

MEMORANDUM

STATE OF ALASKA

Department of Law


To: Jim Marcotte
Executive Director
Alaska Board of Fisheries

Date: November 8, 2010

File No.: JU2010201678

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Subject: **Comments on Specific
Proposals Scheduled for
November 2010 Board of
Fisheries Meeting:
Lower Cook Inlet Finfish**

The Department of Law has the following comments on certain of the proposals to be considered by the Board of Fisheries at its November 2010 meeting on Lower Cook Inlet Finfish regulations:

Proposal 24: Proposal 24 proposes to add a new section to 5 AAC 56 (regulations for Kenai Peninsula Area) to change the Anchor River king salmon escapement goal from a sustainable escapement goal (SEG) that is based on a lower-bound threshold to an escapement goal (either a SEG or a biological escapement goal, BEG) that has a range of acceptable escapements. This proposal is inconsistent with two existing regulatory policies that specify that it is the role of the *department*, not the board, to establish such escapement goals. The policy for the management of sustainable salmon fisheries (5 AAC 39.222) and the policy for statewide salmon escapement goals (5 AAC 39.223) give the department this authority and authorize the board only to establish optimal escapement goals (OEGs), as discussed below.

The escapement goal policy, 5 AAC 39.223(b) states:

(b) The board recognizes the department's responsibility to

...

(2) establish biological escapement goals (BEG) for salmon stocks for which the department can reliably enumerate salmon escapement levels, as well as total annual returns;

(3) establish sustainable escapement goals (SEG) for salmon stocks for which the department can reliably estimate escapement levels when there is not sufficient information to enumerate total

annual returns and the range of escapements that are used to develop a BEG;

(4) establish sustained escapement thresholds (SET) as provided in 5 AAC 39.222 (Policy for the Management of Sustainable Salmon Fisheries);

...

Likewise, the definitions of BEG, SEG, and SET in the sustainable salmon fisheries policy specify that they will be “determined by the department.” 5 AAC 39.222(f)(3), (36), and (39).

The escapement goal policy and the sustainable salmon fisheries policy give the board authority only to establish “optimal escapement goals.” The escapement goal policy states in 5 AAC 39.223(c):

(c) In recognition of its joint responsibilities, and in consultation with the department, the board will

(1) take regulatory actions as may be necessary to address allocation issues arising from implementation of a new or modified BEG, SEG, and SET;

(2) during its regulatory process, review a BEG, SEG, or SET determined by the department and, with the assistance of the department, determine the appropriateness of establishing an optimal escapement goal (OEG); the board will provide an explanation of the reasons for establishing an OEG and provide, to the extent practicable, and with the assistance of the department, an estimate of expected differences in yield of any salmon stock, relative to maximum sustained yield, resulting from implementation of an OEG.

“Optimal escapement goal” is defined in the sustainable salmon fisheries policy as a specific management objective for salmon escapement that (a) considers biological and allocative factors and may differ from the SEG or BEG, (b) may be expressed as a range with the lower bound above the level of sustainable escapement threshold, (c) will be sustainable, and (d) will be adopted as a regulation by the board. 5 AAC 39.222(f)(25).

If the board were to adopt Proposal 24 to establish an SEG or BEG escapement goal range for the Anchor River, this action would need to be reconciled with the two existing policies, either through a “notwithstanding clause” (e.g., “notwithstanding anything to the contrary in 5 AAC 39.222 or 5 AAC 39.223, the escapement goal for the Anchor River shall be ...”) or through amendment of the policies. Alternatively, the

board could adopt an OEG for the Anchor River by regulation following the requirements of 5 AAC 39.223(c)(2) if it so desired.