

**SB**

**54**

<TARGET><BILL>SB 54</BILL><SUBJECT>SB  
54</SUBJECT><COMM>HFSH28</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  
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## Senate Resources Committee

### MEMORANDUM

Date: March 20, 2013

To: Representative Paul Seaton  
Chairman, House Special  
Committee on Fisheries

From: Senator Cathy Giessel  
Chairman, Senate Resources Committee

Re: Request to Hear SB 54

I am writing to request a hearing on Committee Substitute for Senate Bill 54 in the House Special Committee on Fisheries. As you know, CSSB 54 is legislation that was sponsored by the Senate Resources Committee at the request of the Alaska Commercial Fisheries Entry Commission (CFEC). The original version of this legislation extended the "sunset" date currently in statute from December 30, 2013, until December 30, 2023, for CFEC's vessel-based limited entry programs for the Alaska weathervane scallop and Bering Sea hair crab fisheries. The Senate Resources Committee amended the legislation to provide for a five-year extension instead of ten-year extension as a compromise with those who wish to see more scrutiny of the vessel-based limited entry programs.

Attached please find a copy of the most recent version of the bill, a Sponsor Statement, a Sectional Analysis, two zero fiscal notes, a resolution and letters of support, and a letter in opposition to the bill. Also attached is a copy of a report on the ownership of limited entry permits in the Alaska weathervane scallop fisheries, a media piece covering this report, and a letter from CFEC in response to the inaccuracies in the media report. Senate Resources Committee Aide Sharon Long is working on this bill, along with CFEC Commissioner Benjamin Brown. They will be able to address any questions you may have about other information you may need for the House Special Committee on Fisheries to consider this legislation.

Thank you for scheduling CSSB 54 for a hearing.



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

## Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109  
PO Box 110302  
Juneau, Alaska 99811-0302  
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### Sponsor Statement for Senate Resources Committee Substitute for Senate Bill 54

The Senate Resources Committee Substitute for Senate Bill 54 will extend for five 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 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 CSSB 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**  
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## *MEMORANDUM*

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

Date: 12 March 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  
CSSB 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 2018. This will extend the so-called "sunset" date in statute and prolong for five 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.

# FISCAL NOTE

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

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

Identifier (file name) SB54-DFG-CFEC-03.04.13 Dept. Affected Fish & Game  
Title Senate Bill 54 - extending the termination date of the Appropriation Comm Fisheries Entry Commission  
ystem for the weathervane scallop and Bering Sea hair crab Allocation Comm Fisheries Entry Commission  
Sponsor Senate Resources Committee by Request  
Requester Commerical Fisheries Entry Commission OMB Component Number 471

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

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

	FY14 Appropriation Requested	Included in Governor's FY14 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
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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)**

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

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

Phone 907-790-6960  
Date/Time 1/14/2013  
Date 1/14/2013

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.

# 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 (CFEC) 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.

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

**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.

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<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 (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 (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.

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<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 Owner Ocean Fisheries LLC									
SLLP005 *	Owner Ocean Fisheries LLC					Arctic Hunter LLC				
W2ABV85008 *	Vessel F/V Provider Owner Provider, Inc							F/V Provider divested from CFEC permit Tom Minio		
SLLP008 *	Owner Provider, Inc					Provider Fisheries LLC				
W2BBV85012	Vessel F/V La Brisa 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 Owner Carolina Boy, Inc									
SLLP009 *	Owner Ocean Fisheries LLC									
W2ABV85014 *	Vessel F/V Forum Star Owner Forum Star, Inc			Forum Star LLC						
SLLP002 *	Owner Forum Star, Inc		American Seafoods LLC							
W2BBV85015	Vessel F/V Kilkenny Owner Thomas Hogan						William Harrington			
SLLP003	Owner Thomas Hogan						William Harrington			
W2BBV85018	Vessel F/V Arctic Storm Owner Tom Gilmartin									Vessel sold w/o pmt EWT LLC
SLLP006	Owner Tom Gilmartin									EWT LLC   EWT LLC
W2ABV85016	Vessel F/V Pursuit 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 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 *	Ocean Hunter	Ocean Fisheries LLC	Jim Stone Glenn Mikkelsen Egil Mikkelsen John Lemar Stein Nyhammer
	SLLP005 *		Arctic Hunter LLC	James H. Stone
	W2BBV85012	Wayward Wind	Alaskan Dream Ventures, Inc.	Max Hulse Robert Hulse Mary Hulse Denise Hulse
	SLLP004		Max G. Hulse	n/a
	W2ABV85013 *	Carolina Boy	Carolina Boy, Inc.	William Wells, Jr.
	SLLP009 *		Ocean Fisheries LLC	Jim Stone Glenn Mikkelsen Egil Mikkelsen John Lemar Stein Nyhammer
	W2ABV85014 *	Forum Star	Forum Star LLC	Bernt Bodal Jeff Davis Coastal Bering Sea Fish Assoc Management
	SLLP002 *		American Seafoods Co. LLC	(unavailable)
	W2BBV85015	Kilkenny	William J. Harrington	n/a
	SLLP003		William J. Harrington	n/a
Suspended CFEC Vessel Permits	W2ABV85008 *	(formerly Provider)	Thomas Minio	n/a
	SLLP008 *	(currently fished on F/V Provider)	Provider Fisheries LLC	Jim Stone Glenn Mikkelsen Egil Mikkelsen John Lemar Tom Minio Stone Management
	W2BBV85018	(formerly Arctic Storm)	EWT LLC	Erik Orman Warren J Alexander
SLLP006		EWT LLC	Erik Orman Warren J Alexander	
Relinquished CFEC Permits or Relinquished Eligibility for a Permit	W2ABV85016	-Pursuit	Future Fisheries, Inc (permit relinquished in 2007)	Roy Enoksen Ronald Enoksen Peter Anthony Francis O'Hara
	SLLP007 *	(currently fished on F/V Arctic Hunter)	Ocean Fisheries LLC	Jim Stone Glenn Mikkelsen Egil Mikkelsen John Lemar Stein Nyhammer
	W2ABV85010 SLLP010 *	Carolina Girl II	Alaska Scallop LLC Alaskan Scallop Fisheries	Jim Stone Glenn Mikkelsen Egil Mikkelsen John Lemar Tom Minio
	(relinquished eligibility rights for a CFEC permit associated with F/V Carolina Girl II)			

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)

# Shell game: state scallop fishery faces scrutiny

MOLLY DISCHNER, ALASKA JOURNAL OF COMMERCE

A bill extending the limited entry program for scallops is making its way through the Alaska State Senate, but not without scrutiny.

On March 11, an amendment to Senate Bill 54 passed in the Resources Committee to shorten the length of the program as a result of concerns raised in hearings from legislators and in public comment about consolidation in the fishery over the last decade under parallel state and federal limited entry.

When the bill was introduced by Resources Committee Chair Sen. Cathy Giessel, R-Anchorage, in February, it would have extended the program by 10 years until 2023. Before the bill was introduced, discussion revolved around making it permanent.

The concerns have arisen because 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 along with the F/V Ocean Hunter, one of the two vessels that still fish in state waters. Since 2009, 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.

According to a 2006 federal report on the scallop fishery, about \$244,000 in "lease fees" were paid from Stone's Ocean Fisheries LLC and Mark Kandianis' Provider Inc. in 2003 to permit holders who were not actively fishing.

The scallop limited entry program administered by the Commercial Fisheries Entry Commission, or CFEC, is scheduled to sunset at the end of 2013, a result of the last extension of the program passed by the legislature in 2008.

