

SUPPLEMENTAL NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALASKA BOARD OF FISHERIES

This **SUPPLEMENTAL NOTICE** amends the Notice of Proposed Changes that was issued on August 26, 2011 concerning proposed regulation changes in Title 5 of the Alaska Administrative Code dealing with fishery and aquatic plant resources by adding the following topics to be considered at the meetings noted:

The following additional topics will be addressed at the board's Statewide Dungeness Crab, Shrimp, and Miscellaneous Shellfish meeting scheduled for **MARCH 20-23, 2012** at the Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska:

A board generated proposal to adopt a **statewide definition of anchor rollers** into regulation (5 AAC 39.105(x))

In the **Norton Sound red king crab fishery**, increase harvest levels. (5 AAC 34.915)

In the **Aleutian Islands golden king crab fishery**, increase harvest levels. (5 AAC 34.612)

In **Bristol Bay salmon fishery**, amend registration requirements to include electronic submission of registration and re-registration via the web. (5 AAC 06.370)

All other provisions posted in the August 26, 2011 Notice of Proposed Changes remain the same, including the public comment periods and tentative meeting schedule.

For a copy of the proposed regulation changes, or for a copy of the August 26, 2011 Notice of Proposed Changes, contact the Alaska Department of Fish and Game, Boards Support Section, P.O. Box 115526, Juneau, AK 99811-5526, phone 907-465-4110, or access the internet at:

<http://www.adfg.alaska.gov/index.cfm?adfg=fisheriesboard.meetinginfo>

Statutory Authority: AS 16.05 - AS 16.20, AS 16.40

Statutes being implemented, interpreted, or made specific: AS 16.05 - AS 16.20, AS 16.40

Fiscal Information: The proposed regulatory actions are not expected to require an increased appropriation.

Date: October 31, 2011



Monica Wellard, Executive Director
Alaska Board of Fisheries

FORM FOR ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting Agency: Alaska Board of Fisheries.
2. General subject of regulation: Norton Sound red king crab, Aleutian Islands golden king crab, registration for the Bristol Bay salmon fishery and Statewide definition for anchor roller;
3. Citation of regulations: 5 AAC 06, 34, and 39
4. Reason for proposed action: Supplemental topics for the March 2012 Board of Fisheries meeting. Implement, interpret, or make specific the provisions of AS 16.05 - AS 16.20, AS 16.40.
5. Program category and RDU affected: Natural Resources and all RDUs.
6. Cost of implementation to the state agency and available funding: These actions are not expected to require any additional costs.
7. The name of the contact person for the regulations:

Monica Wellard, Executive Director
Alaska Board of Fisheries
PO Box 115526
Juneau, AK 99811-5526
(907) 465-4110

8. The origin of the proposed action:
 staff or state agency
 federal government
 general public
 petition for regulation
 other (please list)

9. Date: October 31, 2011

Prepared by: 
Monica Wellard, Executive Director
Alaska Board of Fisheries
(907) 465-4110

PROPOSAL 380 - 5 AAC 39.975 (XX). Definitions. Establish a definition for “anchor roller” as follows:

5AAC 39.975(XX) “anchor roller” means a device used solely in aid of deploying and retrieving anchor gear, and does not provide any additional flotation, planing surface, sea keeping ability, buoyancy, deck space, or structural support to the vessel;

ISSUE: During summer months of 2011, reports were received by the Alaska Department of Public Safety that commercial purse seine fishing vessels longer than the allowable overall length were being used to take salmon. The Alaska Legislature has limited the allowable length of purse seine vessels in Alaska to 58 feet in "overall length" (AS 16.05.835). The Alaska Legislature defines “overall length” as the straight line length between the extremities of the vessel, excluding anchor rollers. The term “anchor roller” is not defined on a statewide basis.

It was found that vessels of more than 58 feet in overall length had been modified by removing a section of the bow (in one case, several feet of vessel hull length), and then bolting the bow section back on. The owner then considered this hull section to be an “anchor roller.” A clear definition on a statewide basis is needed to clarify what is and is not an "anchor roller."

WHAT WILL HAPPEN IF NOTHING IS DONE? The term "anchor roller" will continue to be undefined in regulation and may continue to be disputed or misunderstood by the public.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? No.

WHO IS LIKELY TO BENEFIT? The general public and law enforcement will have a clear definition of "anchor roller." Disputes or misunderstanding will be minimized.

WHO IS LIKELY TO SUFFER? No one.

OTHER SOLUTIONS CONSIDERED? No other solutions were considered as a clear definition would be of best service to the public.

