with state law does not deserve our criticism.**

**In short, to avoid risks of greater confusion, we would urge limiting coverage of SB 54 to its scope: the limited state waters scallop fishery for which CFEC bears responsibility.**

**In closing, on the subject of responsibility, there have been allegations that the fishery has become too exclusive, which would normally trigger CFEC's statutory responsibility to examine an optimum number for the fishery. In the event CFEC concluded**

**that there were too few units of gear for the state waters scallop fishery, CFEC would be required to sell more permits to achieve the optimum number.**

**Sunset of the state waters scallop fishery limitation at the end of this year would strip CFEC of this statutory remedy and create the risk that the resulting open-to-entry fishery would be closed.**

**CFEC advocates for extension of the sunset date to avoid these results.**

**Yours truly,**

**Alaska Commercial Fisheries Entry Commission**

A handwritten signature in black ink, appearing to read "Bruce Twomley", is written over a horizontal line.

**Bruce Twomley, Chair**

**Benjamin Brown, Commissioner**



**Benjamin Brown**  
**Commissioner**



STATE OF ALASKA  
Commercial Fisheries Entry Commission  
8800 Glacier Hwy., #109  
P.O. Box 110302  
Juneau, AK 99811-0302

Office: (907) 790-6942  
Fax: (907) 790-7042  
Cell: (907) 723-1790  
Reception: (907) 789-6160

[ben.brown@alaska.gov](mailto:ben.brown@alaska.gov)

# MEMORANDUM

## State of Alaska Department of Law

TO: Commercial Fisheries Entry  
Commission

DATE: April 1, 2013

FROM: Thomas E. Lenhart *JEL*  
Assistant Attorney General

FILE NO.: JU2012200809

TEL. NO.: (907) 465-5370

SUBJECT: Constitutionality of Vessel Based  
Limited Entry

Senate Bill 54 and House Bill 156 would extend the current vessel based limited entry system for five more years beyond the current sunset date of December 2013. Because this program limits entry into two fisheries by controlling the number of permitted vessels instead of the number of permitted skippers, some questions have been raised as to whether this statute may result in fisheries that are so exclusive as to run afoul of the Alaska Constitution. The short answer is "no".

The vessel-based entry program was first created by the Alaska Legislature in 2002, and was extended for five years in 2008. Each time, the proposed legislation was reviewed by the Department of Law and found to have no constitutional flaws. The program has now been in place for 10 years, and there have been no legal challenges to the validity of the authorizing statutes.

Looking back about 40 years to the history of limited entry in Alaska, the initial attempt at limiting entry encountered problems with the Article VIII provision of the State Constitution reserving the State's fish and wildlife for the common use of the people and with the section 15 prohibition on creation of exclusive rights. As a result, the Constitution was amended in 1972 by adding a sentence to section 15 carving out the explicit authority to limit entry into fisheries for the enumerated reasons. The Constitution does not specify whether such limitation into fisheries shall be accomplished by limiting the number of skippers or the number of vessels.

Following the amendment of the Constitution, the Legislature created the Commercial Fisheries Entry Commission and authorized it to limit "participants and vessels into the commercial fisheries in the public interest and without unjust discrimination." AS 16.43.010. The language of this original authorizing statute appears to clearly contemplate that the commission may limit either skippers or vessels in a fishery based on the judgment of which approach in a given fishery best serves the public good. The subsequent specific authorization of a vessel based limitation in the scallop and hair crab fisheries in 2002 is completely consistent with the purpose statement set forth in AS 16.43.010.

Given that the Constitution clearly allows for the limitation of fisheries as an exception to the prohibition on exclusive rights, and that the provisions in AS 16.43.450 limiting the number of vessels participating in two shellfish fisheries are completely consistent with the statutory purposes of the overall limited entry program set forth in AS 16.43.010, there are no facial issues with regard to constitutional authority or statutory consistency presented by SB 54 or by the existing vessel based program. This is the third time that the Department of Law has reached this conclusion.

However, it has been suggested that the vessel program as applied has nevertheless created a fishery that is so exclusive as to violate the Article VIII prohibition on exclusive fisheries. This suggestion does not appear to be supported by the facts. Because the hair crab fishery has been closed, this review will focus solely on the scallop fishery, but should be applicable to the hair crab fishery as well.

The initial number of scallop vessel entry permits was eight. While this number is lower than most fisheries, it is certainly not unprecedented. At least 10 other limited entry fisheries in Alaska have received 10 or fewer initial permits. CFEC website: [http://www.cfec.state.ak.us/astatus/B6410P\\_C.HTM](http://www.cfec.state.ak.us/astatus/B6410P_C.HTM). The reasons for the small size of each fishery are fishery specific. However, the fact that biology, economics, or other valid considerations dictates a fishery with few participants (or vessels) does not equate to an unconstitutionally exclusive fishery.

In the case of the scallop fishery, the number of current active participating vessels has been reduced due to market forces and voluntary actions of the permit holders. Neither the statutes nor any actions of the Commission have forced this reduction. Therefore, even if the current number of participating vessels is believed by some to be so few as to be exclusionary, it is not the result of State action and the State has not created an exclusive fishing right. Holders of permits not currently fishing are free to reenter the fishery at any time. This market dynamic can be observed in many other limited fisheries, such as the Southeast salmon seine fishery, where a large percentage of valid permits were not being fished. This fishery has recently been the subject of a federally funded permit buy-back.

The issue of a reduction in active fishing permits as the result of the formation of cooperatives has been addressed by the Alaska Supreme Court. In the case of *Grunert v. Alaska Board of Fisheries*, 139 P.3d 1226 (Alaska 2006), the court examined a regulation promulgated not by the CFEC but by the Board of Fisheries. This regulation specifically authorized the creation of fishing cooperatives. The court decided this case on the grounds that the board had exceeded its authority in promulgating a regulation without statutory authority. As a result, no constitutional questions were reached.

The Alaska Supreme Court has addressed the constitutional issue of exclusivity in *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1266 (Alaska 1988). In this case, the court noted that “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.” That is, the statutes creating limited entry provide a safeguard against market forces or other circumstances creating an overly exclusive fishery. When conditions warrant, the Commission can conduct a study to determine the optimum number of permits under current conditions. If the current number of permits is too low, additional permits can be sold at market value. In the case of the optimum number for vessel based permits, the purposes for conducting an optimum number study include promoting the economic health and stability of the fishery and to promote broad access to the fishery. AS 16.43.470.

