

MEMORANDUM

STATE OF ALASKA

Department of Law

To: Glenn Haight
Executive Director
Alaska Board of Fisheries

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Date: September 16, 2013

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Subject: **Comments on Proposals for
2013 Board of Fisheries
Meeting on Pacific Cod**

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its October 18-22, 2013 meeting on regulations for Pacific cod fisheries.

Proposal 2: This proposal would increase the annual Cook Inlet, Kodiak, and Chignik state-waters Pacific cod guideline harvest levels (GHLs) based on a 10-year average parallel fishery Pacific cod harvest. The description of the proposal in Alaska Department of Fish and Game's (ADF&G's or Department's) proposal book does not indicate whether the proposal is for a one-time adjustment or an annual adjustment based on a rolling 10-year average. The Department's comments indicate this would increase the state-waters GHL in the Central Gulf of Alaska (CGOA) from 25% to 35.8% of the Allowable Biological Catch (ABC) based on the 2003-2012 10-year average, which would be restricted to vessels that use pot and jig gear only, and that limited jig gear effort may result in harvest below the GHL in some years. The Board should consult with the North Pacific Fisheries Management Council and/or National Marine Fisheries Service staff as to whether they anticipate a one-time or rolling adjustment may significantly impact federal fisheries and/or result in federal regulatory action.

Proposals 3 and 4: These would increase the annual Chignik Area state-waters Pacific cod GHL from 8.75 percent to 17.5 percent of the CGOA Pacific cod ABC (Proposal 3) or to 17.0 percent (Proposal 4). The Board should consult with the North Pacific Fisheries Management Council and/or National Marine Fisheries Service staff as to whether they anticipate these or other such adjustments the Board may consider may significantly impact federal fisheries and/or result in federal regulatory action.

Proposal 6: This proposal would open the Pacific cod state-waters season to longline gear in the Cook Inlet (CI) Area on July 15 if the guideline harvest level (GHL) has not been achieved and only open it to vessels registered for the CI sablefish fishery. The preferred alternative is to roll over the remaining Pacific cod GHL from the jig allocation and make it available to the longline fleet participating in the CI sablefish fishery. The next preferred solution would be to allocate 10% of the GHL to longline fishermen who are registered to fish in the CI sablefish fishery, with the season start date concurrent with the CI sablefish fishery. The CI sablefish fishery is not a limited entry fishery, and we do not see problems with limiting the participation to longline vessels registered for the CI sablefish fishery.

Proposals 16 and 17: These proposals would create two state-waters Pacific cod management districts in the South Alaska Peninsula Area, with (1) the proposed South Alaska Peninsula District to include Pacific Ocean waters between a line extending 135° southeast of Kupreanof Point to a line extending south of Scotch Cap Light, and (2) the proposed Aleutian Island District to include Pacific Ocean waters between a line extending south from Scotch Cap Light and 170° W long. The guideline harvest level for the proposed South Alaska Peninsula District would mirror the existing South Alaska Peninsula Area state-waters Pacific cod GHL, which is 25 percent of the Western Gulf of Alaska Pacific cod acceptable biological catch. The GHL for the proposed Aleutian Island District would be derived from the Bering Sea-Aleutian Islands Pacific cod ABC. The proposal does not indicate how BSAI Pacific cod ABC would be reallocated as state-waters GHL for the proposed Aleutian Island District. The GHL or a formula for determining it, needs to be specified, and the Board should consult with the North Pacific Fisheries Management Council and/or National Marine Fisheries Service staff regarding possible federal regulatory impacts from the reallocation to the South Alaska Peninsula area of BSAI Pacific cod, which is considered to be a separate stock. The Board would need to specify the other management provisions applicable in the new districts, such as gear and vessel length limits, registration requirements, GHL allocations among pot and jig gear, and seasonal rollover provisions.

Proposals 18-21. Proposals 18–20 would increase the annual South Alaska Peninsula Area state-waters Pacific cod guideline harvest level (GHL) from 25 percent to 50 percent of the Western Gulf of Alaska (WGOA) Pacific cod acceptable biological catch (ABC). Proposal 21 would increase the annual South Alaska Peninsula Area state-waters Pacific cod GHL from 25 percent to 55 percent of the total WGOA ABC. These would reallocate an additional 25 or 30 percent of the WGOA Pacific cod ABC from the WGOA federal Pacific cod fishery to the South Alaska Peninsula state-waters Pacific cod fishery. The Board should consult with the North Pacific Fisheries Management Council and/or National Marine Fisheries Service staff as to whether they anticipate this is likely to significantly impact federal fisheries and/or result in federal regulatory action.

Proposal 31. This would clarify the Aleutian Islands District (AI) state-waters Pacific cod fishery management plan by removing language indicating state and federal jurisdictional overlaps. We agree with the Department's comments that this is appropriate because while state management during parallel Pacific cod fisheries often mirrors federal regulations in the adjacent EEZ, the respective jurisdictions do not overlap.

Proposal 34. This proposes to place a moratorium on any new or expanded Pacific Cod fisheries in state waters until a long-term management plan is adopted by the Board of Fisheries, after approval by relevant advisory committees, the North Pacific Management Council, and the Department. As the Department notes in its comments, where there are no state-waters Pacific cod fisheries in Area O, state waters are managed under parallel fishery regulations per 5 AAC 28.086. The state does not and cannot limit participation to only those who hold a federal FFP, LLP, or endorsement, and there is the potential for new entrants to move into parallel fisheries. We doubt that the Board could delegate authority over the adoption of fishery management regulations to advisory committees or the North Pacific Fishery Management Council or require in advance that the adoption of such regulations be contingent on the approval of such entities.