



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Commercial Fisheries Entry Commission
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December 7, 2022

Brett Wilbanks, Chairman
ShrimpPros Association
Box 512
Girdwood, Alaska 99587

Bruce Bowman, Vice Chairman
ShrimpPros Association
HC 60 Box 227 I
Copper Center, Alaska 99573

Re: Interim Review of the December 6, 2021, Petition to Limit Entry in the Prince William Sound Shrimp Pot Fishery

Dear Mr. Wilbanks and Mr. Bowman:

The Commercial Fisheries Entry Commission (Commission or CFEC) wrote you on December 8, 2021, formally denying ShrimpPro's petition to limit entry into the Prince William Sound (PWS) commercial shrimp pot fishery for permit categories P09E (under 60 feet) and P91E (60 feet and over). The initial denial was due to the incompatibility between the time it takes to adequately review a petition to limit a fishery and timelines set in the Alaska Administrative Procedures Act (APA found in Alaska Statute (AS) 44.62). The APA contains instructions to state agencies when engaged in developing regulations which is technically what happens when the Commission limits a fishery. The APA requires an agency in receipt of a regulatory petition from the public to respond in 30 days by proposing the sought regulation or denying it. Any review to limit a fishery takes more time than 30 days, therefore the denial is perfunctory.

The Commission takes your concerns seriously and continues to review the fishery. In accordance with the Limited Entry Act (the "Act" found in AS 16.43), the Commission is established to fulfill the Act's purpose as:

16.43.010. Purpose and findings of fact.

(a) It is the purpose of this chapter 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 into the commercial fisheries in the public interest and without unjust discrimination.

Essentially a decision to limit a fishery is based on 1.) the ability to sustainably manage a fishery and 2.) the economic health of participants. In reviewing the fishery, the Commission is returning to you with an update and not moving to limit the fishery at this time.

Background

The Commission is in receipt of ShrimpPros February 2, 2022, response letter and findings. We sincerely appreciate the effort put forward in this well-developed work. In the findings, ShrimpPros noted the following concerns.

1. Due to pot limits in the non-commercial fishery, there is an increase in “speculative hobbyists” in the commercial fishery.
2. Overharvests by the non-commercial fishery is straining the shrimp resource.
3. The individuals coming into the fishery from the non-commercial fishery are doing so to obtain additional allocation which removes product from the market, reduces average earnings for commercial harvesters, and threatens to over-exploit the shrimp resource.

To these concerns there are a few general observations. Individuals who obtain an interim use permit, but do not fish the permit likely do not threaten to the current economics of the fishery or future efforts to limit the fishery. Limited entry permit applications in the past required participation. To the extent “speculative hobbyists” includes these folks, they have little to no claim in the event of a limited entry permit application. Previous permit applications allowed for participation points in the absence of actual participation, but those points required demonstration of an unavoidable circumstance that was special or unique in nature.¹

The third concern is at odds with the Commission’s understanding of how recordkeeping occurs in the commercial fishery confirmed in discussion with Alaska Department of Fish and Game (ADF&G) managers. If an individual fishes under a commercial fishing permit for home pack the harvest is recorded and would not lead to over exploitation. Failure to report harvest under a commercial fishing permit is illegal and an enforcement issue. We agree it reduces the amount of product available for true commercial operators. How much of the commercial harvest is ending up as home pack is addressed to some measure in this review and remains a larger question for additional work.

These observations do not dismiss the concerns, but rather point to questions for additional review as addressed further in this analysis.

¹ Spagnola v. CFEC MOJ Op No 153 (Alaska 1984), Galeano v CFECMOJ No. 375 (Alaska 1987), Copeland v. State, CFEC 167 P.3d 682 (Alaska 2007).

Economic Considerations

The Commission is charged by statute to determine if increases in the level of participation impairs or threatens to impair the economic welfare of the fishery and the overall efficiency of the harvest. This implies there is a steady cohort of operators facing actual or potential harm from a large surge of new entrants.

This analysis focuses solely on permit category P09E given little recent activity with P91E permits. Commission records confirm many of the general trends provided in your findings.² From 2010 through 2021 there is a range of 108 (2015) to 187 (2010) permits issued annually. Commission data indicates 140 permits issued in 2022, but no harvest data is available at this time. Perhaps 2010 was high given optimism and excitement over the fishery opening. The next highest number of permits issued in the last five years was 151 in 2021. Table 1.

