

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

DATE: August 18, 2016

FILE NO.: AN2014102724

FROM: Seth M. Beausang 
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SUBJECT: Department of Law
comments on emergency
petition by Bill Connor

The Department of Law has the following comments on the email emergency petition submitted by Bill Connor to the Board of Fisheries dated June 10, 2016, which was denied by the Commissioner of the Department of Fish and Game on July 7, 2016, and which is to be considered by the board at a meeting on August 30, 2016.

Mr. Connor's petition appears to request that the board adopt emergency regulations (1) allowing limited entry permit holders in the Southern Southeast Inside longline sablefish fishery to use pot gear at their option; or (2) extending the season for the Southern Southeast Inside longline sablefish fishery. Should the board determine that an emergency exists under 5 AAC 96.625(f) and AS 44.62.250 (which requires a written statement of facts and finding that the emergency regulation is "necessary for the immediate preservation of the public peace, health, safety, or general welfare"), the board would have legal authority to adopt emergency regulations extending the longline season specified in 5 AAC 28.110(a)(2), but would not have legal authority to adopt regulations allowing limited entry longline permit holders to use pot gear at their option.

Board regulations at 5 AAC 28.130(a) already allow sablefish to be taken in the Southern Southeast Inside District with longlines and pots. The Commercial Fisheries Entry Commission has limited entry into both fisheries, allowing a maximum of 18 longline entry permits and 3 pot entry permits. *See* 5 AAC 05.320(e)(2). CFEC is the agency with authority to potentially allow additional users to participate in this limited entry pot fishery, not the board. A board regulation attempting to allow longline permit

holders to use pot gear at their option would likely be viewed as an invalid attempt by the board to allow additional users to participate in the limited entry pot fishery. The board can take other non-regulatory action, such as expressing the board's view to CFEC and the public as to whether allowing longline permit holders in this fishery to use pot gear at their option would serve a fishery conservation and development purpose.