

RC 051



THE STATE
of **ALASKA**

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Commercial Fisheries Entry Commission

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To: Seth Beausang
Assistant Attorney General
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Date: February 28, 2017

From: Bruce Twomley, Chair
Commercial Fisheries Entry Commission

Subject: Ryan and Darrell Kapp Proposal for
Alternative Gear in Southeast Roe
Herring Purse Seine Fishery

Sorry to bother you in the middle of a demanding Board meeting. We had an extended discussion with Vanessa Lamantia and Tom Lenhart about the following issue. They suggested that, given current demands on you, we try to reach you by email.

By way of background, you will likely recall that Ryan Kapp in the past submitted a proposal to the Board to approve open pounds as an alternative gear type for the Sitka Sound roe herring purse seine fishery. Much earlier, his father, Darrell Kapp and others, had brought a similar request before the Board, which led DFG to conduct an apparently successful experimental fishery in 1998. (Ryan sent me a copy of the report if anyone would like to see it.)

In response to Ryan's proposal, the Board noted that Sitka Sound was within CFEC's administrative area definition for the Northern spawn-on-kelp pound fishery, and that Ryan's proposal could not be approved unless CFEC modified its administrative area definition for the Northern Southeast spawn-on-kelp pound fishery to exclude Sitka Sound.

Former Chair Tom Kluberton wrote to CFEC asking CFEC to propose such a modification, which we agreed to do. At the end of our hearing, we faced substantial testimony from both the Northern and Southern herring spawn-on-kelp pound permit holders, that their markets in Japan had substantially diminished and continue to shrink. They argued that the infusion of more product would destroy their markets. Ryan has argued that there are more seiners who support the proposal and that new products and markets could be pursued. The pound fishermen called for research to support his claim. CFEC concluded and communicated back to Tom and the Board that we had not been persuaded to act on Ryan's proposal.

Subsequently, at the Board's work session in Soldotna in October 2016, Ryan and his father requested the Board to grant an Agenda Change Request (ACR) to take up their proposal. The Board declined to do so.

This year by April 11, Ryan and his father have the opportunity to submit a timely proposal in cycle to the Board, but they are a little confused by the proceedings so far. They are hoping for some assurance that there is no legal obstacle to the Board hearing and considering the merits of their proposal. As has happened on similar proposals in the past, it would appear to CFEC that the Board could consider the proposal on the merits and, if moved to act favorably, could condition their action on subsequent regulatory action by CFEC to modify the administrative area for the Northern Southeast roe-on-kelp pound fishery.

In turn, CFEC would be greatly helped if the Board would consider the proposal first this time around. AS 16.43.200 governs the commission's adoption and modification of administrative areas. Subparagraph (a) requires the commission to establish administrative areas that are "reasonably compatible" with the Board's administrative areas for a fishery. Subparagraph (b) authorizes CFEC to change boundaries of its administrative areas (1) "when necessary" and (2) when consistent with the purposes Limited Entry Act.

In this context, the only necessity we can identify would be when necessary to give effect to a Board action. We recognize that there has always been a sound conservation argument in favor of open pounding. At the same time, the Sitka Sound roe herring purse seine fishery remains controversial.

Therefore, it would be helpful to CFEC, if the Board were to hear and consider Ryan's proposal first. If the Board were to act favorably on Ryan's open pound proposed alternative, we could meet our "when necessary" condition for going forward and have an incentive to take up the issue a second time. (We would still have to address the issue of whether the proposal was consistent with the purposes of the Limited Entry Act.)

In short, it would be functional, if Ryan and his father could be assured that no legal obstacle prevents the Board from hearing and considering the merits of their proposal (even if conditioned upon further action by CFEC).

On a separate but somewhat similar matter, you recall that Chair John Jensen wrote to the commission asking the commission to propose pot gear as an alternative type of gear that could be employed by the Southern Southeast inside sablefish longline fishermen. The commission has not acted formally yet, but, having completed our hearing process, we are persuaded to adopt pot gear as an alternative gear. John had asked that we reach our decision by March to facilitate the Board's timely action in response. We fully expect to meet that schedule.

In short, CFEC would very much welcome any encouragement you and the Board may be able to offer Ryan and Darrell Kapp.