Because some of the scallop beds around Alaska straddle the three-mile boundary between state and federal waters, the state limited entry program operates in conjunction with the federal program.

Gov. Sean Parnell told Journal correspondent Bob Tkacz on Feb. 28 that CFEC asked him to have the bill introduced under his sponsorship, but he did not do so because of the number and scope of other bills he is sponsoring. Instead, Giessel brought it forward.

"I support the bill," Parnell said.

## **Quick consolidation**

Soon after the 2008 extension was approved by the Alaska legislature, partnerships involving Stone, Glenn and Egil Mikkelsen, John Lemar and Tom Minio subsequently formed two new LLCs on May 7, 2008, and then acquired three federal licenses over three days in June 2008.

Two of those permits were purchased from Mark and Teresa Kandianis.

Associated with those federal licenses purchased 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.

Bill Harrington of Kodiak runs the Kilkenny, which is the only other boat other than the Stone group's Ocean Hunter now operating in state waters, and he delivers fresh scallops mainly to Homer. Max Hulse of Eagle River has also previously delivered fresh scallops.

Hulse said he intends to fish again in the future, and he and Harrington have gone on the legislative record supporting the program's extension.

At the March 11 Resources Committee hearing, a letter from Kodiak fishermen George Hutchings questioned the current system and objected to a letter from the federal North Pacific Fishery Management Council to the Alaska legislature in support of extending the scallop limited entry in state waters.

That letter from the North Pacific council came at the request of Stone, who brought the matter to the council on the last day of its meeting in Portland, Ore., in February during the "staff tasking" agenda item.

At the time, Stone passed around to the council a copy of a similar letter written in 2007 to the legislature, and a 2007 Alaska Department of Fish and Game report on the scallop fishery.

Council member Duncan Fields of Kodiak asked Stone, "Are there additional issues we should consider as we write the letter as opposed to 2007?"

In response, Stone said, "Mr. Fields, no. Everything is identical. I believe there was one change in ownership of a permit, federal and state. I don't believe there's anything else. Quotas are very similar, quotas are slightly down. There are no other issues."

However, there have been at least four federal license transfers since the 2007 ADFG report and the last council letter to the legislature was written, with Stone personally involved in three of the transactions.

When contacted by the Journal, Stone said he "misspoke" before the council regarding license transfers since 2007 because he did not have the information in front of him.

Hutchings wrote to Giessel on March 7 that he was in Portland for the council meeting and would have stayed through the end "if scallops had 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 the personal testimony from Mr. Jim Stone, who is the primary player in this game and voiced only his own opinion ..." Hutchings wrote to Giessel.

CFEC Commissioner Ben Brown confirmed for the committee that there was no advance notice that the council would consider a letter at that meeting, but said that there was significant opportunity for the public to participate when the program was initially developed.

### **Seaton questions constitutionality**

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.

Multiple federal permits may be fished off the same vessel, but only one state permit may be associated with a vessel.

At a House Finance Committee hearing for the CFEC budget Feb. 14, Rep. Paul Seaton, R-Homer, raised the constitutional question to Brown of CFEC. Seaton is also the chair of the House Fisheries Committee.

"I'm concerned, I have been concerned for a long time, about the vessel entry permits," Seaton told Brown. "They don't require a person to participate in the fishery at all. I'm fearful that consolidation that has taken place in that fishery has reached a point where we may be running afoul of the constitutional prohibition on a special right of fisheries."

Later in that hearing, Brown responded to Seaton's critique of the scallop vessel-based program.

"The current operation, although it may not to be Rep. Seaton's liking in every way, but it is not diminishing the resource," Brown said.

Seaton had an answer for that as well.

"Time does go on and things change, and there wasn't consolidation to a very few select people at the time (in 2008), which may run afoul of other parts of the constitution and a special right of fishery," Seaton said to Brown.

After the hearing, Seaton questioned the CFEC advocacy for the scallop program further to Journal correspondent Tkacz.

"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,” Seaton said 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.”

If the bill passes the Senate, it may go to the House Fisheries Committee, which Seaton chairs, although that isn’t guaranteed. A determination won’t be made until the bill is on the Senate floor, and it could go to House Resources or another committee.

Brown addressed the constitutional question in the first Senate Resources Committee hearing on the bill March 4, stating that, “as an attorney, if this were unconstitutional somebody would have challenged it by now.”

But both Seaton and Hutchings disagree. In his letter, Hutchings said that if he had the financial resources, he would consider appealing to the state and federal court systems.

### **Alaska case law**

There are two Alaska Supreme Court cases decided in 1988 and 2005 that are contributing to the question of constitutionality. The first is *Johns vs. CFEC*, in which a fisherman challenged the “optimum number” of permits that were to be issued for the state herring fishery.

In ruling for *Johns*, the Court addressed the tension inherent in the Limited Entry Act and the constitutional requirement for Alaska resources to be available to all Alaskans.

“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,” the Court wrote. “Without this 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.”

In *Grunert vs. State*, decided in 2005, the Supreme Court struck down a cooperative fishery in Chignik approved by the Board of Fisheries.

Under that cooperative, designed to reduce fishing effort and improve quality at a time of depressed salmon prices, permit holders were paid lease fees by fishermen who took the harvest.

During the first year of the cooperative, 77 boats joined and only 18 fished.

In striking down the cooperative, the Court wrote: “Participation by the individual is inherent in the limited entry permit system. The Chignik cooperative fishery scheme is fundamentally at odds with this premise because it allows people who are not actually fishing to benefit from the fishery resource ... The co-op fisher in this scenario sharply diverges from the model of the economically dependent fisher whom the Limited Entry Act was intended to protect.”

### **Federal control**

There is also a federal ownership cap of two licenses for any “individual, corporation, partnership, or other legal entity.”

According to the final rule for the scallop fishery published in the Dec. 14, 2000, Federal Register, “The two-license ownership limit is intended to prevent any person from obtaining an excessive share of harvest privileges in the scallop fishery as required by national standard 4 of the Magnuson-Stevens Act. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery.”

Despite federal intent language to limit any person to two permits, and a similar state intention limiting to one per vessel, federal regulators have said the current ownership structures for Stone and his partners are legal.

The National Marine Fisheries Service Restricted Access Management Division said the federal program does not specify legal corporate ownership structures, and because each entity has a different name, it is considered a different entity even if the shareholders are the same.

Stone also noted that while the same group of individuals holds multiple permits, no one person has the equivalent to ownership of even one entire vessel.

And Stone asserts that opportunity still exists for new participants to enter the fishery if they so desire, although individuals testified at the first Senate Resources hearing that they would like to participate were the fishery more accessible to small, new, participants.

### **Lobbyists on board**

Legislators and participants aren't the only ones weighing in on the program.

The United Fishermen of Alaska, of which the Alaska Scallop Association is a member, submitted a letter unanimously supporting the program. The Alaska Scallop Association, with its address at Stone's Lakewood, Wash., residence, has hired several lobbyists to help make its case.

According to the state's lobbyist directory, former CFEC Chairman Frank Homan, Gerald McCune, Thomas Meiners and former United Fishermen of Alaska President Bobby Thorstenson are being paid a total of \$47,000 to lobby for SB 54.

Homan, who Tkacz reported for Laws for the Sea has been accompanied by current CFEC Commissioner Brown in the halls of the Capitol, described his lobbying interests on behalf of the scallop association as supporting a program “promoting local ownership and control of the state issued permits” and said it enabled several smaller Alaskan scallopers to participate in the fishery.

“These fisheries were once owned and controlled by entirely out of state interests and would likely revert to such control if the Program were to sunset,” Homan wrote in his disclosure.