In the case of vessel based permits, the statute also includes another protection against exclusivity. Alaska Statute 16.43.450(e) authorizes the Commission to adopt regulations to limit the number of vessel permits held by one person or by a group of related permit holders if necessary to “prevent the excessive concentration of ownership of vessel permits in the fishery.” This provision, coupled with the optimum number provision, provides ample authority to assure the vessel based program does not become excessively exclusive.

As a final consideration, there is a fundamental difference in how a vessel limitation and a skipper limitation controls the number of fishers actually participating in a fishery. If instead of a vessel limitation the scallop fishery had nine skipper permit holders, only those nine individuals could “participate.” That is because any vessel fishing must have the individual permit holder on board at all times under a skipper system. However, under a vessel based system, a permitted vessel may be fished by an unlimited number of different skippers. Therefore, if the vessel owner chooses to use a system of rotating crews or leases the vessel to multiple skippers or operators on some shared basis, then many more than nine fishers may have the opportunity to participate in this fishery. Legally, either approach is permissible.

In conclusion, there are no issues of constitutionality or statutory inconsistency raised by SB 54 and HB 156.

TEL/rls



Southwest Alaska Municipal Conference  
3300 Arctic Boulevard, Suite 203 Anchorage, AK 99503 p: 907.562.7380 www.swamc.org

Alaska Peninsula  
Aleutian Chain  
Bristol Bay  
Kodiak Island  
Pribilof Islands

March 28, 2013

Representative Paul Seaton  
Chair of the House Fisheries Committee  
State Capitol, Room 102  
Juneau, AK 99801

Re: SWAMC Support for SB54 - Extending Termination Date of Weathervane Scallop and Bering Sea Hair Crab Fisheries

Representative Seaton,

The Southwest Alaska Municipal Conference (SWAMC) would like to provide support for SB 54, an act extending the termination date of the Weathervane Scallop and Bering Sea Hair Crab Fisheries.

The scallop fishery provides an important economic contribution to our coastal communities, especially Kodiak and Unalaska where the fleet bases operations. Our communities provide services and supplies supporting this fishery, adding to fisheries diversity, and thus a more stable labor force. In addition to the direct impact of providing goods and services, the fishery provides a positive tax base for local and state government. In the 2012/13 fishing season, over 400,000 pounds of product were landed Statewide at an ex-vessel value of approximately \$4,000,000. This money flowed to crew members, owners and vendors who live and spend time in Southwest Alaska.

If the current limited entry system ends, the Department of Fish & Game has advised they will be forced to close the state portion of the scallop fishery, as it could be unmanageable in an open access scenario. This would cause avoidable economic loss to our region and the state. SB54 has the support of Governor Parnell, the Senate, the Department of Fish and Game, United Fishermen of Alaska and now SWAMC, due to the importance of maintaining healthy fisheries in our region.

Thank you for your consideration.

Sincerely,

Andy Varner  
Executive Director



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**

**Twomley, Bruce C (CFEC)**

---

**From:** Twomley, Bruce C (CFEC)  
**Sent:** Wednesday, March 27, 2013 2:10 PM  
**To:** 'Andrew Jensen'  
**Cc:** Brown, Ben (CFEC); Rickey, Douglas K (CFEC)  
**Subject:** RE: Shell Game (3/13/13)  
**Attachments:** BT to AJ re Seaton.doc

Mr. Jensen—

Thank you for your note.

Please accept the enclosed 725 word submission. (A virtue of this exercise is that I have learned to use word count).

I assumed this would be most useful to you in Word and that you would have no use for a letterhead.

If you need anything more, please let me know. And I would welcome any questions or comments you may have.

--bruce twomley (790-6944)

March 27, 2013

Andrew Jensen  
Managing Editor  
[editor@alaskajournal.com](mailto:editor@alaskajournal.com)

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

Dear Mr. Jensen:

Under the heading *Seaton questions constitutionality*, the article (p.2) states:

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 does not convey the magnitude of the problem faced by the commission. Based on the same period used to establish vessel eligibility, some 43 individual captains had participated in the fishery and would have been eligible to apply for permits (and hold interim-use permits) under traditional limited entry. Even under a shorter, hypothetical four-year period, 27 captains would have been eligible to apply. If the commission had implemented traditional limited entry, each of those captains could have brought a vessel into the fishery during the

period of time required to adjudicate their claims to permits (with judicial appeals, 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 27) compared to 9 participating vessels presented a stark choice to the commission.

The article (p.3) attributes the following statements to Rep. Paul Seaton:

“Time does go on and things change, and there wasn’t consolidation to a very few select people at the time [in 2008 when the legislature extended termination of this limitation], which may run afoul of other parts of the constitution and a special right of fishery. . . .”

\* \* \*

“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 comments attributed to Rep. Seaton fail to acknowledge (1) that the state waters fishery looks very much the same today as it did when the legislature extended the limitation in 2008, and (2) that the commission’s actions are solidly grounded in specific direction from the legislature and the Alaska Constitution.

As it did in 2008, the state waters scallop fishery includes 7 permits, and, in full compliance with state law, no individual or entity holds more than one state permit.

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.

CFEC is prepared 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 CFEC's statutory authority 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.

Extending termination would avoid a risk that the resulting open-to-entry scallop fishery may have to be closed to protect the stocks.

Creating the risk of closure would breach the duty of the legislature and managers alike under Article VIII, Section 4, of the Alaska Constitution, to ensure that "Fish . . . and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle . . . ."

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.

**Yours truly**  
**Alaska Commercial Fisheries Entry Commission**  
**Bruce Twomley, Chair**  
**Benjamin Brown, Commissioner**



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

To: Bob Tkacz

Date: March 16, 2013

From: Bruce Twomley, Chair  
Benjamin Brown, Commissioner

Subject: Your Written Questions for the  
March 18 Edition of Laws for the  
Sea

Please note that the CFEC report pertaining to weathervane scallop limited entry is on BASIS, and we are not aware of anyone who resisted putting it there.

Please also recall that, back in February, CFEC released the report to Rep. Seaton and to you. The report is a public document under AS 40.25.220(3) and 20 AAC 05.1930(a).

You promptly wrote an article based on the report that included four (4) misstatements from your apparent misreading of the report. We encouraged you to correct your misstatements in our February 21 letter to you, and we appreciate your second article about the report which corrected two (2) of the mistakes.

