

MEMORANDUM

State of Alaska
Department of Law

To: Glenn Haight
Executive Director
Alaska Board of Fisheries

Date: January 18, 2018

File No.: JU2017200511

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From: Seth M. Beausang
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Subject: Comments from Department of Law on proposals for the January 2018 Board of Fisheries meeting for Southeast Alaska and Yakutat finfish

The Department of Law has the following comments on the proposals by the Board of Fisheries at its January 2018 meeting for Southeast Alaska and Yakutat finfish.

Subsistence: For all proposals affecting subsistence fisheries, the board should consider whether adoption of the proposed regulation is needed to provide a reasonable opportunity for subsistence uses of the amount of fish reasonably necessary for those uses. “Reasonable opportunity” means an “opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking fish or game.” The board can base its determination of whether the regulations provide a reasonable opportunity for subsistence uses on: the amounts of a fish stock that have been established as reasonably necessary for subsistence uses, information pertaining to subsistence harvest data, bag limits, access, methods and means regulations and gear necessary to achieve the harvest, and other factors.

Unless it has done so previously, the board, when considering a proposal that would affect subsistence, should: (1) determine whether the fish stock is in a nonsubsistence area; (2) determine whether the fish stock or portion of the fish stock is customarily and traditionally taken or used for subsistence; (3) determine whether a portion of the fish stock may be harvested consistent with sustained yield; (4) determine the amount of the harvestable portion that is reasonably necessary for subsistence uses; (5) adopt regulations to provide a reasonable opportunity for subsistence uses; and (6) if the harvestable amount is not sufficient to allow for subsistence uses and other consumptive uses, adopt regulations to reduce or eliminate other uses in order to provide a preference and reasonable opportunity for subsistence uses.

If the harvestable portion of the fish stock is not sufficient to provide a reasonable opportunity for subsistence uses, the board must eliminate nonsubsistence consumptive uses and distinguish among subsistence users based on the Tier II criteria.

Especially where there is conflicting evidence in the record concerning subsistence or any other material issue, the board's duty is to take a hard look at the salient problems and demonstrate that it has genuinely engaged in reasoned decision making.

Proposals 120 & 121: To the extent these proposals in part seek to allow persons with CFEC limited entry Southern Southeast Inside sablefish pot permits to also use longline gear, that is beyond the board's authority. Under these circumstances, CFEC has the sole authority to determine what gear its permits allow.

Proposal 130: The board should consider whether its action on this proposal and the resulting regulations will provide a reasonable opportunity for subsistence uses of salmon in those portions of District 15 that the board has identified as having salmon that are customarily and traditionally used for subsistence, and a preference for subsistence uses of salmon.

Proposal 131: The board should consider whether adopting the proposed minimum mesh size for gillnets in this subsistence fishery would maintain a preference for subsistence uses of salmon.