The necessity of limited access was a point made by ADFG Commissioner Cora Campbell, Brown and others in the first Senate Resources Committee hearing March 4.

Proponents of extending the program have said ADFG would not be able to manage the fishery if it were in open access.

The quota for the state waters fishery is limited, they have said, and open access could lead to overfishing so quickly that the state might not allow a fishery at all.

In his letter to the committee, Hutchings of Kodiak, disputed that claim by noting the state water fishery could operate as other parallel fisheries do under open access.

Prior commissioners of ADFG have told the legislature that the department has authority to require 100 percent observer coverage, which allows real-time catch reporting and prevents exceeding crab bycatch limits, as well as the ability to set a separate harvest in state waters or to close areas to prevent localized depletion.

The high start-up costs and small state harvest also make it unlikely several boats would rush into the fishery under open access.

“If State scallop fishery is allowed to revert to open access, new participants that are motivated to fish more cleanly could target scallops,” Hutchings wrote. “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.”

There is no question that Alaska scallop stocks are in good shape and are managed conservatively. The Alaska Scallop Association’s marketing efforts have also helped the wholesale price leap to \$10 per pound in 2012.

According to its members’ public testimony, the cooperative paid \$1.6 million in crew shares, bought \$850,000 worth of fuel in Alaska, had \$480,000 in maintenance work done on their vessels and bought another \$335,000 in groceries and supplies last year.

As a small fishery with what is now only two boats operating in state waters, managing the harvest is extremely simple.

That’s not the only thing Seaton is considering, however.

“We need to look at this in all aspects,” Seaton told the CFEC’s Brown in February, “and not just in ease of management.”

*Molly Dischner can be reached at [molly.dischner@alaskajournal.com](mailto:molly.dischner@alaskajournal.com).*

*Journal correspondent Bob Tkacz contributed to this report. He can be reached at [fishlawsbob@gmail.com](mailto:fishlawsbob@gmail.com).*



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Commercial Fisheries Entry Commission

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March 21, 2013

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Molly Dischner  
Reporter  
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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 47 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 3 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 47 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**



Southwest Alaska Municipal Conference  
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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,

A handwritten signature in black ink that reads "Andy Varner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Andy Varner  
Executive Director

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

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

Frank Kelty  
PO Box 162  
Unalaska, Alaska 9968  
E-Mail [kelty1149@yahoo.com](mailto:kelty1149@yahoo.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 vessel-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 an 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 are too many vessels involved ADFG may decide not to 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 to continue to work this fishery. I've seen first hand 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 is 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

----- Forwarded message -----

From: **Donald Lane** <[donlane71@gmail.com](mailto:donlane71@gmail.com)>

Date: Thu, Mar 21, 2013 at 9:39 AM

Subject: Scallops

To: "Rep. Paul Seaton" <[Representative\\_Paul\\_Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)>

Hi Paul,

I applaud your efforts to force a public review of the Alaska Scallop fishery. In the 80's I was on the Homer Fish and Game Advisory Board and we worked hard to develop the Augustine Island Scallop fishery, specifically for smaller Coastal boats. 6' dredge, king crab by catch cap etc. It was viable and important fishery typically with off the dock sales. The scallop beds were repeatedly raided by the Large offshore scallopers with big dredges and this piracy resulted in a number of years of forced closures. After the F/V Big Ben (?) incident that forced an emergency closure to all Alaska Scalloping, nearshore and offshore, the NPFMC was forced, mostly by hysteria, to create and all inclusive Scallop Management Plan. I testified a number of times at the NPFMC about the benefits and need to keep Cook Inlet out of the Plan. However, because the scallop beds were actually in Federal waters, my comments were ignored. I resent the way the Scallop Fishery has evolved. It is no longer a fishery that Homer has a sense of ownership and responsibility. The consolidation that has taken place has been troubling for me for years. The F/V Kilkenny still comes to Homer and sells scallops, because he has Homer connections and I appreciate that.

Please consider the following comments in your Scallop thoughts.

1. The NPFMC reacted and designed this program but it appears the problems have fallen in the State of Alaska lap.
2. The Owners of the Scallops permits clearly are not on the boats and I appreciate your efforts to shine a light on what the Scallop Fishery has become, and should have Constitutional review.
3. I believe the State is saddled with the financial responsibility for management, ie. I know the M/V Pandalus has spent a lot of time doing scallop surveys. How much has that cost and who is benefiting?
4. I noticed the Scallop permit owners (less than a handful) refer to all the jobs etc. etc. I am wondering if those are Alaskan jobs? I do not believe they import a lot of the crew from East Coast, not sure where the raw scallops end up for final processing. Much out of state I believe.

It is hard to get a sense of history after so many years but Homer once had a well managed local scallop fishery that was taken away. It has since been given to mostly corporate owners, the state seems to have management burden., I am not seeing where coastal Alaska has benefited

Again, thank you for shining a light on this debacle of management. What poor management can become after 25 years.

The Best. Don Lane.

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



# UNITED FISHERMEN OF ALASKA

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**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,

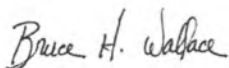
**Whereas**, CFEC, in conjunction with the Alaska Department of Fish & Game (ADF&G), has overseen the successful, stable, sustainable management of the weathervane scallop fishery for the past decade, in compliance with the Alaska Constitution and the Limited Entry Act; and,

**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

# North Pacific Fishery Management Council

Eric A. Olson, Chairman  
Chris Oliver, Executive Director



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

Telephone (907) 271-2809

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;

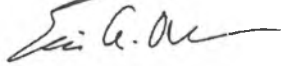
The North Pacific Fishery Management Council (Council) supports the State of Alaska extending the current limited entry program for the Weathervane scallop fishery in state waters. The Council delegated authority to the State of Alaska to manage all aspects of the scallop fishery in federal waters off 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

# **ADF&G SCALLOP FISHERY MANAGEMENT IN THE ABSENCE OF THE STATE VESSEL-BASED-LIMITED-ENTRY PROGRAM**

Prepared by:  
Gregg Rosenkranz  
ADF&G Scallop Biometrician  
April, 2013

The Alaska Department of Fish and Game (ADF&G) supported the vessel-based limited entry program for the state water weathervane scallop fishery when it was introduced in 2004 and when it was reconsidered in 2008. If the limited entry program expires in December 2013, the scallop fishery in state waters will revert to open access while the fishery in federal waters 3–200 nautical miles offshore will remain under the federal license limitation program (LLP) approved by the North Pacific Fishery Management Council (NPFMC) in 2001. If the state limited entry program expires, ADF&G fishery managers from around the state (Figure 1) who currently manage the scallop fishery in both state and federal waters would decide how to manage the open access state waters scallop fishery.

## **Scallop Fishery in State Waters**

In Southeast Region, seven discrete scallop beds have been identified from scallop observer program logbooks (Figure 2). Of this area, 17 percent lies in state waters and we estimate that 23 percent of the total 2009/10 through 2012/13 (most recent four seasons) catch of 629,000 lbs. scallop meat was harvested from state waters.

In the Central Region Area E fishery off Kayak Island (Figure 3), 10 percent of the area identified as scallop beds using observer program logbooks lies in state waters, and over the 2009/10 through 2010/11 seasons, about 2.5 percent of the 42,100 lbs. scallop harvest was taken from state waters. The Kayak Island fishery was not opened during the 2012/13 season.