Table 1: Prince William Sound P09E Permit Data

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Permits Issued	187	176	151	142	124	108	128	119	109	139	125	151
Permits with a delivery	70	40	32	42	27	23	44	49	39	63	63	58
Permits with no delivery	117	136	119	100	97	85	84	70	70	76	62	93

The Commission can track individual permit holder deliveries. Through the years 2010-2021 permits were issued to 501 unique individuals. Of those 501 individuals, 294 never made a landing; therefore, in a limited entry permit application review those permit holders would likely not qualify for a permit. The reference made earlier to earning participation points due to unavoidable circumstances was often for a fishing season of no activity in and amongst fishing seasons with activity. It is difficult to imagine a scenario where a permit is awarded to an individual having no actual catch history.

Past limited entry application reviews put higher weight on more recent activity. Many limited fisheries processes set the number of permits at the highest level of participation in the last four years although that is not mandatory in this case. For review purposes, this is 63 permits as was seen in 2019 and 2020, up from a low of 23 in 2015.

From 2016-2021, 268 people were issued an interim use permit. Of those, 139 did not make a landing which holds the number of individuals with harvest history over this period at 129. To gauge what economic harm might look like, the analysis attempts to identify the steady cohort of operators referenced earlier. From 2016-2021, 13 individuals fished each year, 5 fished five years, and 8 fished four years. This adds to 26 individuals who participated in at least four of the last six years. Starting with these 26 individuals appears reasonable to test economic harm.

If the industry was finding an increase of speculators, non-commercial harvesters, and hobbyists, we might expect to see several impacts on the “core” group including a declining number of deliveries per permit holder, a decline in the core group’s percentage of the total guideline

² As ShrimpPros noted in its February 2, 2022, letter to commissioners Smith and Kelley, data between different agencies have some differences. For this analysis, the Commission is using its data unless indicated otherwise.

harvest level (GHL), and an increase in the number of participants making few deliveries (those fishing for home pack or history).

Table 2 compares harvest data for the 26 core operators who participated in at least four of the last six years, to all other participants. It appears relevant to highlight which area was fished for each year given similarities in fishing effort based on the area.³

Table 2: Prince William Sound P09E Core Operators v All Others, 2016-2021

Harvest Area	2016	2017	2018	2019	2020	2021
	Area 1	Area 2	Area 3	Area 1	Area 2	Area 3
Core Operators - 26 permit holders (not all 26 holders fished each year)						
Total pounds harvested	24,909	39,388	54,129	39,707	31,233	47,894
Average gross earnings per harvester	\$ 8,310	\$ 11,196	\$ 15,090	\$ 9,832	\$ 5,863	\$ 18,251
Pounds harvested /total pounds harvested	62%	66%	85%	63%	49%	72%
Average pounds/delivery	160.39	148.51	186.66	162.00	240.41	157.92
Average \$/pound	\$ 6.34	\$ 6.25	\$ 6.41	\$ 6.44	\$ 4.51	\$ 8.00
Average deliveries	8.9	14.4	13.3	11.6	5.21	11.4
Average earnings per permit holder	\$ 8,310	\$ 11,196	\$ 15,090	\$ 9,832	\$ 5,863	\$ 18,251
All other operators						
Number of operators	25	27	16	37	39	37
Total pounds harvested	15,244	20,457	9,373	23,484	32,257	18,206
Average gross earnings per harvester	\$ 3,879	\$ 4,764	\$ 3,702	\$ 4,270	\$ 3,850	\$ 3,728
Pounds harvested /total pounds harvested	38%	34%	15%	37%	51%	28%
Average pounds/delivery	164.96	126.97	100.01	168.70	180.75	111.26
Average \$/pound	\$ 6.36	\$ 6.29	\$ 6.32	\$ 6.73	\$ 4.66	\$ 7.58
Average deliveries	5.3	7.2	5.9	5.1	4.6	5.1
Average earnings per permit holder	\$ 3,879	\$ 4,764	\$ 3,702	\$ 4,270	\$ 3,850	\$ 3,728

In Area 1, the northernmost area in the Sound and proximate to both Whittier and Valdez, results between 2016 and 2019 were consistent save for the number of new participants starting in 2019. Despite the large number of new participants in 2019, the core operators maintained their overall share of the fishery bringing in 63% of the GHL. Yet, it is curious the non-core operators sustained larger pounds per delivery.