Your reporting alerted CFEC to the fact that the report could be seriously misread. To CFEC, your four (4) misstatements about a fishery featuring only seven (7) limited entry permits was a flashing red light. We had no desire to place a potentially misleading document in the bill packet.

Your written questions misquoted Ben's statement to you after the March 11 hearing. He did not claim that, "... the report is a public document by virtue of the fact that he provided it individually to the members of the legislature he spoke to about SB 54." He did not tell you that "... he could not recall which senators he met with on SB 54."

Ben told you that he met with all the members of the Senate Resources Committee or a member's staff in preparation for the committee hearing, and in the course of those meetings he shared the report, your article in response, and with **some** of those legislators or staffers, our letter to you with our proposed corrections (our letter to you was the only uncertainty, because some meetings took place before we sent it). In these meetings no one suggested the report be included in the bill packet.

Finally you inquired about CFEC's policy for agency contacts with legislators. Bruce documented our agency's longstanding (since before his arrival here) practice in his March 2 email to you.

## Hair Crab & Scallop Background Information

- Bering Sea Hair Crab Background
  - Fishing first began for Bering Sea hair crab in the 1960s by the Japanese and by the U.S. fleet in 1979.
  - From 1979-1991 a year long season was put into place in which a permit issued by ADF&G was needed.
  - Primary harvest was incidental catch from the Bering Sea Tanner crab fisheries.
  - In 1993 a 100% observer coverage program was put into place.
  - Given the still increasing participation in the fishery the legislature passed HB 538 in 1996 to regulate vessel licenses in the hair crab fishery.
  - In 2001, as a result of low stock abundance, the Bering Sea has been closed to hair crab fishing.
  - In 2002 the legislature passed HB 206 which established a vessel-based limited entry program for the hair crab fishery.
- Alaska Weathervane Scallop Background
  - First fished in the 1960s.
  - There was only passive management, seasons and area closures, in place until 1993.
  - In 1994 the state saw an influx of east coast scallop vessels coming to Alaska waters to harvest scallops.
  - Given this increased participation the fishery was designated as a “high impact emerging fishery”.
  - This increased participation and its new designation prompted ADF&G and the Board of Fish to develop and adopt the Alaska Scallop Fishery Management Plan.
  - Given the ever increasing participation in the fishery the legislature passed HB 141 to regulate vessel licenses in the scallop fishery.
  - In 2002 the legislature passed HB 206 which established a vessel-based limited entry program for the scallop fishery.
- Limited Entry Program Background
  - The vessel-based limited entry program was originally developed out of a request from the legislature to CFEC to do so and bring it back to them for consideration.
  - In 2002 the Legislature passed HB 206 creating the vessel-based limited entry program for the Bering Sea hair crab and Alaska weathervane scallop fisheries.
  - It was deemed that a vessel-based program was more appropriate because of the nature of these two fisheries. They are the only two vessel-based fisheries in the state.
  - There are a total of 8 permits for the weathervane scallop fishery, five for vessels longer than 80 feet and 3 for vessels less than 80 feet.

- The Bering Sea Hair Crab fishery has a total of 16 permits but given conservation concerns ADF&G has not allowed any harvest for this species since the creation of the limited entry program.
- The vessel-based limited entry program for the scallop fishery has allowed ADF&G to manage this fishery for continued sustainability and simplicity in its regulations compared to if this was an open-access fishery.
- If and when the hair crab population reaches a level for harvestable surplus again having a limited entry program in place will allow ADF&G to manage that fishery for its continued sustainability

## LL0809 – Hair Crab & Scallop Limited Entry Talking Points

- This vessel-based limited entry program was born out of a need to ensure the sustainability of these two fishery resources.
- These are the only two vessel-based limited entry programs in Alaska due to their unique natures.
- These two programs have worked well since their inception:
  - The scallop limited entry program has provided both an economically viable and sustainable fishery for its participants.
  - The hair crab limited entry program remains in place for when the fishery may reopen and the ability to limit participants will enable its continued sustainability.
- Hair Crab Talking Points
  - The pre-existing fishery on hair crab was found to threaten the economic welfare of the fishery and sustained yield management of the resource.
  - The conventional limited entry system was found not to adequately protect the economic health and stability of the fishery or promote sustained yield of the resource.
- Scallop Talking Points
  - Before the limited entry program:
    - The scallop fishing fleet in Alaska was overcapitalized.
    - The scallop fishery had reached levels that were threatening the sustainability of the fishery.
  - Alaska weathervane scallops are susceptible to localized depletion and general overfishing.
  - We have seen other scallop fisheries around the world collapse after relatively short periods of intense fishing.
  - The conventional limited entry system was found not to adequately protect the economic health and stability of the fishery or promote sustained yield of the resource.
  - The U.S. Dept. of Commerce had taken action to restrict access to the Alaska weathervane scallop fishery in the waters of the U.S. exclusive economic zone (EEZ) adjacent to Alaska.
  - In turn, the State of Alaska limited entry into the weathervane scallop fishery in State waters too.
  - Alaska continues to manage the weathervane scallop fishery in both State and federal waters.