PROPOSED BY: Board of Fisheries

PROPOSAL 381 - 5 AAC 34.915. Norton Sound Section Red King Crab Harvest Strategy.
Amend the maximum allowable harvest in Norton Sound red king crab fishery to align with revised harvest rates based on recent population model as follows:

(a)(1). The threshold level of abundance of legal male red king crab biomass is 1.0 million pounds; the Norton Sound red king crab season may open only if analysis of the preseason survey data indicates that the biomass of legal male red king crab exceeds this level;

(2) if the Norton Sound red king crab season is open under (1) of this subsection and the legal male red king crab biomass is less than 2.0 million pounds, the biomass of legal male red king crab available for harvest will be 5% of the legal male red king crab abundance;

(3) if the Norton Sound red king crab season is open under (1) of this subsection and the legal male red king crab biomass is greater than 2.0 million pounds, the harvest rate will progressively rise from 15% at a legal male RKC biomass of 2.0 million pounds to 20% at the legal male red king crab biomass of 4.0 million pounds;

ISSUE: A recent review of Norton Sound red king crab population models has resulted in the conclusion that the model has consistently overestimated the legal male biomass by approximately 40%. Thus, under current regulations, the Norton Sound red king crab harvest will be reduced about 40%, not due to an actual decline in population, but because of a reworked population model that is no longer in tune with the regulations. This level of harvest reduction will be devastating to commercial fishermen and buyers. The new model indicates the population to have had a harvest rate of 12 to 18% over much of the past decade. Harvest under the current regulatory maximum rate of 10% would be less than 125,000 pounds, down for a harvest that hovered near 400,000 pounds for the past decade. This ACR seeks to increase the maximum allowable harvest rate to align with revised harvest rates observed under the new model.

The current regulation has been in place since the Norton Sound red king crab management model has been in place, since 1998. Managers worked to keep harvests within the ranges set in regulation based upon the old model's determination of stock size. The new model is considerable more conservative and the present regulation will have the effect of holding harvests well below their sustainable levels. This will have the effect of dramatically reducing the economic viability of the fishery for both the fishermen and the market. The best fix is to update the harvest strategy in regulation prior to the next fishing season.

This proposal addresses a significant reduction in commercial harvest, not allocations between fisheries. Approval of the request will result in less disruption.

The new population model became public in April 2011 roughly a month before the 2011 management plan was announced. The Norton Sound commercial fishery is in double jeopardy with the current situation. The model has reduced the biomass calculation by 40%. Second, with

the current management strategy, the threshold where the harvest rate is halved is well within the historic range of legal male biomass variation. A harvest reduction to 30% of recent harvests will gravely impact both fishermen, buyers, and the Norton Sound king crab market for several years until it could be brought before the BOF during a regular cycle. Biologically, the population is stable and the possibility of draconian reduction cannot be supported for conservation reasons. Therefore, this issue must be taken up prior to the next fishing season.

WHAT WILL HAPPEN IF NOTHING IS DONE? Possible impact on fishermen, buyers and the Norton Sound king crab market.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? Yes.

WHO IS LIKELY TO BENEFIT? Commercial use.

WHO IS LIKELY TO SUFFER? None.

OTHER SOLUTIONS CONSIDERED? No.

PROPOSED BY: Charles Lean

(Previously ACR 6)

PROPOSAL 382 - 5 AAC 34.612. Harvest levels for golden king crab in Registration Area O. Increase total allowable catch in the Aleutian Islands golden king crab fishery due to lack of adoption of new stock assessment model by crab plan team as follows:

5 AAC 34.612 – Harvest levels for golden king crab in Registration Area O.

ISSUE: In 2008 the Alaska Board of Fisheries adopted an increased harvest limit of 5% for the Aleutian Islands golden king crab fishery as shown in 5 AAC 34.612. It was to be in place until a stock assessment model was established by the department. The expectation was that the model would be in place within one or two years. The model has still not been finalized or approved and there is uncertainty about whether it will ever be accepted as a stock assessment tool.

Due to the fishery performance, it is clear that the Aleutian Islands golden king crab fishery is in a robust condition. Consideration by the Board for another quota increase is warranted while we continue to wait for the model to be approved by the Crab Plan Team and North Pacific Fishery Management Council's Scientific and Statistical Committee, which hopefully would then be followed by a harvest strategy developed by the department and approved by the Board. Another option would be for the Board to direct the department to create a harvest strategy based on CPUE and observer data, rather than depending on the adoption of a model for this to occur.

This issue has been discussed for five years or more with industry requesting the department to consider conditions which would allow for an adjustment of the total allowable catch levels for the golden king crab fisheries in the Aleutian Islands.

It was expected in 2008 that the model would be approved and in place within a short time. The delay in the model being approved and established is an unforeseen event and the effect on the fishery is that foregone harvest is occurring. Preliminary model estimates show that a substantially increased harvest limit could be set, but the model has not been formally adopted.