Area 2 covers waters adjacent to Whittier and assumed easiest for new participants to participate. The number of active permit holders somewhat reflects this, but 2020 stands in stark contrast to other years. With the highest catch per unit efforts since 2010 at 2.14 lbs./pot, ADF&G reported the fishery took just 18 days to prosecute – compared to 41 days in 2017 when Area 2 was last fished.⁴ While core operators routinely made on average over 10 deliveries in most years, they

³ The Prince William Sound commercial shrimp fishery is conducted in three areas of the Sound. In any year, the entire commercial fishery will occur in only one area, rotating on a three-year cycle. Past harvest records indicate consistently different levels of productivity based on the area fished.

⁴ Rumble, J. M., J. Baumer, X. Zhang, B. Buzzee, E. Russ, J. Loboy, and M. Byerly. 2022. Prince William Sound shrimp pot fisheries, 2010–2020. Alaska Department of Fish and Game, Special Publication No. 22-10, Anchorage, Table 6, page 21.

had half of that in 2020. The average pounds per delivery was sharply up at 240 lbs., about 25% larger than normal. The price per pound was down to \$4.51/lb., far below the \$6.40 normally received. 2020 was also the only year in this analysis that the core operators did not harvest over half of the GHJ with just 49%. At under \$6,000 in average earnings per permit holder for the core operators, this was the poorest season during this period.

In looking at 2020, it is understandable that long-time harvesters were concerned about the influx of new participants. However, 2021 reset many of these variables to mirror those of years prior. It is important to note Area 3 is the poorest performing fishing area as judged by catch per unit effort. With that, one anticipates less participation by the more casual or speculative harvesters. The strongest feature of the fishery in 2021 was increased average earnings of more than \$18,000 for the core group, over three times the earnings just the year prior. Equally helpful was a price per pound of \$8.00, 24% and 77% higher than 2019 and 2020, respectively.

In looking at recent trends, between 2016 and 2019, there was more than a doubling of the number of the non-core operators. In reviewing the participant data, nine of these individuals started making deliveries in 2019 and continued to make deliveries each year thereafter. These operators appear to be more than speculators. In reviewing these new and consistent harvesters, we performed the same analysis from Table 2 listed in Table 3 by bringing these nine individuals under the umbrella of the core operators into an “expanded core” to see if they are strong contributors or still among the more casual participants.

Table 3: Prince William Sound P09E "Expanded" Core Operators v All Others, 2016-2021

	2016	2017	2018	2019	2020	2021
Harvest Area	Area 1	Area 2	Area 3	Area 1	Area 2	Area 3
Core Operators (26 permit holders) plus New Participants who fished all of the last 3 years (9 for a total of 35 permit holders)						
Total pounds harvested	24,909	39,388	54,129	46,151	38,645	54,112
Average gross earnings per harvester	\$ 8,310	\$ 11,196	\$ 15,090	\$ 8,551	\$ 5,351	\$ 14,507
Pounds harvested /total pounds harvested	62%	66%	85%	73%	61%	82%
Average pounds/delivery	160.39	148.51	186.66	155.22	216.56	157.05
Average \$/pound	\$ 6.34	\$ 6.25	\$ 6.41	\$ 6.48	\$ 4.57	\$ 8.04
Average deliveries	8.9	14.4	13.3	10.6	5.6	9.7
Average earnings per permit holder	\$ 8,310	\$ 11,196	\$ 15,090	\$ 8,551	\$ 5,351	\$ 13,651
All other operators						
Number of operators	25	27	16	28	30	28
Total pounds harvested	15,244	20,457	9,373	17,040	24,845	11,988
Average gross earnings per harvester	\$ 3,879	\$ 4,764	\$ 3,702	\$ 4,083	\$ 3,810	\$ 3,071
Pounds harvested /total pounds harvested	38%	34%	15%	27%	39%	18%
Average pounds/delivery	164.96	126.97	100.01	179.32	189.08	97.20
Average \$/pound	\$ 6.36	\$ 6.29	\$ 6.32	\$ 6.71	\$ 4.60	\$ 7.17
Average deliveries	5.3	7.2	5.9	4.3	4.0	4.9
Average earnings per permit holder	\$ 3,879	\$ 4,764	\$ 3,702	\$ 4,083	\$ 3,810	\$ 3,071

While not as productive as the “core” group, these nine harvesters did not substantially bring down the overall price per pound, average number of deliveries, or the average earnings. In each

year, this new group caught approximately 10% of the overall GHL. That said, 2020 remains an outlier. The “all other” harvesters sustained an average pounds per delivery significantly higher than it had in other years which led to a much quicker season for all.