2011 Year-end Distribution of Permit Holders by Permit Type and Resident Type\*

| Permits First Issued in:    | All Permits Held By |                       |                    |                       |              |             | All Permits  |             |                 |
|-----------------------------|---------------------|-----------------------|--------------------|-----------------------|--------------|-------------|--------------|-------------|-----------------|
|                             | Alaska Rural Local  | Alaska Rural Nonlocal | Alaska Urban Local | Alaska Urban Nonlocal | Non-resident | DCCED /CFAB | Alaska Total | Grand Total | Percent Alaskan |
| <b>1988-91</b>              |                     |                       |                    |                       |              |             |              |             |                 |
| BBay Herring Spawn on Kelp  | 227                 | 9                     | 0                  | 18                    | 10           | 2           | 256          | 266         | 96%             |
| Norton Sd Her Beach Seine   | 0                   | 1                     | 0                  | 2                     | 3            | 0           | 3            | 6           | 50%             |
| Nelson Island Her Gillnet   | 108                 | 5                     | 0                  | 10                    | 4            | 0           | 123          | 127         | 97%             |
| Nunivak Island Her Gillnet  | 22                  | 1                     | 0                  | 9                     | 4            | 0           | 32           | 36          | 89%             |
| Lower Yukon Herring Gillnet | 49                  | 1                     | 0                  | 3                     | 0            | 0           | 53           | 53          | 100%            |
| Norton Sd Herring Gillnet   | 111                 | 47                    | 2                  | 34                    | 61           | 0           | 201          | 262         | 77%             |
|                             | 517                 | 64                    | 9                  | 76                    | 82           | 2           | 668          | 750         | 89%             |
| <b>1997</b>                 |                     |                       |                    |                       |              |             |              |             |                 |
| SE Dungeness Ring Net       | 2                   | 0                     | 1                  | 0                     | 0            | 0           | 3            | 3           | 100%            |
| SE Dungeness Dive           | 0                   | 0                     | 1                  | 0                     | 1            | 0           | 1            | 2           | 50%             |
| SE Dungeness 300 Pot        | 7                   | 1                     | 37                 | 0                     | 4            | 0           | 45           | 49          | 92%             |
| SE Dungeness 225 Pot        | 11                  | 0                     | 25                 | 0                     | 6            | 1           | 37           | 43          | 86%             |
| SE Dungeness 150 Pot        | 32                  | 0                     | 37                 | 1                     | 14           | 0           | 70           | 84          | 83%             |
| SE Dungeness 75 Pot         | 35                  | 2                     | 53                 | 1                     | 20           | 0           | 91           | 111         | 82%             |
| Cook Inlet Dungeness Pot    | 53                  | 2                     | 8                  | 2                     | 5            | 0           | 65           | 70          | 93%             |
|                             | 140                 | 5                     | 162                | 4                     | 50           | 1           | 312          | 362         | 86%             |
| <b>1998</b>                 |                     |                       |                    |                       |              |             |              |             |                 |
| NSE Her Spawn on Kelp Pound | 17                  | 0                     | 79                 | 0                     | 15           | 0           | 96           | 111         | 86%             |
| SSE Her Spawn on Kelp Pound | 71                  | 0                     | 76                 | 2                     | 23           | 0           | 149          | 172         | 87%             |
| SE Shrimp Otter Trawl       | 0                   | 0                     | 0                  | 1                     | 0            | 0           | 1            | 1           | 100%            |
| SE Shrimp Beam Trawl        | 12                  | 0                     | 11                 | 0                     | 3            | 0           | 23           | 26          | 88%             |
| SE Shrimp Pot               | 113                 | 2                     | 114                | 4                     | 22           | 0           | 233          | 255         | 91%             |
| PWS Sablefish Net Gear      | 0                   | 0                     | 0                  | 1                     | 0            | 0           | 1            | 1           | 100%            |
| PWS Sablefish Fixed 90ft    | 1                   | 0                     | 0                  | 0                     | 0            | 0           | 1            | 1           | 100%            |
| PWS Sablefish Fixed 60ft    | 0                   | 2                     | 0                  | 0                     | 0            | 0           | 2            | 2           | 100%            |
| PWS Sablefish Fixed 50ft    | 10                  | 5                     | 0                  | 14                    | 3            | 0           | 29           | 32          | 91%             |
| PWS Sablefish Fixed 35ft    | 5                   | 3                     | 0                  | 1                     | 0            | 0           | 9            | 9           | 100%            |
|                             | 229                 | 12                    | 280                | 23                    | 66           | 0           | 544          | 610         | 89%             |
| <b>1999-2002</b>            |                     |                       |                    |                       |              |             |              |             |                 |
| SE Urchin Dive              | 4                   | 0                     | 20                 | 2                     | 41           | 0           | 26           | 67          | 39%             |
| SE Geoduck Dive             | 14                  | 1                     | 39                 | 1                     | 35           | 0           | 55           | 90          | 61%             |
| SE Cucumber Dive            | 65                  | 4                     | 141                | 3                     | 72           | 0           | 213          | 285         | 75%             |
| Goodnews Bay Her Gillnet    | 28                  | 78                    | 0                  | 13                    | 1            | 0           | 119          | 120         | 99%             |
| Kodiak Fd/Bt Her Seine/Gill | 1                   | 0                     | 4                  | 0                     | 0            | 0           | 5            | 5           | 100%            |
| Kodiak Fd/Bt Her Trawl 75ft | 0                   | 0                     | 0                  | 0                     | 1            | 0           | 0            | 1           | 0%              |
| Kodiak Fd/Bt Her Trawl 70ft | 0                   | 0                     | 1                  | 0                     | 0            | 0           | 1            | 1           | 100%            |
| Kodiak Fd/Bt Her Trawl 60ft | 0                   | 0                     | 0                  | 0                     | 2            | 0           | 0            | 2           | 0%              |
|                             | 112                 | 83                    | 205                | 19                    | 152          | 0           | 419          | 571         | 73%             |
| <b>2004</b>                 |                     |                       |                    |                       |              |             |              |             |                 |
| Kodiak Tnr Bairdi Pot 120ft | 0                   | 2                     | 29                 | 2                     | 10           | 0           | 33           | 43          | 77%             |
| Kodiak Tnr Bairdi Pot 60ft  | 15                  | 16                    | 87                 | 8                     | 12           | 0           | 126          | 138         | 91%             |
|                             | 15                  | 18                    | 116                | 10                    | 22           | 0           | 159          | 181         | 88%             |
| Overall Total               | 5,355               | 889                   | 3,523              | 1,255                 | 3,348        | 5           | 11,027       | 14,375      | 77%             |

**Vessel Permits**

**2004**

|                             |    |     |
|-----------------------------|----|-----|
| Bering Sea Hair Crab        | 13 | n/a |
| Weathervane Scallop to 80ft | 4  | n/a |
| Weathervane Scallop GT 80ft | 3  | n/a |

