

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

DATE: March 4, 2016

FILE NO.: JU2015200517

FROM: Seth M. Beausang *SMB*
Assistant Attorney General

TEL. NO.: 269-5289

SUBJECT: Department of Law
comments on proposals
for the March 8-11, 2016
Statewide Finfish and
Supplemental Issues
meeting

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its March 8-11, 2016 Statewide Finfish and Supplemental Issues meeting:

Proposal 126: As we explained to the board last cycle, this proposal would allow Southeastern Alaska herring purse seine permit holders in Sitka to use open herring pounds in Sitka Sound in lieu of their seine gear. The Northern Southeast herring pound fishery is a limited entry fishery and includes Sitka Sound within the limited entry administrative area. In Southeastern Alaska, a "herring pound" can include an "open pound," which is defined in 5 AAC 27.130(e)(2). The board does not have authority to allow new entrants into the Northern Southeast herring pound limited entry fishery by allowing non-permit holders to use open pounds in the fishery. We understand from PC 16 that CFEC considered changing the administrative area of this limited entry fishery, in order to allow the board to act on this proposal, but that CFEC ultimately declined to change the administrative area. The board does not have the authority to adopt this proposal.

Proposal 194: Based on the statements in the proposal about the alleged impacts of trawl fishing on subsistence uses in this area, the board is encouraged to consider

whether the board's regulations provide a reasonable opportunity for subsistence uses of salmon, other finfish, and crab in this area.

Proposal 206: Were the board to adopt this proposal the board should consider:

(1) Whether to adopt the proposed requirement that a rod have an audible device attached to it (i.e., a bell) when a person is more than an arm's length from their fishing rod, in addition to the proposed requirement that a person "must be attentive to their rod." "Attentive" is defined by Merriam-Webster Dictionary as "watching something carefully: paying careful attention to something." Also, it may be difficult to enforce a requirement that a person "must be attentive to their rod."

(2) The proposed requirement that a person be within a certain distance from their fishing rod, measured in rod lengths, may be difficult to enforce given the varying lengths of fishing rods.

(3) The proposed requirement that a second person be "a designated observer to assist in rod attendance (attentiveness)" needs to be clarified. Among other things, the board should determine what license requirements apply to the second person, how the person would be "designated" as an observer, and what it means to "assist in rod attendance (attentiveness)."

Proposals 210 & 211: The board probably does not have authority to prohibit commercial fishing for the purpose of fish meal production or the use of commercially taken fish for the production of fish meal.

Proposal 212: Were the board to adopt this proposal, CFEC would likely need to make corresponding changes to its regulations before a person holding more than one salmon net permit could fish in more than one registration area in a single year.

Proposal 214: The board probably does not have authority to impose a fine.

Proposal 216: The board should comply with the written determination requirement in AS 16.05.251(a)(13) before establishing an on-board observer requirement.