One last review focuses primarily on individuals who made fewer deliveries than the average deliveries of all permit holders. This attempts to identify the speculative or hobbyist permit holders. Table 4.

Table 4: Prince William Sound P09E Review of Smallest Operations

Harvest Area	2016	2017	2018	2019	2020	2021
	Area 1	Area 2	Area 3	Area 1	Area 2	Area 3
Average number of deliveries all operators	6.9	10.4	10.2	7.8	4.8	7.4
Remaining operators after expanded core group (35 permit holders)						
Number of operators	25	27	16	28	30	28
Average number of deliveries	5.3	7.2	5.9	4.3	4.0	4.9
Pounds harvested	15,244	20,457	9,373	17,040	24,845	11,988
Percent of total harvest	38%	34%	15%	27%	39%	18%
Number of operators with 1 delivery	5	3	3	6	5	6
Pounds harvested	1,300	818	118	1,693	452	502
Percent of total harvest	3.2%	1.4%	0.2%	2.7%	0.7%	0.8%
Number of operators with 2 or fewer deliveries	10	6	6	10	12	9
Pounds harvested	2,686	1,160	585	3,470	3,339	1,024
Percent of total harvest	6.7%	1.9%	0.9%	5.5%	5.3%	1.5%
Number of operators with 3 or fewer deliveries	15	11	8	13	15	11
Pounds harvested	6,112	2,978	1,800	5,262	4,361	1,478
Percent of total harvest	15.2%	5.0%	2.8%	8.3%	6.9%	2.2%

There are trends regarding smaller operations. Within this group, the number of operators making a single delivery is about 10% of the total operators. Their harvests are generally less than 1%. While participation dipped in 2017 and 2018, there is not a significant increase in the number of operators making three or less deliveries each year. Area 1 is fished much harder by these smaller operations as seen in 2016 and 2019, although Area 2 is not far behind.

Conservation and Sustained Yield Management

The Commission puts great importance on feedback it receives from ADF&G when considering whether an open access fishery is putting sustainable management in jeopardy. ADF&G input is highly regarded when determining an appropriate number of permits in a fishery. In past Supreme Court rulings, first in *State v. Ostrosky*⁵ and later in *Johns v. Commercial Fisheries*

⁵ State v. Ostrosky, 667 P. 2d 1181 (Alaska 1983).

*Entry Commission*⁶, it was held the Commission’s reliance on input from ADF&G was a major deciding factor in ruling CFEC set the appropriate number of permits in the fisheries in question.

Earlier this summer and more recently, Commission staff reached out to ADF&G’s commercial fisheries management to determine if there were concerns about their ability to manage the commercial shrimp fishery sustainably. On both occasions there was no concern.

The harvest information bears this out. The GHLS since 2010 have been set and met with remarkable precision in the commercial fishery, an outcome that stems from timely reporting and communication between your colleagues in the fleet and ADF&G managers. Everyone’s work in this regard is to be commended. Table 5 provides the GHLS and harvest data as provided by ADF&G.⁷

Table 5: Total Harvests in the Non-Commercial and Commercial Fisheries in the PWS Shrimp Fisheries, 2010-2021

Year	Total			Commercial			Non-Commercial		
	Allowable Harvest	Harvest	Harvest % of Allowable	GHL	Harvest	Harvest % of GHL	GHL	Harvest	Harvest % of GHL
2010	137,500	133,048	97%	55,000	45,349	82%	82,200	87,699	107%
2011	131,900	111,732	85%	52,760	52,550	100%	79,200	59,182	75%
2012	128,100	77,326	60%	51,240	21,561	42%	76,860	55,765	73%
2013	165,750	147,632	89%	66,300	61,644	93%	99,450	85,988	86%
2014	166,500	157,619	95%	66,600	68,464	103%	99,900	89,155	89%
2015	167,000	115,210	69%	67,000	23,138	35%	100,000	92,072	92%
2016	117,653	151,208	129%	47,061	48,423	103%	70,500	102,785	146%
2017	167,000	159,248	95%	67,000	67,421	101%	100,000	91,827	92%
2018	168,000	196,235	117%	67,200	67,375	100%	100,700	128,860	128%
2019	170,200	171,866	101%	68,100	68,947	101%	102,100	102,919	101%
2020	170,209	210,386	124%	68,100	69,898	103%	102,109	140,488	138%
2021	174,978	159,140	91%	70,000	70,168	100%	104,987	88,972	85%

Alaska Department of Fish and Game, Special Publication No 22-10.