In Kodiak Shelikof District, about 32 percent of the main scallop bed between Cape Douglas and Hallo Bay (Figure 4) lies in state waters, and we estimate that 24 percent of the 584,000 lbs. harvested during the 2009/10 through 2012/13 seasons was taken in state waters. Besides the main bed, several other areas further south in Shelikof Strait that lie in state waters open to scallop fishing are occasionally targeted by the fleet but have produced less than 5 percent of the total harvest since inception of the scallop observer program in 1993.

Scallop abundance in these fisheries is currently trending downward. For example, the 2012/13 Yakutat District scallop guideline harvest level (GHL) was set at 120,000 lbs. scallop meats, a decrease from 160,000 lbs. during the 2009/10–2010/11 seasons and 150,000 lbs. during the 2006/07–2008/09 seasons. Similarly, the Kodiak Shelikof District GHL was reduced to 105,000 lbs. in 2012/13 from 135,000 lbs. for 2011/12 and 170,000 lbs. for the 2007/08–2010/11 seasons. The Kayak Island scallop fishery, which is assessed by biennial dredge surveys, is currently closed due to low estimated scallop abundance.

## **Current Fishery Participants**

Four vessels have participated in the statewide scallop fishery over the past several seasons. Of these, two hold state waters licenses and were responsible for the state waters harvest detailed

above. One of these vessels is part of the three-vessel Alaska Scallop Association (industry cooperative) and one is a smaller vessel home ported in Kodiak that has participated in the Kodiak Area and Cook Inlet fisheries. ADF&G expects that current LLP license holders would fish in the same areas as any new entrants to the fishery, thereby competing with new entrants for the limited state waters scallop harvest. Note that two cooperative vessels that currently do not hold state waters permits would acquire rights to fish in state waters if the state's limited entry program expired. Further information on current license holders is contained in the attached Commercial Fisheries Entry Commission report *Limited Entry in the Alaska Weathervane Scallop Fishery*.

### **Management of an Open Access Scallop Fishery in State Waters**

Decisions on how to manage open access state waters scallop fisheries would fall to ADF&G shellfish managers in each affected region. At least three possibilities exist. First, if there was not a substantial increase in scallop fishing effort, state water scallop fisheries could be managed on a parallel basis with federal water fisheries, i.e., a single GHL would be set for a management unit that included both state and federal waters and fishing would proceed until closed. Typically, scallop fisheries are closed when the upper bound of the GHL is reached but may also be closed before then due to concerns about crab bycatch or poor fishery performance. Second, separate GHGs could be set for state and federal waters. These could be based on historic information from the scallop observer program summarized above or could be set using estimates from the Kayak Island dredge survey or from experimental CamSled video surveys in Kodiak Shelikof District. Currently, abundance estimates from survey data (where available) are made on a whole bed basis rather than being split between state and federal waters. Third, managers could keep state waters closed while allowing the scallop fishery to proceed in federal waters. This might be a preferred option if effort increased substantially and raised concerns about conservation of the scallop resource. Note that in many parts of the state, scallop dredging has been prohibited in state waters by the Alaska Board of Fisheries (Figure 1).

Onboard scallop observers are required by state regulations for all vessels fishing for weathervane scallops except in Cook Inlet, where the fishery occurs in federal waters and is limited to a single dredge with maximum width 6 ft. Vessels fishing for scallops in all other areas can deploy up to two 15 ft. dredges (some smaller vessels are limited by the LLP to two 10 ft. dredges) and carry onboard observers who report to ADF&G by email regularly during fishing operations. Managers would continue to rely on inseason information from onboard observers to monitor scallop fishery harvest and bycatch in the event of open access scallop fisheries in state waters. New participants would need to make arrangements with observer contractors well ahead of the season as a limited number of trained scallop observers are available.

A possible enforcement issue could arise if the state water scallop fishery went to open access. Vessels fishing for scallops under the federal LLP are required to carry a vessel monitoring system (VMS), which allows real-time tracking of vessel position. Vessels fishing for scallops in state waters under open access would not be required to carry VMS under current regulations, and LLP vessel operators would likely complain to ADF&G, Alaska State Troopers, and/or NOAA Fisheries Office of Law Enforcement if these vessels appeared to impinge on federal waters. This problem would likely be exacerbated by the irregular nature of state-federal water boundaries in scallop fishing areas (Figures 2-4), which could make determination of vessel position with respect to the boundary difficult.

Barriers for new entrants to an open access state water scallop fishery include the onboard observer requirement, obtaining scallop dredges, approval for food processing operations (shucking or shucking/freezing of scallops) by the Alaska Department of Environmental Conservation, relatively low harvest levels, developing markets, and Alaska weather. Onboard observers currently cost \$300/day and require vessels to provide accommodations for an extra person onboard who is not part of the fishing operation. Scallop dredges are heavy pieces of fishing gear, and most are built on the east coast. Vessels 50 ft. or less in overall length would in general not be well-suited for this fishery due to space and stability requirements. Still, the potential number of new entrants to an open access state water fishery is impossible to predict at this time.

As a historical note, analysis performed by NPFMC staff during consideration of the LLP (see attached report) indicated that the fishery was overcapitalized during the 1990s. Indeed, the primary reason for NPFMC approval of the LLP was economics; vessel operators successfully argued that under open access, too many vessels chasing too few scallops would make most operations unprofitable.