2011 Year-end Distribution of Permit Holders by Permit Type and Resident Type\*

| Permits First Issued in:     | All Permits Held By |                       |                    |                       |              |             | All Permits  |             |                 |
|------------------------------|---------------------|-----------------------|--------------------|-----------------------|--------------|-------------|--------------|-------------|-----------------|
|                              | Alaska Rural Local  | Alaska Rural Nonlocal | Alaska Urban Local | Alaska Urban Nonlocal | Non-resident | DCCED /CFAB | Alaska Total | Grand Total | Percent Alaskan |
| <b>1975</b>                  |                     |                       |                    |                       |              |             |              |             |                 |
| SE Salmon Seine              | 37                  | 10                    | 138                | 8                     | 186          | 0           | 193          | 379         | 51%             |
| SE Salmon Drift Gillnet      | 133                 | 6                     | 226                | 5                     | 103          | 0           | 370          | 473         | 78%             |
| Salmon Power Troll           | 261                 | 11                    | 495                | 10                    | 185          | 0           | 777          | 962         | 81%             |
| Yakutat Salmon Setnet        | 101                 | 10                    | 0                  | 20                    | 36           | 0           | 131          | 167         | 78%             |
| PWS Salmon Seine             | 100                 | 57                    | 0                  | 35                    | 75           | 0           | 192          | 267         | 72%             |
| PWS Salmon Drift Gillnet     | 250                 | 90                    | 0                  | 76                    | 121          | 0           | 416          | 537         | 77%             |
| PWS Salmon Setnet            | 5                   | 3                     | 0                  | 16                    | 5            | 0           | 24           | 29          | 83%             |
| Cook Inlet Salmon Seine      | 65                  | 0                     | 11                 | 1                     | 6            | 0           | 77           | 83          | 93%             |
| Cook Inlet Salmon Drift      | 241                 | 11                    | 149                | 6                     | 161          | 1           | 408          | 569         | 72%             |
| Cook Inlet Salmon Setnet     | 234                 | 19                    | 349                | 5                     | 129          | 0           | 607          | 736         | 82%             |
| Kodiak Salmon Seine          | 40                  | 48                    | 154                | 43                    | 91           | 0           | 285          | 376         | 76%             |
| Kodiak Salmon Beach Seine    | 6                   | 4                     | 9                  | 2                     | 10           | 0           | 21           | 31          | 68%             |
| Kodiak Salmon Setnet         | 14                  | 4                     | 93                 | 18                    | 59           | 0           | 129          | 188         | 69%             |
| Chignik Salmon Seine         | 38                  | 13                    | 0                  | 25                    | 15           | 0           | 76           | 91          | 84%             |
| Pen/Aleutian Salmon Seine    | 58                  | 6                     | 3                  | 16                    | 36           | 0           | 83           | 119         | 70%             |
| Pen/Aleutian Salmon Drift    | 35                  | 38                    | 2                  | 17                    | 70           | 0           | 92           | 162         | 57%             |
| Pen/Aleutian Salmon Setnet   | 77                  | 3                     | 1                  | 13                    | 19           | 0           | 94           | 113         | 83%             |
| Bristol Bay Salmon Drift     | 368                 | 164                   | 0                  | 313                   | 1,017        | 0           | 845          | 1,862       | 45%             |
| Bristol Bay Salmon Setnet    | <u>340</u>          | <u>62</u>             | <u>0</u>           | <u>247</u>            | <u>323</u>   | <u>0</u>    | <u>658</u>   | <u>981</u>  | <u>67%</u>      |
|                              | 2,412               | 559                   | 1,630              | 876                   | 2,647        | 1           | 5,478        | 8,125       | 67%             |
| <b>1976</b>                  |                     |                       |                    |                       |              |             |              |             |                 |
| Upper Yukon Salmon Gillnet   | 23                  | 3                     | 26                 | 2                     | 1            | 0           | 54           | 55          | 98%             |
| U Yukon Salmon Fish Wheel    | 75                  | 5                     | 26                 | 7                     | 2            | 0           | 113          | 115         | 98%             |
| Kuskokwim Salmon Gillnet     | 545                 | 4                     | 158                | 19                    | 6            | 0           | 726          | 732         | 99%             |
| Kotzebue Salmon Gillnet      | 22                  | 4                     | 116                | 19                    | 0            | 0           | 161          | 161         | 100%            |
| Lower Yukon Salmon Gillnet   | 558                 | 23                    | 0                  | 78                    | 6            | 0           | 659          | 665         | 99%             |
| Norton Sound Salmon Gillnet  | <u>147</u>          | <u>2</u>              | <u>15</u>          | <u>14</u>             | <u>0</u>     | <u>0</u>    | <u>178</u>   | <u>178</u>  | <u>100%</u>     |
|                              | 1,370               | 41                    | 341                | 139                   | 15           | 0           | 1,891        | 1,906       | 99%             |
| <b>1977-78</b>               |                     |                       |                    |                       |              |             |              |             |                 |
| SE Roe Herring Seine         | 5                   | 8                     | 18                 | 4                     | 12           | 0           | 35           | 47          | 74%             |
| SE Herring Gillnet           | 23                  | 0                     | 59                 | 1                     | 28           | 0           | 83           | 111         | 75%             |
| PWS Roe Herring Seine        | 23                  | 30                    | 0                  | 23                    | 29           | 0           | 76           | 105         | 72%             |
| Cook Inlet Herring Seine     | <u>31</u>           | <u>5</u>              | <u>7</u>           | <u>10</u>             | <u>22</u>    | <u>0</u>    | <u>53</u>    | <u>75</u>   | <u>71%</u>      |
|                              | 82                  | 43                    | 84                 | 38                    | 91           | 0           | 247          | 338         | 73%             |
| <b>1980-87</b>               |                     |                       |                    |                       |              |             |              |             |                 |
| Salmon Hand Troll            | 383                 | 9                     | 498                | 25                    | 122          | 0           | 915          | 1,037       | 88%             |
| NSEI Sablefish Longline      | 7                   | 3                     | 43                 | 2                     | 16           | 0           | 55           | 71          | 77%             |
| SSEI Sablefish Longline      | 0                   | 1                     | 9                  | 0                     | 4            | 0           | 10           | 14          | 71%             |
| SSEI Sablefish Pots          | 2                   | 0                     | 0                  | 0                     | 1            | 0           | 2            | 3           | 67%             |
| SE Red,Blue King Crab Pot    | 0                   | 0                     | 6                  | 0                     | 0            | 0           | 6            | 6           | 100%            |
| SE Red,Blue,Brn King Crb Pot | 1                   | 0                     | 5                  | 0                     | 0            | 0           | 6            | 6           | 100%            |
| SE Brown King Crab Pot       | 0                   | 0                     | 9                  | 0                     | 0            | 0           | 9            | 9           | 100%            |
| SE Red,Blue King/Tanner Pot  | 1                   | 0                     | 12                 | 1                     | 0            | 0           | 14           | 14          | 100%            |
| SE Brown King/Tanner Pot     | 2                   | 0                     | 3                  | 0                     | 0            | 0           | 5            | 5           | 100%            |
| SE All King/Tanner Pot       | 1                   | 0                     | 24                 | 0                     | 4            | 0           | 25           | 29          | 86%             |
| SE Tanner Crab Pot           | 5                   | 0                     | 15                 | 0                     | 5            | 0           | 20           | 25          | 80%             |
| PWS Roe Herring Gillnet      | 16                  | 0                     | 0                  | 5                     | 3            | 0           | 21           | 24          | 88%             |
| PWS Her Spawn on Kelp Pound  | 45                  | 20                    | 0                  | 20                    | 43           | 0           | 85           | 128         | 66%             |
| Kodiak Roe Herring Seine     | 6                   | 18                    | 26                 | 7                     | 11           | 0           | 57           | 68          | 84%             |
| Kodiak Roe Herring Gillnet   | 8                   | 13                    | 45                 | 10                    | 14           | 1           | 77           | 91          | 85%             |
| Kodiak Roe Her Seine/Gill    | <u>1</u>            | <u>0</u>              | <u>1</u>           | <u>0</u>              | <u>0</u>     | <u>0</u>    | <u>2</u>     | <u>2</u>    | <u>100%</u>     |
|                              | 478                 | 64                    | 696                | 70                    | 223          | 1           | 1,309        | 1,532       | 85%             |