While the Commission finds the commercial fishery management to be strong, there is pause when combining it with the non-commercial harvest. As pointed out in your findings, the commercial fishery is tied to the non-commercial fishery as they share allocations of the same total allowable harvest. As prescribed through regulation, the commercial sector receives 40% of the total allowable harvest if surveyed to be at least 110,000 pounds. The non-commercial harvest is allocated the remaining GHL. However, unlike the commercial harvest, the non-commercial harvest is not actively managed in-season. Rather it is accounted for through end of the year subsistence and sport permit holder surveys.

ADF&G manages the non-commercial fishing activity through pot limits established prior a season based on harvest activity the year prior. Starting in 2016, the non-commercial harvest significantly topped its GHL in three of the six years despite persistent reductions in pot limits.

⁶ *Johns v. Commercial Fisheries entry Commission*, 758 P. 2d 1256, n.6 (Alaska 1988).

⁷ As noted previously there are differences in data depending on the source. It is noted there are significant differences between commercial harvests reported by CFEC and ADF&G.

It may be uncharted waters for non-commercial fisheries management to drive the Commission's review of management at large. Commercial fisheries managers have the tools to precisely manage the fishery at current levels. However, they are not the sole driver in this question when the resource is tied to another management systems that yields different results. That said, limiting the commercial fishery will not change how the non-commercial fishery is managed.

The Commission would be more driven in this area of review if survey and harvest results led to reductions in the total allowable harvests of shrimp. That has not been the case. Despite large harvest overages in some years in the non-commercial fishery, the shrimp resource remains resilient. Strong abundance, coupled with new regulations that allow ADF&G non-commercial fisheries managers to deny future permits if non-commercial permit holders do not report their harvests, leaves the Commission with concern albeit not enough to question the sustainable management of the resource at this time.

Left to Review

The decision to not limit a fishery at this time is not a closed door as conditions are far from static. Based on the information before us it does not appear limiting the PWS commercial shrimp fishery is appropriate. However, there remain several items to review over the next year.

Fishing data from 2022 is of great interest. If seasons like 2020 become a trend, it is cause to limit the fishery. 2021 saw a rebound in the economic fortunes of long-term operators. The Commission will delve into results from the 2022 season as soon as they are available.

Another area to review is measuring the impacts of increased participation on the efficiency of an operation. To understand efficiencies, one must understand costs and that information is lacking in this analysis. The only information that starts to address efficiencies is the number of fishing days. It may be assumed if commercial harvesters are fishing less, it is less time to recover their fixed costs and earn a profit. It is unlikely many of the core operators made much of a profit in 2020 with average earnings under \$6,000.

The Act puts great weight on an individual's economic dependence in a fishery when awarding limited entry permits. The PWS commercial shrimp fishery is a very small fishery and it is presumed core participants have additional income streams. It will be important to gauge to some degree the level of dependence participants have in this fishery.

In addition to understanding costs and dependence, the Commission lacks a general sense of permit holder opinion regarding limiting the fishery. During ShrimpPros public testimony during the March 2022 Board of Fisheries meeting, it was indicated ShrimpPros members were about 25% of the fleet. Whether that's 25% of 26 people, 35, other, we are uncertain. The Commission will attempt to garner more input from the fleet through surveys.

Lastly, the Commission is guarded in making resource conservation-based decisions contrary to ADF&G managers, yet the question of a sustainable fishery is not fully answered when two management systems with two sets of rules share the same resource. The Commission

sympathizes with the commercial operators in this regard, but is uncertain that limiting entry in the commercial fishery will have an impact. Your input on that question is appreciated.

In completing this interim review, the Commission does so knowing there are many assertions made here that may be in error or incomplete. Similarly, there are many areas left uncovered that require additional input. We sincerely appreciate your feedback to this review and advice on other areas to review.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION



Glenn Haight, Chair

cc: Märit Carlson-Van Dort, Chair, Alaska Board of Fisheries
Doug Vincent-Lang, Commissioner, ADF&G