

MEMORANDUM

State of Alaska

Department of Law

TO: Art Nelson
Executive Director
Alaska Board of Fisheries

DATE: March 6, 2023

FILE NO.: 2022200306

FROM: Aaron Peterson
Senior Assistant Attorney General

TEL. NO.: 907-269-5232

SUBJECT: Department of Law comments on proposals for the March 10, 2023 – March 14, 2023 Board of Fisheries meeting.

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its March 10-14, 2023 Board of Fisheries meeting for Statewide Finfish and Supplemental Issues:

Proposal 154: This proposal apparently seeks to amend a statute found in Title 16 of the Alaska Statutes. The Board does not have authority to amend statutes.

Proposal 161: This proposal asks the Board to adopt a policy regarding the management of groundfish, similar to the “Guiding Principles for Groundfish Fishery Regulations,” which was repealed in 2013.

Law has consistently advised the Board to expressly address applicable guiding principles on the record when considering regulatory proposals concerning fisheries and stocks for which a policy exists.

As an example, the Board has adopted a “Policy for the management of sustainable salmon fisheries” at 5 AAC 39.222. Board members should review the policy thoroughly and ensure that the standards outlined in the policy have been considered on the record in any proposal dealing with salmon management. A checklist to assist Board members in application of the policy should be included in the Board workbooks for each meeting where salmon proposals are scheduled.

Law also recommends that the Board carefully evaluate whether adoption or maintenance of guiding principles in regulation is warranted, recognizing that failure to address or comply with a guiding principle, or carefully explaining its deviation from the principle, may result in a Board action being invalidated.

A Board cannot bind a future board to a particular course of action, so the Board may adopt regulations inconsistent with any guiding principles or management plans so long as it fully explains the rationale for its action and its deviation from the principles or plan. Although guiding principles and other provisions that purport to restrict the actions of future Boards are generally ineffective in limiting the Board's discretion they create procedural obstacles that may serve as bases for legal challenges to Board actions.

Proposal 163: This proposal asks the Board to prohibit guiding in personal use finfish fisheries. The Board has authority to regulate personal use fishing as needed for the conservation, development, and utilization of fisheries.¹

However, the board does not have the authority to imposes taxes or fees as alternatively requested by the proposer.

Proposal 167: This proposal would require subsistence and personal use salmon harvesters to report to the department within five days of harvest. The department usually indicates that it would be a substantial administrative and financial burden to create and utilize reporting of this nature. Because the Board has no administrative, budgeting, or fiscal powers over the Department, any Department concerns about funding for a particular reporting system should be considered before adopting this kind of proposal.

¹ AS 16.05.251(a)(12).