# FISCAL NOTE

**STATE OF ALASKA**  
**2013 LEGISLATIVE SESSION**

Bill Version JU2012200809  
 Fiscal Note Number \_\_\_\_\_  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name) 0809-DFG-CFEC-12-06-2012 Dept. Affected Fish and Game  
 Title Draft legislation repealing the termination date of the vessel n for the Bering Sea hair crab fishery and the weathervane sc Appropriation Comm Fisheries Entry Commission  
 Allocation Comm Fisheries Entry Commission  
 Sponsor \_\_\_\_\_  
 Requester Department of Law OMB Component Number 471

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

|                               | FY14<br>Appropriation<br>Requested | included in<br>Governor's<br>FY14<br>Request | Out-Year Cost Estimates |            |            |            |            |            |
|-------------------------------|------------------------------------|--|-------------------------|------------|------------|------------|------------|------------|
|                               |                                    |  | FY14                    | FY15       | FY16       | FY17       | FY18       | FY19       |
| <b>OPERATING EXPENDITURES</b> |                                    |  |                         |            |            |            |            |            |
| Personal Services             | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Travel                        | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Services                      | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Commodities                   | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Capital Outlay                | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Grants, Benefits              | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| Miscellaneous                 | 0.0                                | 0.0  | 0.0                     | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL OPERATING</b>        | <b>0.0</b>                         | <b>0.0</b>                                   | <b>0.0</b>              | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

| FUND SOURCE |                  | (Thousands of Dollars) |            |            |            |            |            |            |
|-------------|------------------|------------------------|------------|------------|------------|------------|------------|------------|
| 1002        | Federal Receipts |                        |            |            |            |            |            |            |
| 1003        | GF Match         |                        |            |            |            |            |            |            |
| 1004        | GF               |                        |            |            |            |            |            |            |
| 1201        | CFEC Rcpts (DGF) | 0.0                    | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1037        | GF/MH (UGF)      |                        |            |            |            |            |            |            |
| 1178        | temp code (UGF)  |                        |            |            |            |            |            |            |
|             | <b>TOTAL</b>     | <b>0.0</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

| POSITIONS |   |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|---|
| Full-time | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-time | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| CHANGE IN REVENUES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|--------------------|-----|-----|-----|-----|-----|-----|-----|
|--------------------|-----|-----|-----|-----|-----|-----|-----|

Estimated **SUPPLEMENTAL (FY13) operating costs** 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY14) costs** 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended, or repealed? N/A Discuss details in analysis section.

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Initial version

Prepared by Shirley Penrose, Operations Manager  
 Division Commercial Fisheries Entry Commission  
 Approved by Benjamin E. Brown, Commissioner  
Commercial Fisheries Entry Commission

Phone 907-790-6960  
 Date/Time 12/6/12 - 2:30pm  
 Date 12/6/2012

**FISCAL NOTE ANALYSIS**

**STATE OF ALASKA  
2013 LEGISLATIVE SESSION**

**BILL NO. JU2012200809**

**Analysis**

There are no significant fiscal impacts for CFEC associated with this proposed legislation.

# Laws for the SEA

Covering fisheries, seafood & environmental issues in the Alaska Legislature  
VOLUME 19 #8 FEBRUARY 18, 2013 55 DAYS TO ADJOURNMENT

## IN THIS EDITION

- \*\*Senate wants enhancement projects in \$30 million Chinook plans. Page 3.**
- \*\*HB 89/Lawmakers still waiting for invasives rapid response plan. Page 4.**
- \*\*Hearing exposes DEC air, water pollution disclosures inconsistency. Page 6.**
- \*\*HB 32/Wood-Tikchik hydro project bill advances. Page 8.**
- \*\*HB 123/Wilson wants \$2 billion for Transportation Project Fund. Page 9**

## MUNY HARBORS WANT RIGHT TO SEIZE DERELICT BOATS

Responding to an anxious request from Alaska's harbor masters and port managers, the **House Fish Committee** is drafting a bill to expand what is currently the **Dept. of Transportation's** exclusive, but unused, authority under the "**Alaska Abandoned and Derelict Vessel Act**," to local governments and other state agencies.

The bill could be introduced as soon as this week, according to Chairman Paul Seaton's office. As proposed, it would include power for state and local authorities to seize and dispose of derelicts and to seek fines and jail time for owners who abandon leaking hulks on public property.

It may also result in a new annual charge to Alaskan boat owners to provide money to clean up what are likely hundreds of derelicts on Alaska's coastal and inland shores. Washington State's derelict vessel removal program, which lawmakers have reviewed, imposes a \$2 surcharge on annual vessel registrations.

"It would help them immensely," said **Carl Uchytel**, of local harbor masters at the Feb. 14 hearing.

The **Alaska Assoc. of Harbor Masters & Port Administrator** adopted a resolution asking for the bill last October and Uchytel, its vice president, noted that the often-forced transfer of ownership of most local harbors to municipalities over the past 20 years did not include any authority for them to deal with derelict and abandoned boats.

Endorsed by DOT and the Dept. of Natural Resources, the bill is an effort to develop a local ability to remove abandoned or derelict vessels from local harbors before they sink and potentially saddle villages with six and seven-figure cleanup costs.

State law allows vessels to be anchored in a location for up to 14 days. It requires state permission for longer stays but DNR, the landlord for the state's coastal and tidelands, has no authority to force compliance or to take remove a vessel whose condition poses environmental or navigational risks. It must get authority delegated from DOT to act.

