

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

DATE: March 11, 2021

TEL. NO.: 907-269-5232

FROM: Aaron Peterson
Assistant Attorney General

SUBJECT: Department of Law comments
on emergency petition for the
March 16, 2021 Board of
Fisheries meeting

The Department of Law has the following comments regarding the Northern Norton Sound Fish and Game Advisory Committee emergency petition that is scheduled for consideration at the Board of Fisheries March 16, 2021 meeting.

Emergency Petition to close the Norton Sound commercial red king crab fishery for the 2021 season: This petition asks the board to close the Norton Sound Red King Crab commercial fishery for the remainder of 2021.

The Joint Board Petition Policy is codified at 5 AAC 96.625:

It is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency under AS 44.62.250(a). In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. Except for petitions dealing with subsistence hunting or subsistence fishing, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

Under AS 44.62.250, the board may adopt an emergency regulation if it “makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare.” The board typically evaluates whether an emergency exists with respect to a petition before considering whether to take action in response to the petition.

Finally, if the board decides to make a change, under AS 44.62.260 a regulatory change adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with certain regulatory steps prior to submitting the regulation to the lieutenant governor. In other words, if the board decides to make a change, the board may want to consider whether to also direct the department to make the change permanent.