

MEMORANDUM

State of Alaska

Department of Law

TO:	Glenn Haight Executive Director Alaska Board of Fisheries	DATE:	November 21, 2018
		FILE NO.:	2018200692
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FROM:	Seth M. Beausang Brad Meyen Assistant Attorneys General	SUBJECT:	Comments from the Department of Law on proposals for the November 28—December 3, 2018 Board of Fisheries meeting for Bristol Bay Finfish

The Department of Law has the following comments on the proposals by the Board of Fisheries at its November 28—December 3, 2018 Board of Fisheries meeting for Bristol Bay finfish.

Proposal 33: This proposal would allow the use of “beach weirs” for commercial salmon fishing and would provide for the issuance of limited entry commercial salmon beach weir permits. The board does not have authority to provide for the issuance of limited entry commercial fishing permits, such as by providing for the issuance of salmon beach weir permits in exchange for two set net permits. Were the board to authorize a new gear for commercial salmon fishing in the Bristol Bay Area, without action by CFEC to limit entry into the fishery, the board’s action would create a new open access commercial salmon fishery for that gear type. Beach weirs appear similar to fish traps prohibited by AS 16.10.070 and their design and implementation may require additional review.

Proposal 40: This proposal would create a lottery system for access to certain set net fishing sites. The board does not have authority to establish a lottery system for access to set net sites, or otherwise regulate or permit access to state-owned tidelands. The Shore Fishery Leasing Program at the Department of Natural Resources issues leases for state-owned tidelands for set net fishing.

Proposal 51: This proposal would create a limited entry guided sport fishery. The board does not have authority to create a limited entry fishery.

Proposal 52: This proposal seeks to regulate the guided sport fishery in a portion of the Naknek River drainage. Were the board inclined to adopt this proposal the Department of Law would need to review proposed regulatory language, and there may

be aspects of this proposal that are beyond the board's authority, such as the proposal to prohibit the use of certain LLCs.

Proposal 53: This proposal seeks to regulate the guided sport fishery in a portion of the Naknek River drainage. Were the board inclined to adopt this proposal the Department of Law would need to review proposed regulatory language, and there may be aspects of this proposal that are beyond the board's authority. The board does not have authority to assign liability for boating infractions or accidents.

Proposal 55: This proposal seeks to regulate the guided sport fishery in a portion of the Naknek River drainage. Were the board inclined to adopt this proposal the Department of Law would need to review proposed regulatory language, and there may be aspects of this proposal that are beyond the board's authority. With respect to the proposed prohibition on "dropping clients off unguided," were the board to adopt that proposal, the board should be clear that any regulation is of an activity in aid of sport fishing. The board has broad authority to regulate various aspects of "fishing," but does not have authority to regulate the transportation of persons without a fishing nexus.

Proposal 60: This proposal seeks to regulate the guided sport fishery in a portion of the Naknek River drainage. Were the board inclined to adopt this proposal the Department of Law would need to review proposed regulatory language, and there may be aspects of this proposal that are beyond the board's authority. The board likely has authority to limit opportunity in a guided sport fishery through a rod limit that applies to non-resident guided sport fishing clients, however Law would need to carefully review any proposed language to implement such a rod limit.

Proposal 61: This proposal seeks to prohibit staking out of areas for sport fishing by individuals or with boats, fishing gear, or other items. Under AS 16.05.790, persons are already prohibited from intentionally obstructing or hindering another person's lawful fishing by physically blocking the person from fishing. The board may have authority to further prohibit staking out with boats or other items, although enforcement of such a prohibition may be difficult.