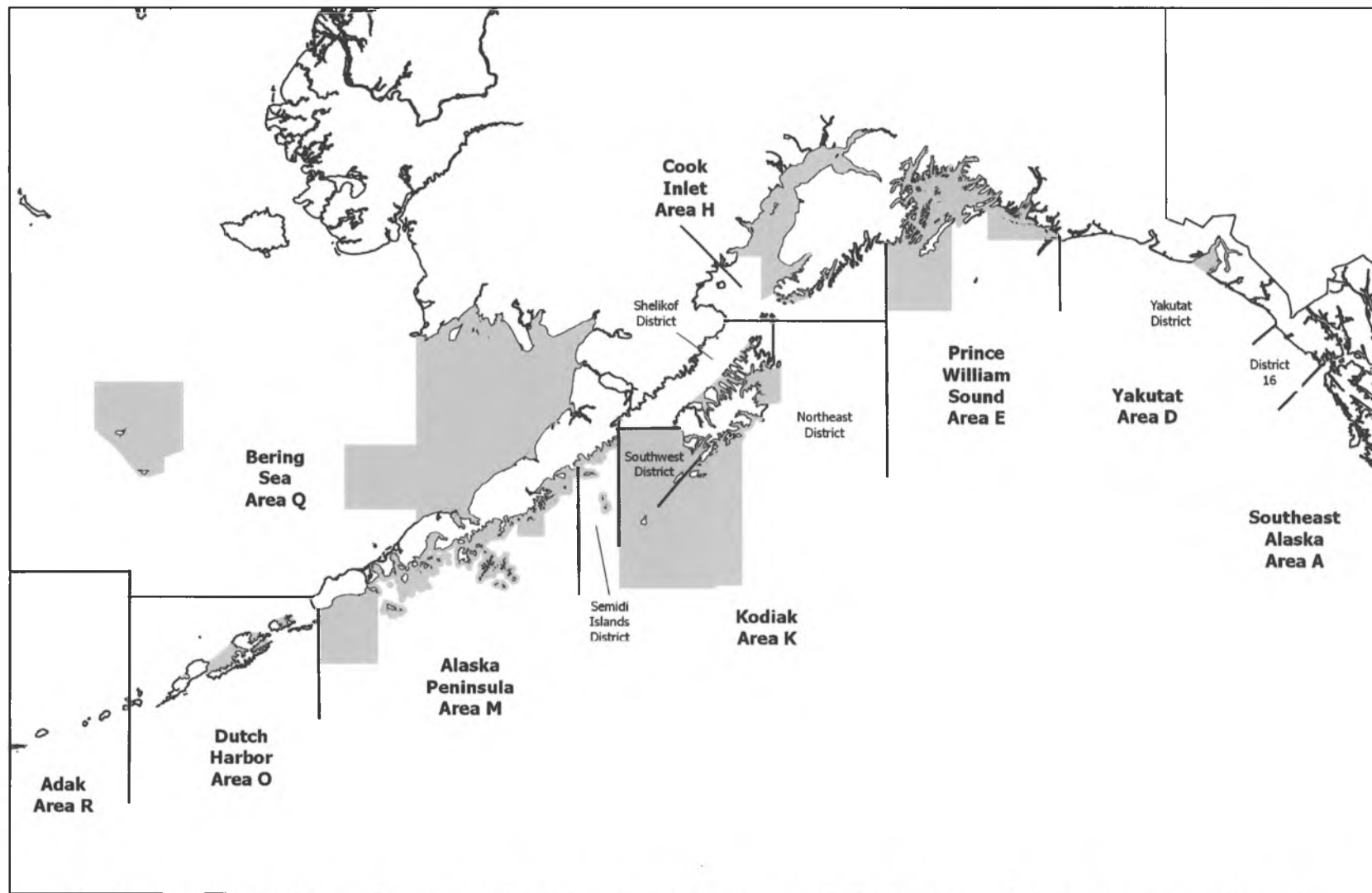


Figure 1. Map showing Alaska weathervane scallop fishing registration areas and districts. Grey-shaded areas are closed to scallop fishing. Scallop fisheries with fishing in both state and federal waters occur in Southeast Region's Area D, Central Region's Area E, and in Kodiak Shelikof District, part of Westward Region.

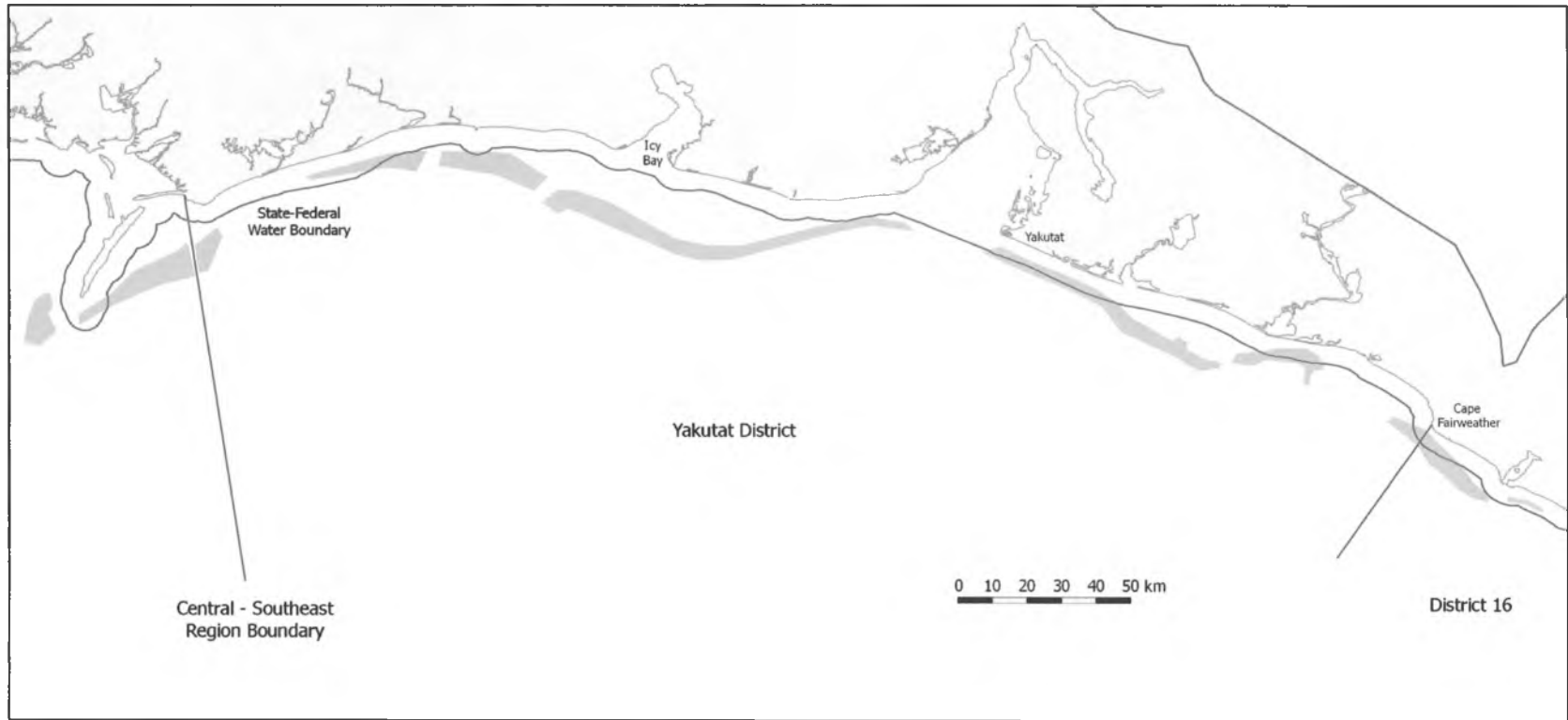


Figure 2. Map showing eastern Gulf of Alaska scallop fishing areas in state and federal waters identified from observer program logbooks (green polygons).