DNR has catalogued 94 derelicts, according to **Wyn Menefee**, operations manager of the **Div. of Mining, Land & Water**. He said there are probably many more and that the department often discovers new ones on general field operations.



## SB 54

### CFEC WANTS 10-YEAR EXTENSION FOR CONSOLIDATED SCALLOP FISHERY

Legislation introduced Friday, with the apparent support of **Gov. Sean Parnell** and **Commis. Cora Campbell** would extend the state's vessel-based limited entry system for the weathervane scallop and **Korean hair crab** fisheries for another ten years despite consolidation in the control of vessels in the scallop fishery that appear to violate the intent of both state and federal law.

Federal law limits any single person, corporation or entity to owning or controlling no more than two federal licenses in the scallop fishery and state law allows a legal person to own only one permit.

CFEC records indicate that, over the decade since the system was first authorized, a group of five men own the permits or control the fishing activity of three of the nine existing scallop permits and four of the same group control five permits, generally through different corporations. Six of those **(Continued on Page 3.)**

**BILL CONTINUES VESSEL PERMIT SCALLOP FISHERY****(Continued from Page 1.)**

permits and nine of ten vessels included in an entry moratorium that proceeded the current permitting system have links to the Alaska Scallop Assoc., a marketing group of three of the permitted vessels based in Lakewood, Washington.

**SB 54**, sponsored by the **Senate Resources Committee**, extends the **Commercial Fisheries Entry Commission's** authority to manage the two fisheries under the system that issues permits for vessels from its expiration this Dec. 30 to 2023. The bill includes a provision declaring that, if it is passed after Dec. 30, 2013, it would take effect retroactively to that date.

The vessel-based management is unique in state law to the two fisheries. It was first approved by the legislature in 2002 with a 2008 sunset, which was extended that year to 2013. Due to low stock levels the hair crab fishery has never opened under the vessel permit system.

**CFE Commis. Ben Brown** told the House Subcommittee writing the next **Dept. of Fish & Game** budget that the governor and commissioner support the bill. "It is very important to CFEC to not allow it to die," Brown said at the Feb. 12 overview of the commission's self-supporting budget.

**Rep. Paul Seaton** (R-Homer), a subcommittee member and long-time critic of vessel-based permitting, asked for current CFEC and federal records on the nine vessels originally permitted in both the state and federal fisheries in 2004.

Seaton emphasized that he wanted "not just corporate names, the actual vessel owners to find out if we have excessive consolidation that could run afoul of that."

State law protecting the confidentiality of individual vessel harvest records prohibits the disclosure of catch data on a fishery if it has three or fewer vessels. That limit has stopped CFEC from disclosing, even to lawmakers, the number of vessels operating in the fishery or its actual harvest volume compared to its guideline harvest level.

The federal scallop license program, established in 2001, said, "No person, corporation, or entity can hold or control more than two scallop licenses. The Council determined that ownership greater than two licenses would constitute an excessive share of harvest privileges in this fishery," according to the report prepared in response to Seaton's request.

State law allowing, but not requiring, CFEC to use a vessel-based permit system requires it to adopt regulations limiting the number of permits that may be held "by a permit holder or group of related permit holders" if it finds the restriction necessary "to prevent the excessive concentration of ownership of vessel permits in the fishery."

Only five state permits are currently in "active" status meaning they could be fished, according to the report. Among those is one licensed to the **F/V Carolina Girl II**. The report notes that the craft lists Seaford, Virginia as its homeport and last received an Alaska vessel license in 2003.

The CFEC report says **Jim Stone, Glenn and Egil Mikkelsen** and **John Lemar** are "principle shareholders" in businesses that own two state and three federal permits. **Stein Nyhammer** is a principle shareholder in one state and two federal permits.

In addition to their direct ownerships, the report notes, two other state permits have been relinquished "in apparent actions to consolidate fishing rights" and two other permits are in "suspension," in this case meaning they are valid but their owners have not named vessels to the permits.

The only independent, Alaska-based vessel active in the fishery is the **F/V Wayward Wind**. The vessel's state permit is owned by **Alaska Dream Ventures, Inc.** whose principle shareholders are Max, Robert, Mary and Denise Hulse. Max owns the vessel's federal permit. Robert Hulse, of Ketchikan, also owns a Southeast salmon driftnet permit. Max Hulse.

"To enforce CFEC's prohibition on owning more than one vessel permit, corporations are required to declare all the shareholders who hold more than five percent of the entity's stock. Information on the principal shareholders for federal (permits) comes from online government databases," the CFEC report notes.

**SENATE WANTS CHINOOK PRODUCTION PLANS**

Senate Finance Committee members reviewing the Dept. of Fish & Game's \$30 million Chinook

*Confused  
state &  
federal  
data*

### **Jim Stone's SB54, 3/4/13 Senate Resources Testimony;**

Introduce myself, 35 year Alaska multi species Fisherman, as an Alaska Scallop Assoc (ASA) member, manager of ASA harvest vessels and in charge of scallop sales. With the Chairs permission introduce the other Scallop Assoc fishermen in the Audience. Including & especially Mona Stone,

**Mona Stone.** is our chef and culinary events coordinator. She prepares scallops at seafood and fishery events around the state and up & down the west coast. Her pan sear stations have introduced Alaskan Weathervanes to many thousands of consumers and hundreds of high-end chefs that had never heard of them. She takes us fishermen with her and the people love the interaction of learning how to properly prepare the scallops as well as meeting the fishermen. Her efforts in the last few years have dramatically increased the value we now receive. She has also been responsible for all the Alaskan seafood prepared at many of the United Fishermen of Alaska receptions in recent years. **She was just awarded the UFA's 2012 Fisherman of the year tittle** for her efforts in showing off Alaska's seafood so well.

#### **Testimony:**

These are the fishermen/partners on the three large Scallop catcher/freezer boats, all home ported in Kodiak. Essentially we each own half a boat each. These boats average 100' in length and are quite expensive to own (multi-million dollar rigs) and operate. They fish with 12 crewmen & gals, must carry required observers at almost \$400/day, (expected rise coming with the feds paying \$825 per day for their groundfish observer program), and burn 600 gallons of fuel a day, (about a 16% increase over last June.) Insurance cost is astronomical, 42% increase this year!!! None of us can afford to own one of these by ourselves, Financially it just makes sense to work together. We have done our due diligence to ensure our ownership violates neither State nor Federal rules, a very difficult thing to do when fishing the same species under two different sets of rules.