The proposal is not an allocation request, rather a harvest limit increase for the entire fishery.

After the Crab Plan Team failed to adopt the model in 2010, an Agenda Change Request was submitted to the Board, but was rejected because the department made it clear that the Crab Plan Team and SSC would likely approve the model prior to the 2011 season. It was expected that the department would then begin developing a harvest strategy for the Board to review and approve. This did not occur and the model will be under further review at a workshop in 2012, with no assurance that it will be accepted next year. In fact, since this is a Tier 5 un-surveyed stock, there is some concern that the model will never be approved.

As stated earlier, this issue has been a source of discussion for over five years. When the Board last addressed the total allowable catch levels for this fishery, everyone expected the model and harvest strategy approval process to be completed with a year or two at most.

The industry and public continue to lose year after year by having the total allowable catch set at an arbitrarily low number. Further delays in addressing this issue should not occur.

WHAT WILL HAPPEN IF NOTHING IS DONE? Possible impact on commercial industry.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? Yes.

WHO IS LIKELY TO BENEFIT? Commercial use.

WHO IS LIKELY TO SUFFER? None.

OTHER SOLUTIONS CONSIDERED? The Alaska Board of Fisheries addressed this issue at the March 2008 meeting and approved a 5% increase in the harvest limit for this fishery. This was to be temporary until the stock assessment model was established by the department. The Board further reviewed an Agenda Change Request in 2010 for consideration during the 2010/2011 cycle, but rejected that request based in part on assurances from the department that the model would likely be approved in May 2011.

PROPOSED BY: Linda Kozak

(Previously ACR 9)

PROPOSAL 383 - 5 AAC 06.370. Registration and reregistration. Amend registration requirements in Bristol Bay salmon fishery to include electronic submission of registration and reregistration via the web as follows:

(a)(1) initial district registration is accomplished by completing a registration form provided by the department and returning the completed form to the department office in Dillingham or King Salmon **or electronically on the department's website;**

ISSUE: The department is moving forward with plans to allow commercial salmon CFEC permit holders in Bristol Bay to complete initial district registration on the department's website. In order to accomplish this, the regulation requiring initial registration be done by submitting a completed registration form to the department office in Dillingham or King Salmon must be amended to include the option to register on the website.

Waiting until the 2012 Bristol Bay board meeting would delay implementation of this change by one fishing season. Electronic registration provides more flexibility to permit holders but also will streamline the processing of district registration and allow dissemination of that information to the public much faster than what is currently possible when manually entering registration forms. Electronic registration reduces the burden of handling paper registration cards by ADFG staff, reduces errors by permit holders, records every action pertaining to each permit, and provides immediate feedback regarding issues with the permit holders legal status (eg. vessel fees, permit fees, t-sticker, district registration).

WHAT WILL HAPPEN IF NOTHING IS DONE? Delay implementation of change by one fishing season.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? N/A

WHO IS LIKELY TO BENEFIT? Commercial use.

WHO IS LIKELY TO SUFFER? None.

OTHER SOLUTIONS CONSIDERED? None.

PROPOSED BY: Alaska Department of Fish and Game (Previously ACR 10)

PROPOSAL 384 - 5 AAC 34.816(a)(1). Bristol Bay Red King Crab Harvest Strategy.

Amend regulation as follows:

5 AAC 34.816. Bristol Bay Red King Crab Harvest Strategy

(a)(1) the threshold level of abundance is 8,400,000 mature female red king crab and 14,500,000 pounds of effective spawning biomass; the Bristol Bay red king crab season may open only if analysis of preseason survey data indicates that the population of red king crab is more than both of these indices of stock reproductive potential; the Bristol Bay red king crab season will not open if preseason survey data indicate that the population is at or below either of these two indices of stock reproductive potential.

ISSUE: The federal *Fisheries Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs* (FMP) establishes a state/federal cooperative management regime that defers management of the Bristol Bay red king crab (RKC) fishery to the State of Alaska with federal oversight.

Under the FMP, the State of Alaska has authority to establish harvest levels for crab stocks. Harvest levels are a category two management measure in the FMP. The state may change how harvest levels are set as long as the harvest level is in compliance with the FMP.

The Bristol Bay RKC fishery regulatory harvest strategy contains a minimum total allowable catch (TAC) threshold as follows:

5 AAC 34.816. Bristol Bay Red King Crab Harvest Strategy

(a)(1) the threshold level of abundance is 8,400,000 mature female red king crab and 14,500,000 pounds of effective spawning biomass; the Bristol Bay red king crab season may open only if analysis of preseason survey data indicates that the population of red king crab is more than both of these indices of stock reproductive potential; the Bristol Bay red king crab season will not open if preseason survey data indicates that the population is at or below either of these two indices of stock reproductive potential; the minimum total allowable catch threshold (not including the CDQ quota) for the commercial red king crab fishery is 4,000,000 pounds; neither the commercial red king crab fishery or the CDQ fishery under 5 AAC 39.690 will open if the minimum total allowable catch threshold is not met.

