

## MEMORANDUM

## State of Alaska

Department of Law

TO:	Glenn Haight Executive Director Alaska Board of Fisheries	DATE:	March 6, 2018
FROM:	Seth M. Beausang Assistant Attorney General	FILE NO.:	JU2017200513
		TEL. NO.:	269-5232
		SUBJECT:	Department of Law comments on proposals for the Statewide Dungeness Crab, Shrimp, & Miscellaneous Shellfish meeting from March 6-9, 2018.

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at the Statewide Dungeness Crab, Shrimp, & Miscellaneous Shellfish meeting from March 6-9, 2018 in Anchorage, Alaska.

**Proposal 207:** This proposal seeks to allow the retrieval of personal use scallop dredges with 5 horsepower or less line hauler or pot puller. Regulations do not appear to currently provide for a personal use scallop fishery except in the personal use Southeastern Alaska and Yakutat Areas; in those areas, scallops may be taken for personal use "by hand or with rakes, shovels, and manually operated clam guns," 5 AAC 77.010(k)(3), and dredges are not allowed. In the Southeastern Alaska sport scallop fishery, scallops may be taken by "diving gear, dip nets, or by hand." 5 AAC 47.035(b)(5). In addition to deciding whether to establish a personal use scallop fishery in areas other than the Southeastern Alaska and Yakutat Areas and allow power dredges to be used, as requested by Proposal 207, the board might also consider whether to reconcile the different gear allowed for scallops in the sport and personal fisheries in the Southeastern Alaska and Yakutat Areas. As the notice for this meeting indicates that it excludes the Southeastern Alaska and Yakutat Areas, if the board wishes to change the allowable gear for scallops in these fisheries, one way to accomplish that is for the board to delegate its rulemaking authority to the department and direct the department to adopt appropriate regulations after considering any public comment.

**Proposal 208:** A regulation that allocates fishing opportunity by vessel length might be considered to be an allocation of fishery resources within a single commercial fishery, which is not permitted under the *Grunert* decisions. In addition, the board does not have authority to enact the ‘grandfather’ provision requested by this proposal.

**Proposals 210 & 211:** These proposals would open additional areas to commercial scallop fishing. Under the Fishery Management Plan for the Scallop Fishery off Alaska, “closed areas” are a Category 1 management measure that “may be freely adopted or modified by the State, subject to other Federal law.” State regulations should be consistent with any federal bottom trawl closure regulations in 50 C.F.R. 679.22(b). State management measures must be consistent with the Plan. Under the Plan, state regulations “may include time and area closures designed to minimize bycatch and protect habitat.” The Plan notes that “Existing State regulations close most areas that are also closed to bottom trawling to protect crab and other sensitive habitat” and requires that “Closed areas will be specified in regulations.” The board should consider the need to minimize bycatch and protect habitat when deciding whether to change the regulations specifying areas closed to commercial scallop fishing in the exclusive economic zone.