

MEMORANDUM


State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

DATE: November 23, 2015

FILE NO.: JU2015200514

FROM: Seth Beausang 
Assistant Attorney General

TEL. NO.: 269-5289

SUBJECT: Department of Law
comments on proposals
for the December 2-8,
2015 Bristol Bay Finfish
meeting

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its December 2-8, 2015 meeting on proposals for the Bristol Bay finfish fisheries:

Proposals 22-24: These proposals seek to change administrative areas established by the Commercial Fisheries Entry Commission to regulate limited entry fisheries, by amending regulations that the board has adopted that establish fishing registration areas. CFEC's regulations largely incorporate the board's registration areas in defining limited entry administrative areas. *See, e.g.,* 20 AAC 05.230(a)(1)(A). By statute CFEC is the agency that establishes limited entry administrative areas. *See* AS 16.43.100(a)(3) & .200. Should the board redefine its registration areas, until CFEC has an opportunity to act and either incorporate or reject the board's changes with respect to CFEC's administrative areas, there will be some uncertainty as to the contours of the administrative areas. One way the board could address this potential uncertainty, should it be inclined to change its registration areas, is to delay the effective date of its action to allow CFEC time to incorporate or reject the board's changes.

Proposals 25-26: These proposals call for opening new areas to drift gillnet fishing. In addition to the board's allocation criteria (AS 16.05.251(e)) and policy for the management of sustainable salmon fisheries (5 AAC 39.222), these proposals call for the

board to consider the Bristol Bay Commercial Set and Drift Gillnet Sockeye Salmon Fisheries Management and Allocation Plan (5 AAC 06.355).

Proposal 50: The proposal does not describe how other districts would “opt into the dual permit program if the set gillnet stakeholders in each district choose to.” The board’s authority under AS 16.05.251(i) to allow permit stacking cannot be delegated to stakeholders.

Proposals 61-62: These proposals propose alternative language, so the board will have to make clear, by amending the proposals or otherwise, what language the board acts on.

Proposal 64: This proposal uses the term “book high water.” Should the board adopt this proposal, it should define this term or use alternative wording.

Proposal 86: We agree with the staff comments that the board has no “administrative, budgeting, or fiscal powers” to require the department to administer this program.

Proposal 90: Were the board to adopt this proposal, it would likely be deemed to have partially delegated to the commissioner the board’s authority to allocate among fisheries with respect to the Bristol Bay commercial herring fishery. Should the board be inclined to do that, it should make clear its intention to delegate authority to the commissioner.

Proposal 220: There is doubt as to the board’s authority to regulate vessels not engaged in fishing or the transport of fish, e.g., “derelict vessels.” Should the board adopt this proposal, the board should make clear its intention to regulate vessels engaged in fishing or the transport of fish, and should define terms not ordinarily used in regulation such as “net barges” or “hard fixed buoys” as necessary to make clear that the board is acting within its authority.

Proposal 221: This proposal would provide that a “tender, buyer or fish transport vessel shall not take mooring, anchor or remain stationary for an extended period within 1,500 feet of an operational set net site.” The term “extended period” might be too vague to enforce and would benefit from clarification by the board.