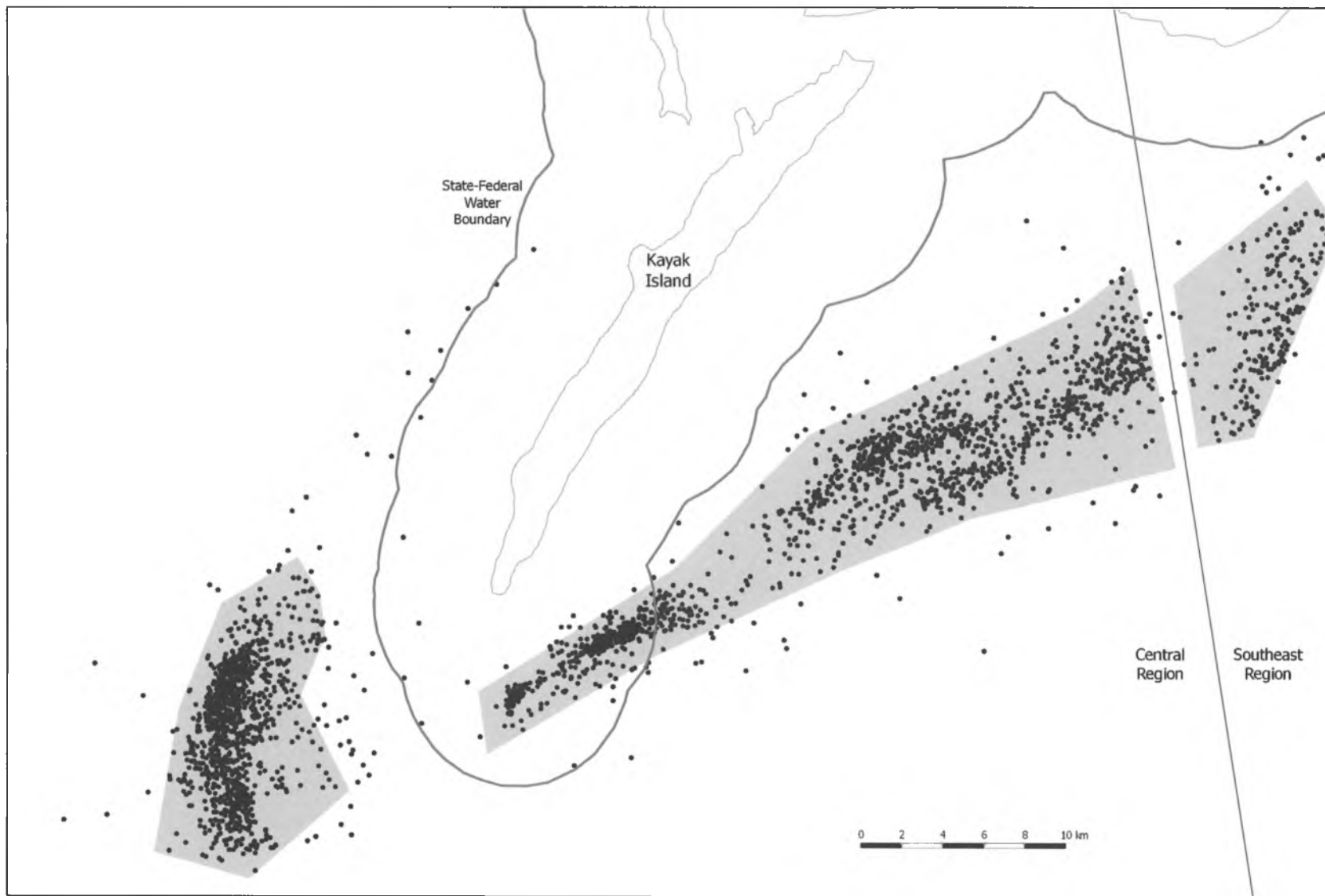


Figure 3. Map showing scallop fishing effort distribution around Kayak Island. Black dots are starting positions of all scallop tows between 1997 and 2011 from observer program logbooks.

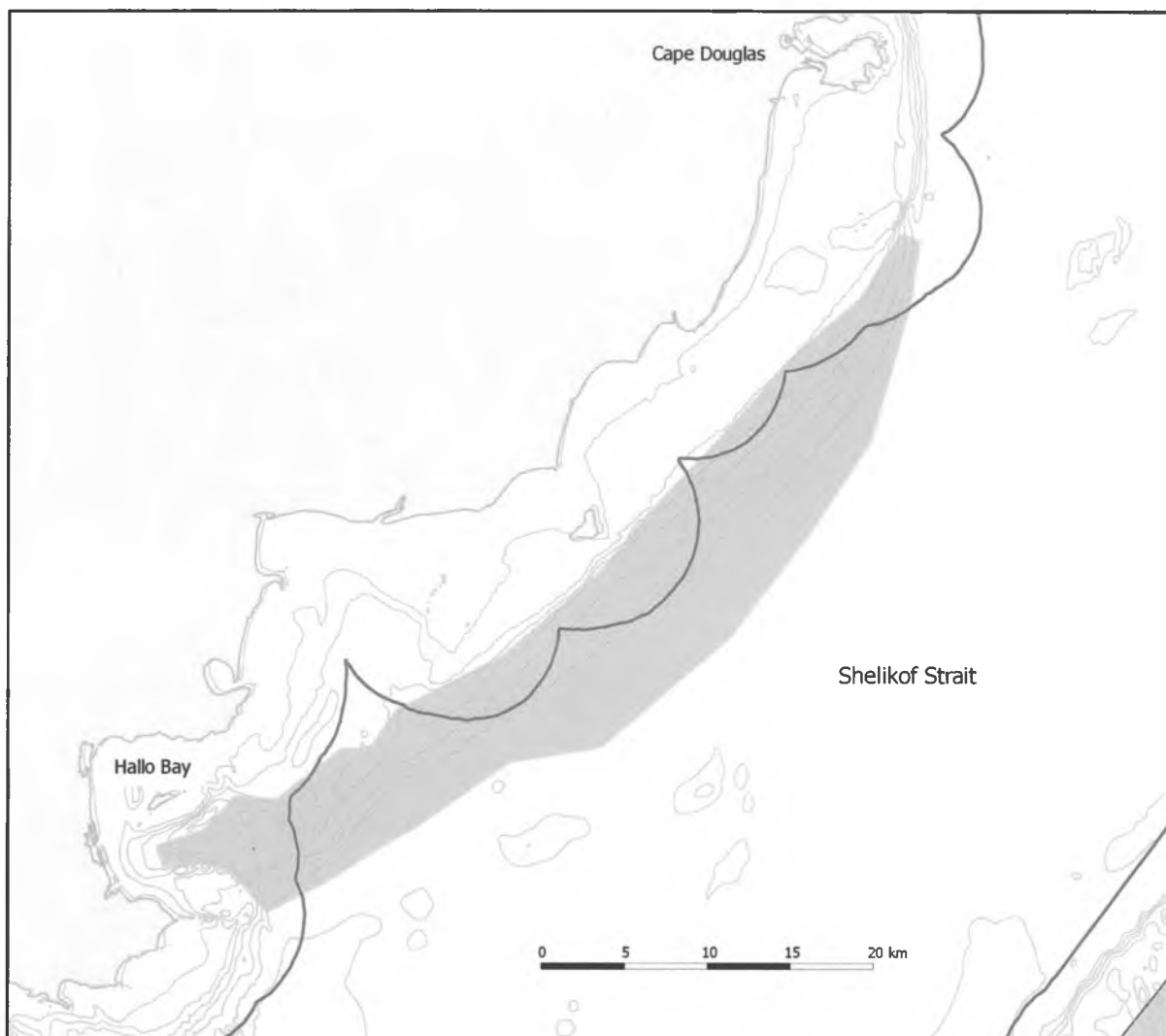


Figure 4. Map showing state and federal water boundary (red line) in Kodiak Shelikof District. The green polygon constructed from observer program logbook data encloses area that produced over 95 percent of the Shelikof District scallop harvest.



# *Kodiak Island Borough*

*Office of the Borough Mayor*

710 Mill Bay Road

Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391

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March 26, 2013

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

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

Representative Seaton,

The Kodiak Island Borough would like to express 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, Southwest Alaska Municipal Conference, and now the Kodiak Island Borough, due to the importance of maintaining healthy fisheries in our region.

Sincerely,  
KODIAK ISLAND BOROUGH

A handwritten signature in black ink, appearing to read "J. M. Selby". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

Jerome M. Selby, Mayor

**Louie Flora**

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**Subject:** FW: Alaska Journal of Commerce article on scallops

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**From:** Louie Flora  
**Sent:** Thursday, March 21, 2013 9:36 AM  
**To:** Rep. Peggy Wilson; Rebecca Rooney  
**Subject:** Alaska Journal of Commerce article on scallops

Mar 13, 2013 - 04:18 PM AKST

Shell game: state scallop fishery faces scrutiny

**MOLLY DISCHNER, ALASKA JOURNAL OF COMMERCE**

A bill extending the limited entry program for scallops is making its way through the Alaska State Senate, but not without scrutiny.

On March 11, an amendment to Senate Bill 54 passed in the Resources Committee to shorten the length of the program as a result of concerns raised in hearings from legislators and in public comment about consolidation in the fishery over the last decade under parallel state and federal limited entry.

When the bill was introduced by Resources Committee Chair Sen. Cathy Giessel, R-Anchorage, in February, it would have extended the program by 10 years until 2023. Before the bill was introduced, discussion revolved around making it permanent.

The concerns have arisen because 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 along with the F/V Ocean Hunter, one of the two vessels that still fish in state waters. Since 2009, 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.

