



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of
Fish and Game**

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To: Mr. John Jensen, Vice Chair
Alaska Board of Fisheries

Date: July 7, 2016

From: Sam Cotten, Commissioner
Alaska Department of Fish and Game

A handwritten signature in blue ink that reads "Sam Cotten".

Subject: Emergency petition to extend the sablefish fishing season for longline gear and allow use of pot gear by holders of sablefish longline limited entry permits in the Southern Southeast Inside Subdistrict fishery.

Pursuant to AS 16.05.270, the Alaska Board of Fisheries (board) delegated authority to the commissioner of the Alaska Department of Fish and Game (department), under board policy 2015-277-FB, to determine whether an emergency under 5 AAC 96.625(f) exists when emergency petitions are submitted to the board outside of the regular board cycle. This letter provides my decision as commissioner of the Alaska Department of Fish and Game that an emergency does not exist with respect to the emergency petition from Bill Connor dated June 10, 2016.

Action Requested

Mr. Connor requested the Alaska Board of Fisheries allow holders of Commercial Fisheries Entry Commission (CFEC) sablefish longline limited entry permits in the Southern Southeast Inside Subdistrict (SSEI) to use either longline or pot gear and to extend the fishing season for sablefish longline gear in SSEI by allowing use of longline gear after pot gear permit holders have completed fishing operations.

Background

Pot gear was first allowed for sablefish harvest in Southeast Alaska inside waters in 1970 and vessel operators using pot gear accounted for 33% of the total harvest in the early 1970s. Beginning in 1982, the Northern Southeast Inside Subdistrict fishery was restricted to longline gear only, but pot gear was still allowed in the SSEI area. The SSEI sablefish fishery was designated as an equal quota share fishery in 1997 and five of the 35 permits were issued for pot gear. Since 1997, several temporary interim permits have been eliminated and the current fishery consists of 20 longline permits and three pot permits. In 1997, separate seasons were established for longline and pot gear in SSEI to resolve the gear entanglement issues between the longline and pot fishermen. Fishermen using longline gear may fish between June 1 and August 15 and

those using pot gear participate later, from September 1 until November 1. There are no pot limits in the SSEI sablefish fishery.

Pot gear is a legal gear type for directed harvest of sablefish in federally managed fisheries in the Bering Sea-Aleutian Islands and Gulf of Alaska (GOA) areas. Pot gear was authorized in GOA waters in 2015 primarily to mitigate concerns for whale depredation of sablefish caught on longline gear. In taking this action the North Pacific Fishery Management Council adopted the following purpose and need statement:

“Whale interaction with fishing gear affects the ability of sablefish quota share holders to harvest their sablefish IFQs by reducing catch per unit of effort and increasing fishing costs. Research into whale deterrence strategies and changes in fishing practices has not resolved the problem. Additional sablefish mortality associated with whale depredation is difficult to quantify, but increases total mortality and uncertainty in sablefish abundance indices. The use of pot gear for sablefish could reduce sperm whale and killer whale interactions with fishing gear in the Gulf of Alaska. The Council seeks to reduce the problems associated with whale depredation while minimizing gear conflicts and excessive grounds preemption that could result from allowing pot and longline gear to fish in the same regulatory areas.”

The department does not have specific data to document differences in whale depredation between the two gear types or quantify the amount of sablefish taken from longline gear by whales in SSEI. It is generally understood that the impact of whale depredation is greater on longline gear than pot gear.

The SSEI sablefish Annual Harvest Objective (AHO) has decreased from 634,000 lb in 2009 to 536,618 lb in 2015. The decrease is primarily due to decreases in survey catch per unit of effort and concerns about the high proportion of immature fish in the commercial and survey catch. Whale depredation is not a factor in setting the AHO. Typically a small portion of the SSEI AHO goes unharvested each year (approximately 10.5% of the AHO for the 2011 – 2015 fishing seasons).

Finding of Emergency

The Joint Board Petition Policy, 5 AAC 96.625 that the board uses to respond to emergency petitions states that an emergency petition “will be denied and not scheduled for a hearing unless the problem outlined in the petition justifies a finding of emergency.” The policy defines “emergency” as:

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.

Discussion

The board evaluated several proposals to increase pot gear fishing opportunity in Southeast Alaska inside waters sablefish fisheries in 2015 and did not take action on these proposals because the board lacks authority to allow additional users into this limited entry pot gear fishery. Although whale depredation was cited as rationale for allowing pot gear in these proposals, pots are already a legal gear type in the SSEI sablefish fishery and there are three holders of pot gear limited entry permits. CFEC is the only entity that can allow new users into

the limited pot gear entry fishery. Since the board declined to adopt these proposals CFEC has not been petitioned to provide additional pot gear permits in SSEI.

With regard to the request that the board reopen the SSEI fishery for permit holders using longline gear after pot gear fishermen have completed fishing operations, I do not believe that an emergency exists. The SSEI fishing season began on June 1 and will remain open until August 15, providing ample time for permit holders to complete fishing operations. While approximately 10.5% of SSEI sablefish AHO has gone unharvested during the last five fishing seasons, the amount gone unharvested has not increased over time, nor has information related to an unexpected situation that would trigger a finding of emergency been presented. It is not entirely clear why this amount is left unharvested during the relatively long fishing seasons, but it may be due in part to the fact that at least one permit holder has not participated during the past two fishing seasons. The percentage of unharvested AHO has not increased over time thereby providing evidence that factors contributing to the harvest shortfall are not unforeseen or unexpected. For all of these reasons, the petition does not show the existence of an unforeseen or unexpected event that threatens a fish resource, or an unforeseen or unexpected resource situation whereby delaying regulatory action would preclude a biologically allowable resource harvest.

Based on the information available to me I cannot conclude that an emergency under 5 AAC 96.625(f) exists. Accordingly, I deny the emergency petition pursuant to 5 AAC 96.625(f) and AS 44.62.230.

cc: Glenn Haight, Executive Director, Alaska Board of Fisheries
Scott Kelley, Director, Division of Commercial Fisheries
Tom Brookover, Director, Division of Sport Fisheries
Seth Beausang, Assistant Attorney General, Department of Law
Bruce Twomley, Chairman, Commercial Fisheries Entry Commission