Conservation measures have forced this fishery from about 1.2 million lbs in the 90's to only about 400,000 lbs today. We applaud and support our fishery manager's stance on the side of precaution in the name of sustainability, but the reductions did have drastic effect on the fishing boats and the amount that we can fish, again making it logical to partner together. We are given very small crab bycatch amounts and must work together to avoid the roving schools of crab, being partners helps us avoid the crab.

We are happy to report the conservation record of ADFG's management of the scallop fishery has not gone unnoticed. We have lobbied the Monterey Bay Aquarium's Seafood Watch program to rate Alaska Weathervane Scallops. Such a small fishery is not normally on their radar and has been left unrated by any 3<sup>rd</sup> parties, when selling to high end consumers & chefs these ratings have become increasingly important. With the help of ADFG, U of Alaska and NMFS in Anchorage we were able to prove our stance as a sustainable fishery in Seafood watch's eyes. In December Alaska Weathervane Scallops received their highest rating of "Best Alternative". We have been invited to attend their "cooking for solutions" 3 day event in May and will be afforded a

golden opportunity to introduce Alaska Weathervane Scallops to hundreds of world famous chefs. Mona will once again be leading us fishermen on this culinary excursion.

**Marketing;** As a result of working together we have been able to get out in the culinary world and market ourselves. We participate with seafood and fishery events all over the state and up and down the West Coast as well as in BC..... Mention Mona here?.... Frequently we work side by side with ASMI and are pushing the Alaska Brand name right with them... By the way we are huge supporters of ASMI and thank the legislature for funding such an important organization, please continue their full funding. We have had huge marketing success and have had at least a doubling of our prices as a result. We have managed to get the Alaska Weathervane Scallop away from being just another commodity lost in the world scallop complex. The Alaskan Scallop is being redefined in the culinary world as a much sweeter and more sustainable version than its more plentiful Atlantic scallop cousin. These new record high prices despite low quotas are helping us maintain safe vessels, pay our crews well and support the businesses in our communities, mainly Kodiak.

**Maintenance, supply and crew;** All the currently active boats (both ASA and non ASA boats) are home-ported in Kodiak. Most of the scallop fleet's repairs and maintenance are done in Kodiak. Since the Kodiak boat lift's installation in 2009 we are even able to haul our large 100' boats out for bottom repair and paint. This saves us \$25,000 plus, per boat avoiding the fuel to run to the traditional ship yards in the lower 48 and back.. We estimate the Scallop fleet spends annually \$3.3 million in AK (mostly Kodiak) on crew, fuel, repairs, supplies and groceries. **Crew;** Average of about 40 crewmen & Captains approx 50% or more are usually AK residents (mostly Kodiak) sharing about \$1.6 million gross pay per year avg.

Most of the currently open scallop beds are 100% in the federal waters, except in Shelikof Strait and off Yakutat there are small pieces of those beds that come into State waters, normally about 10% to 20% of the total Scallop catch comes from state waters and 80% to 90% from the federal waters.

**A bit of Historical perspective;** We got to this position of needing legislative help, when in 1995 a vessel from the east coast found a loophole in the regs and turned in their Alaska fishing license and went into the federal waters to fish, this loophole gave ADFG no authority to stop them, as a result they extracted a huge amount of scallop before the NMFS could find a way to shut them down, this vessel then sailed off never to return to Alaska, thank God... In 1996 the rest of us could not fish at all until both NMFS and the State of Alaska could set up some rules to never allow this to happen again. The people that suffered the most were the honest scallop fishermen that were forced to not fish for an entire year while a fix was found for both the state and the federal sides. No pay for an entire year was devastating.

ADFG has made it clear that if the vessel limited entry program is not extended that it will be unable to manage the fishery and will be unable to open the state waters to fishing, making these same honest Scallopers suffer again with unnecessary quota reductions.

I refer you to the United Fishermen of Alaska resolution, the last two Whereas's are the ones that grab our attention the most.

**Whereas**, allowing the vessel-based limited entry systems to expire at the end of 2013 would prevent the sustained yield management of these fisheries, and would significantly harm those who hold permits for these fisheries and those employed in these fisheries; and,

**Whereas**, allowing the vessel-based limited entry systems to expire at the end of 2013 would benefit no one, and would cause loss of opportunity and economic harm;

Thank you for the time and please do these hard working lifelong multi-generational fishermen and our families, **"No Harm"**.

Frank Kelty  
PO Box 162  
Unalaska, Alaska 9968  
E-Mail [kelty1149@vahoo.com](mailto:kelty1149@vahoo.com)  
907-581-1301

April 2, 2013

Representative Paul Seaton  
120 4<sup>th</sup> Street State Capital Room 102  
Juneau, Alaska 99811-0001

Subject: SB 54

Mr. Chairman:

I am writing to you today in support of Senate Bill 54 which would extend the termination date of the authority of the Commercial Fisheries Entry Commission to maintain vessels – based limited entry fisheries for the Weathervane Scallop and Bering Sea hair crab fisheries until December 30, 2018. I would hope that this bill will move out of the Fisheries Committee that you are the Chairman of very soon.

I have worked in the Alaska Seafood industry for 30 years in Unalaska, working for two different companies in the Unalaska/Dutch Harbor area, and have firsthand knowledge of these fisheries. The main reason I support this bill is that it will continue to be basically a rationalized cooperative based fishery. If this fishery goes back into and open access mode in state waters for this small amount of poundage, this will create major problems for Alaska Department of Fish and Game on how they will manage it; if there too many vessels involved ADFG may decide not open it. With new players getting involved in the fishery bycatch issues could increase with vessels operators that aren't familiar with the fishing grounds increasing bycatch amounts that could close productive fishing areas.

I believe it is important to allow this cooperative to be extended until 2018, it is important that operators who have worked this fishery, are dependent on this fishery, and have produced a first class product, have reduced bycatch in many areas, should be able continue to work this fishery. I've seen first had the problems with over-capitalized fisheries in the Halibut/Sablefish, Pollock, and Bering Sea Crab Fisheries. A more rationalized fishery is the way to go in this situation, with fewer players you have less bycatch, a better product is produced at a higher value, and management of the fishery is also improved. I would urge you to pass this bill from the Fisheries Committee as soon as possible it the right thing to do. If you have any questions or concerns my contact numbers are listed above.

Sincerely



Frank Kelty  
CC: Rep. Bob Herron  
Rep. Bryce Edgmon  
Sen. Cathy Giessel