According to a 2006 federal report on the scallop fishery, about \$244,000 in “lease fees” were paid from Stone’s Ocean Fisheries LLC and Mark Kandianis’ Provider Inc. in 2003 to permit holders who were not actively fishing.

The scallop limited entry program administered by the Commercial Fisheries Entry Commission, or CFEC, is scheduled to sunset at the end of 2013, a result of the last extension of the program passed by the legislature in 2008.

Because some of the scallop beds around Alaska straddle the three-mile boundary between state and federal waters, the state limited entry program operates in conjunction with the federal program.

Gov. Sean Parnell told Journal correspondent Bob Tkacz on Feb. 28 that CFEC asked him to have the bill introduced under his sponsorship, but he did not do so because of the number and scope of other bills he is sponsoring. Instead, Giessel brought it forward.

“I support the bill,” Parnell said.

### **Quick consolidation**

Soon after the 2008 extension was approved by the Alaska legislature, partnerships involving Stone, Glenn and Egil Mikkelsen, John Lemar and Tom Minio subsequently formed two new LLCs on May 7, 2008, and then acquired three federal licenses over three days in June 2008.

Two of those permits were purchased from Mark and Teresa Kandianis.

Associated with those federal licenses purchased 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.

Bill Harrington of Kodiak runs the Kilkenney, which is the only other boat other than the Stone group’s Ocean Hunter now operating in state waters, and he delivers fresh scallops mainly to Homer. Max Hulse of Eagle River has also previously delivered fresh scallops.

Hulse said he intends to fish again in the future, and he and Harrington have gone on the legislative record supporting the program’s extension.

At the March 11 Resources Committee hearing, a letter from Kodiak fishermen George Hutchings questioned the current system and objected to a letter from the federal North Pacific Fishery Management Council to the Alaska legislature in support of extending the scallop limited entry in state waters.

That letter from the North Pacific council came at the request of Stone, who brought the matter to the council on the last day of its meeting in Portland, Ore., in February during the “staff tasking” agenda item.

At the time, Stone passed around to the council a copy of a similar letter written in 2007 to the legislature, and a 2007 Alaska Department of Fish and Game report on the scallop fishery.

Council member Duncan Fields of Kodiak asked Stone, “Are there additional issues we should consider as we write the letter as opposed to 2007?”

In response, Stone said, “Mr. Fields, no. Everything is identical. I believe there was one change in ownership of a permit, federal and state. I don’t believe there’s anything else. Quotas are very similar, quotas are slightly down. There are no other issues.”

However, there have been at least four federal license transfers since the 2007 ADFG report and the last council letter to the legislature was written, with Stone personally involved in three of the transactions.

When contacted by the Journal, Stone said he “misspoke” before the council regarding license transfers since 2007 because he did not have the information in front of him.

Hutchings wrote to Giessel on March 7 that he was in Portland for the council meeting and would have stayed through the end “if scallops had 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 the personal testimony from Mr. Jim Stone, who is the primary player in this game and voiced only his own opinion ...” Hutchings wrote to Giessel.

CFEC Commissioner Ben Brown confirmed for the committee that there was no advance notice that the council would consider a letter at that meeting, but said that there was significant opportunity for the public to participate when the program was initially developed.

### **Seaton questions constitutionality**

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.

Multiple federal permits may be fished off the same vessel, but only one state permit may be associated with a vessel.

At a House Finance Committee hearing for the CFEC budget Feb. 14, Rep. Paul Seaton, R-Homer, raised the constitutional question to Brown of CFEC. Seaton is also the chair of the House Fisheries Committee.

“I’m concerned, I have been concerned for a long time, about the vessel entry permits,” Seaton told Brown. “They don’t require a person to participate in the fishery at all. I’m fearful that consolidation that has taken place in that fishery has reached a point where we may be running afoul of the constitutional prohibition on a special right of fisheries.”

Later in that hearing, Brown responded to Seaton’s critique of the scallop vessel-based program.

“The current operation, although it may not to be Rep. Seaton’s liking in every way, but it is not diminishing the resource,” Brown said.

Seaton had an answer for that as well.

“Time does go on and things change, and there wasn’t consolidation to a very few select people at the time (in 2008), which may run afoul of other parts of the constitution and a special right of fishery,” Seaton said to Brown.

After the hearing, Seaton questioned the CFEC advocacy for the scallop program further to Journal correspondent Tkacz.

“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,” Seaton said 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.”

If the bill passes the Senate, it may go to the House Fisheries Committee, which Seaton chairs, although that isn’t guaranteed. A determination won’t be made until the bill is on the Senate floor, and it could go to House Resources or another committee.

Brown addressed the constitutional question in the first Senate Resources Committee hearing on the bill March 4, stating that, “as an attorney, if this were unconstitutional somebody would have challenged it by now.”

But both Seaton and Hutchings disagree. In his letter, Hutchings said that if he had the financial resources, he would consider appealing to the state and federal court systems.

### **Alaska case law**

There are two Alaska Supreme Court cases decided in 1988 and 2005 that are contributing to the question of constitutionality. The first is *Johns vs. CFEC*, in which a fisherman challenged the “optimum number” of permits that were to be issued for the state herring fishery.

In ruling for *Johns*, the Court addressed the tension inherent in the Limited Entry Act and the constitutional requirement for Alaska resources to be available to all Alaskans.

“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,” the Court wrote. “Without this 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.”

In *Grunert vs. State*, decided in 2005, the Supreme Court struck down a cooperative fishery in Chignik approved by the Board of Fisheries.

Under that cooperative, designed to reduce fishing effort and improve quality at a time of depressed salmon prices, permit holders were paid lease fees by fishermen who took the harvest.

During the first year of the cooperative, 77 boats joined and only 18 fished.

In striking down the cooperative, the Court wrote: "Participation by the individual is inherent in the limited entry permit system. The Chignik cooperative fishery scheme is fundamentally at odds with this premise because it allows people who are not actually fishing to benefit from the fishery resource ... The co-op fisher in this scenario sharply diverges from the model of the economically dependent fisher whom the Limited Entry Act was intended to protect."

### **Federal control**

There is also a federal ownership cap of two licenses for any "individual, corporation, partnership, or other legal entity."

According to the final rule for the scallop fishery published in the Dec. 14, 2000, Federal Register, "The two-license ownership limit is intended to prevent any person from obtaining an excessive share of harvest privileges in the scallop fishery as required by national standard 4 of the Magnuson-Stevens Act. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery."

Despite federal intent language to limit any person to two permits, and a similar state intention limiting to one per vessel, federal regulators have said the current ownership structures for Stone and his partners are legal.

The National Marine Fisheries Service Restricted Access Management Division said the federal program does not specify legal corporate ownership structures, and because each entity has a different name, it is considered a different entity even if the shareholders are the same.

Stone also noted that while the same group of individuals holds multiple permits, no one person has the equivalent to ownership of even one entire vessel.

And Stone asserts that opportunity still exists for new participants to enter the fishery if they so desire, although individuals testified at the first Senate Resources hearing that they would like to participate were the fishery more accessible to small, new, participants.

### **Lobbyists on board**

Legislators and participants aren't the only ones weighing in on the program.

The United Fishermen of Alaska, of which the Alaska Scallop Association is a member, submitted a letter unanimously supporting the program. The Alaska Scallop Association, with its address at Stone's Lakewood, Wash., residence, has hired several lobbyists to help make its case.

According to the state's lobbyist directory, former CFEC Chairman Frank Homan, Gerald McCune, Thomas Meiners and former United Fishermen of Alaska President Bobby Thorstenson are being paid a total of \$47,000 to lobby for SB 54.

