

# MEMORANDUM

STATE OF ALASKA

*Department of Law*

To: Glenn Haight  
Executive Director  
Alaska Board of Fisheries

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Subject: **Comments on Proposals for  
2015 Board of Fisheries  
Meeting on Southeast Alaska  
Shellfish Fisheries**

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its January 20 – 27 meeting on regulations for Southeast Shellfish fisheries.

**Proposal 61:** This would appear to require ADF&G to conduct surveys of crabs in soft-shell state one week prior to the planned June 15 summer and October 1 fall opening dates to establish the level of soft-shell prevalence in the population of each district, with the openings dependent on the numbers of crab in soft-shell condition. The Board has no administrative, budgeting, or fiscal powers over the Department and lacks authority to direct the Department to conduct surveys or collect particular data.

**Proposal 62:** This would appear to require ADF&G to initiate an independent stock assessment program that includes annual sampling of certain crab habitat areas. The Board has no administrative, budgeting, or fiscal powers over the Department and lacks authority to direct the Department to conduct sampling or collect particular data.

**Proposals 70-79:** These proposals would close certain areas to commercial Dungeness crab fishing because of impacts on personal use and/or subsistence fishing. The Board should consider whether reductions in personal use or commercial fishing are required to maintain a reasonable opportunity for subsistence fishing.

**Proposal 84:** This would authorize the commissioner to issue a commissioner's permit to fish golden king crab in the Yakutat area (Area D), subject to certain terms and conditions to be placed in the permit. The proposal book indicates that the proposer spoke

with the department about opening a fishery in the area and the Department would prefer to open the Yakutat golden king crab fishery by commissioner's permit and recommended a proposal to that effect. By statute, the commissioner has authority "to authorize the holder of an interim-use permit under AS 16.43 to engage on an experimental basis in commercial taking of a fishery resource with vessel, gear, and techniques not presently qualifying for licensing under this chapter in conformity with standards established by the Alaska Commercial Fisheries Entry Commission." AS 16.05.050(a)(9). The Board cannot diminish or alter this authority. The Board can, however, recommend that the commissioner issue such a permit; this would not be a regulatory action and it would not be binding on the commissioner.

**Proposal 94:** This proposes "that the Board renew policy direction to the [Department] respecting introduction of spawner index management [for the Southeastern Alaska commercial spot shrimp fishery], with clear instructions that test fishing be continued, and carried out thoroughly and properly in adherence with such guidance and agreed protocols." This does not propose regulatory action. Further, the Board does not have administrative, budgeting, or fiscal powers over the Department and lacks authority to direct the Department to conduct surveys or collect particular data.

**Proposal 103:** This proposes a maximum vessel length of 65 feet for vessels fishing in the beam trawl shrimp fishery in Registration Area A, except that vessels that registered to trawl for shrimp in Area A at least three years since 2000 may continue to fish. The "grandfather" exception probably is beyond the board's authority and unlawful.

**Proposal 106:** This proposes the establishment of a Southeast Alaska Shrimp Beam Trawl Task Force to examine current rules and recommend changes. Establishment of such a task force is not a regulatory action.

**Proposal 110:** This proposes to allow permit stacking in commercial sea cucumber fishery, allowing a permit holder to fish with two entry permits and increasing trip limit by 50%. This is not allowed by AS 16.05.251(i) which only authorizes the Board to adopt regulations for permit stacking in salmon fisheries, or by AS 16.43.140(c), which does not include a provision for owning more than one sea cucumber entry permit for the same administrative area.

**Proposal 113:** 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 it adopt a resolution to be forwarded the Legislature with the recommendation for statutory enactment of the reserve.