

MEMORANDUM

STATE OF ALASKA

Department of Law


To: Monica Wellard
Executive Director
Alaska Board of Fisheries

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Subject: **Comments on Specific
Proposals for January 2012
Board of Fisheries Meeting:
Southeast & Yakutat Crab,
Shrimp, Misc. Shellfish**

The Department of Law has the following comments on certain of the proposals to be considered by the Board of Fisheries at its January 2012 meeting on Southeast & Yakutat crab, shrimp, and miscellaneous shellfish issues.

Proposal 139: This proposal would eliminate personal use fisheries on fish stocks where a subsistence fishery also existed. While a personal use fishery might be unnecessary in those areas because Alaska residents could already subsistence fish there, there is no legal impediment to doubling up the fisheries if there is a management rationale.

Proposal 140: This proposal would require the use of a catch report card for personal use and sport fish shellfish in Southeastern Alaska, and impose a penalty for failure to return the card. The Board has no authority to assess a monetary penalty, but has imposed penalties such as forfeiture of the right to participate in the subsequent years fishery for failure to return a harvest report.

Proposals 141: This proposal would prohibit fishing for bottom fish and shellfish in a defined area around Cache Island. While the Board has authority to close areas to fishing for species of fish, an action to adopt a blanket closure to multiple species at the same time without particular regard to the conservation or development of each species would appear to be the creation of a fish reserve area, the finalization of which would require legislative approval under AS 16.05.251(a)(1). If the Board wishes to proceed with this proposal, we recommend that the board adopt a resolution to be forwarded the Legislature with the recommendation for statutory enactment of the reserve.

Proposals 142, 143, and 144: These proposals are similar in form to Proposal 141, but would only limit fishing for bottom fish and shellfish by nonresidents. These potentially raises the same issue as Proposal 141, in that they are based upon multiple, rather than individual, species considerations. In addition, to adopt these proposals, the Board would need to articulate a rationale for eliminating non-resident fishing, such as the fact that the available harvestable surplus is not sufficient to meet expected resident demand.

Proposal 159-60: These proposals would allow increase of 50% or 100% more pots on a vessel if two Tanner crab permits are on board the vessel. This kind of proposal is generally within the Board's authority as long as both permit holders are aboard the vessel and engaged in the operation of the gear.

Proposals 161-63: These proposals would close certain areas to commercial Dungeness crab fishing because of impacts on personal use and subsistence fishing. The Board should consider whether reductions in personal use or commercial fishing are required to maintain a reasonable opportunity for subsistence fishing.

Proposals 183-184: These proposals would appear to create an equal quota share plan for the Southeast Alaska geoduck commercial fishery and also appear to delegate the authority to the Southeast Alaska Regional Fisheries Association to create the equal share plan and/or determine when to start diving and the collective maximum amount to be harvested during each week. The Board may not delegate the authority to set seasons or harvest levels, or enforce any kind of equal share quota plan, to a private group. Any kind of unofficial plan or program would have to be voluntary and would not be enforceable by regulation.

Proposals 187-189: See comments to Proposals 183-184 re: limitations on delegation of Board authority.

Proposals 195-196: These proposals would reduce bag limits for subsistence fishing. The Board should consider whether there would still be a reasonable opportunity for subsistence fishing with reduced bag limits.