Homan, who Tkacz reported for Laws for the Sea has been accompanied by current CFEC Commissioner Brown in the halls of the Capitol, described his lobbying interests on behalf of the scallop association as supporting a program "promoting local ownership and control of the state issued permits" and said it enabled several smaller Alaskan scallopers to participate in the fishery.

"These fisheries were once owned and controlled by entirely out of state interests and would likely revert to such control if the Program were to sunset," Homan wrote in his disclosure.

The necessity of limited access was a point made by ADFG Commissioner Cora Campbell, Brown and others in the first Senate Resources Committee hearing March 4.

Proponents of extending the program have said ADFG would not be able to manage the fishery if it were in open access.

The quota for the state waters fishery is limited, they have said, and open access could lead to overfishing so quickly that the state might not allow a fishery at all.

In his letter to the committee, Hutchings of Kodiak, disputed that claim by noting the state water fishery could operate as other parallel fisheries do under open access.

Prior commissioners of ADFG have told the legislature that the department has authority to require 100 percent observer coverage, which allows real-time catch reporting and prevents exceeding crab bycatch limits, as well as the ability to set a separate harvest in state waters or to close areas to prevent localized depletion.

The high start-up costs and small state harvest also make it unlikely several boats would rush into the fishery under open access.

"If State scallop fishery is allowed to revert to open access, new participants that are motivated to fish more cleanly could target scallops," Hutchings wrote. "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."

There is no question that Alaska scallop stocks are in good shape and are managed conservatively. The Alaska Scallop Association's marketing efforts have also helped the wholesale price leap to \$10 per pound in 2012.

According to its members' public testimony, the cooperative paid \$1.6 million in crew shares, bought \$850,000 worth of fuel in Alaska, had \$480,000 in maintenance work done on their vessels and bought another \$335,000 in groceries and supplies last year.

As a small fishery with what is now only two boats operating in state waters, managing the harvest is extremely simple.

That's not the only thing Seaton is considering, however.

"We need to look at this in all aspects," Seaton told the CFEC's Brown in February, "and not just in ease of management."

*Molly Dischner can be reached at [molly.dischner@alaskajournal.com](mailto:molly.dischner@alaskajournal.com).*

*Journal correspondent Bob Tkacz contributed to this report. He can be reached at [fishlawsbob@gmail.com](mailto:fishlawsbob@gmail.com).*

*This article appears in the March Issue 3 2013 issue of Alaska Journal of Commerce*

Read more: <http://www.alaskajournal.com/Alaska-Journal-of-Commerce/March-Issue-3-2013/Shell-game-state-scallop-fishery-faces-scrutiny/#ixzz2OCB2bNxV>

# Alaska State Legislature

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## REPRESENTATIVE PAUL SEATON HOUSE DISTRICT 30

### **Synopsis of Ownership and Control of Fishing Operations In The Alaska Weathervane Scallop Fishery**

The scallop fishery occurs in both state and federal waters. As a result, there are two limited entry permit systems: one for state waters, and one for federal waters. Although there are two permit systems, the fishery is managed as a single unit. A federal fishery management plan delegates management authority to the Alaska Department of Fish and Game. Fishery rules, including guideline harvests and bycatch limits, apply to both state and federal waters.

In 2004, CFEC developed limited entry regulations for scallop permits in state waters. Nine independent boats had fishing histories that qualified them for permits. The CFEC regulations created a system that worked in concert with the federal limited entry program; each of the boats permitted by the state also held a federal limited entry permit. This allowed boats to easily fish back and forth in state and federal waters.

The question is then, nine years after the implementation of state limited entry, who controls the fishing activities of the original nine operations?

A CFEC report shows that a Washington Group of corporate partners controls five operations, and leases the harvest rights of a sixth vessel. Of the remaining three operations, only one is currently fishing the F/V Kilkenny. The other two fishing operations are controlled by EWT, LLC from New Bedford and the Wayward Wind corporation from Alaska. Neither of these two operations has been registered to fish for scallops since 2005.

The following provides a summary of who controls the fishing activities of the original nine qualified vessels, along with the current status of their original permit history:

#### **Washington Group:**

- 1) Former F/V Carolina Girl II; relinquished CFEC permit eligibility; federal permit held by the Washington Group
- 2) Former F/V Pursuit; relinquished CFEC permit in 2007; federal permit held by the Washington Group

- 3) F/V Carolina Boy; CFEC permit assigned to a vessel in Virginia; federal permit held by the Washington Group
- 4) F/V Ocean Hunter; CFEC permit and federal permit held by the Washington Group
- 5) F/V Provider; CFEC permit suspended (not named to a vessel) by a member of the Washington Group; federal permit held by the Washington Group.
  
- 6) F/V Forum Star; CFEC permit and federal permit held by Seattle corporations. Harvest rights are leased to the Washington Group. Last registered to fish in 2002.
  
- 7) Former F/V Arctic Storm; CFEC permit suspended (not named to a vessel) and federal permit held by a New Bedford corporation. Last registered to fish in 2005.
  
- 8) F/V Wayward Wind; CFEC permit and federal permit held by Alaska corporation. Last registered to fish in 2005.
  
- 9) F/V Kilkenny; CFEC permit and federal permit held by Alaska individual. Actively fishing

# MEMORANDUM

State of Alaska

Department of Law

TO: Commercial Fisheries Entry  
Commission

DATE: April 1, 2013

FROM: Thomas E. Lenhart *TEL*  
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

----- Forwarded message -----

From: **Twomley, Bruce C (CFEC)** <[bruce.twomley@alaska.gov](mailto:bruce.twomley@alaska.gov)>

Date: Sat, Mar 2, 2013 at 1:12 PM

Subject: RE: SB 54

To: Bob Tkacz <[fishlawsbob@gmail.com](mailto:fishlawsbob@gmail.com)>

Cc: "Brown, Ben (CFEC)" <[ben.brown@alaska.gov](mailto:ben.brown@alaska.gov)>

**Hi Bob—**

**I heard the Honorable Paul Seaton's allegation of exclusivity only by watching a televised budget hearing (at which you may have been present).**

**Representative Seaton remains committed to terminating the limitation and returning the fishery to open entry on December 30.**

**Normally, a limitation would be expected to survive indefinitely allowing for completion and implementation of an optimum number study – not the case here.**

**On the other hand, eliminating or extending the sunset date would preserve our statutory authority to perform an optimum number study and allow for CFEC to follow through. The abnormality is the**

pending sunset of the limitation, a feature that distinguishes this limitation from almost all others.

And, in response to your last question, under our division of labor, my co-commissioner (and CFEC's legislative liaison) Benjamin Brown participated in the discussions leading to the introduction of SB 54. I did not. The best I can do for you is to refer you to Ben – my source of information on the subject.

Have a good weekend. --bruce

**From:** Bob Tkacz [mailto:[fishlawsbob@gmail.com](mailto:fishlawsbob@gmail.com)]  
**Sent:** Wednesday, February 27, 2013 12:56 PM  
**To:** Twomley, Bruce C (CFEC)  
**Subject:** Re: SB 54

Hello Bruce,

I've been reading your artfully worded letter carefully and appreciate your creative comments.

On the 4th page in the paragraph beginning "In closing ..."

You say 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."

As you have acknowledged receiving the allegations, is CFEC carrying out its "statutory responsibility" and examining an optimum number for the fishery?

If not, why not and why has CFEC chosen to, in this case, act abnormally.

Also, I'd still like to know if CFEC asked the governor to introduce SB 54 or a reason you refuse to answer that very simple question.

Cheers

Bob

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**