The minimum harvest level was utilized to minimize the risk of the fishery exceeding harvest targets when the fishery was managed inseason under a guideline harvest level (GHL). Since the 2005/06 fishing season, the Bristol Bay RKC fishery has been included in the federal crab rationalization program, and has been managed under a TAC. Inseason management is no longer conducted by ADF&G under a GHL.

If ADF&G determines a harvestable surplus of Bristol Bay red king crab RKC is available that is less than the minimum TAC specified under 5 AAC 34.816, the fishery would be closed. ADF&G is requesting that the minimum TAC be removed from the Bristol Bay RKC management plan because it no longer serves the purpose it was originally developed for.

The Bristol Bay RKC fishery is managed for a TAC. Although there are no allocations in state regulation, the National Marine Fisheries Service issues individual fishing quota shares (IFQ) to qualified participants. Removing the RKC minimum TAC will not affect the federal allocation to IFQ holders.

WHAT WILL HAPPEN IF NOTHING IS DONE? The Bristol Bay RKC TAC for the 2012/13 season will be determined in early October 2012. If the RKC TAC is less than the minimum TAC in regulation, the Bristol Bay RKC season would not open, although a harvestable surplus may be available.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? Not applicable.

WHO IS LIKELY TO BENEFIT? Bristol Bay RKC fishery.

WHO IS LIKELY TO SUFFER? No one.

OTHER SOLUTIONS CONSIDERED? Not previously considered.

PROPOSED BY: Alaska Department of Fish and Game (Previously ACR11)

PROPOSAL 385 - 5 AAC 05.362. Yukon River Summer Chum Salmon Management Plan.

This is a proposal based on a petition accepted by the Alaska Board of Fisheries at its Petersburg meeting in January 2011 requesting a revision to the management plan for Yukon River chum salmon as follows:

Amend 5 AAC 05.362 to allow commercial summer chum salmon harvesting during times of Chinook salmon conservation concerns in Yukon River Subdistrict Y-4A by including the following changes: grant ADF&G emergency order (EO) authority to:

- a) restrict commercial chum salmon harvesting to fish wheels only in Subdistrict Y-4A;
- b) require that fish wheels in Subdistrict Y-4A have a live box or chute and that all Chinook salmon must be returned to the water alive; and
- c) require that fish wheels in Subdistrict Y-4A be manned at all times to ensure that Chinook salmon are promptly returned to the water alive.

The intent of these changes would be to:

- (a) manage the summer chum salmon fishery based upon chum abundance only;
- (b) have harvest during years of Chinook salmon conservation concerns be conditioned upon full compliance with these changes; and
- (c) have commercial harvesting of chum salmon under these changes managed independently of subsistence fishing for Chinook salmon.

ISSUE: Summer chum salmon stocks have rebounded in the middle Yukon Area 4-A, but the harvesting and processing season has been shortened dramatically by ADF&G to protect Canadian-bound Chinook salmon. The impact of ADF&G action has fallen unfairly and disproportionately on the Yukon harvest area 4-A, where Kaltag tribal members are highly-dependent on the only operating salmon processing plant to support the local economy of Kaltag. Fishing is the economic backbone for these native communities. If the shortened 20-day processing season is not extended to its historical 38-day processing season, the processing plant is not commercially viable and will close permanently.

The department's justification for the shortened season is to delay the opening of the commercial chum fishery until after the Canadian-bound Chinook salmon are upstream. However, unlike other commercial fisheries in state and federal waters (e.g., pollock fisheries), which are allocated bycatch of Chinook salmon and allowed to harvest their target species, the Yukon harvest area 4-A is completely closed during a highly critical chum harvest period without any bycatch allocation whatsoever. For reasons that are unclear, the equal protection and due process rights of the City of Kaltag, in particular, and other similarly situated communities on the Yukon with historical commercial fisheries, were simply not considered or weighed properly in the formulation of the federal and state fisheries management plans. As a consequence, the conservation burden of ADF&G's action falls disproportionately on the Yukon harvest area 4-A.

The allocation issue notwithstanding, the language of the [proposal] allows the Yukon chum salmon harvest be extended to its historical 38-day processing season by virtue of the proposed harvest technique, i.e., fish wheels, which eliminates bycatch issues by sending all Yukon Chinook's overboard alive.

If the proposal is approved, setnetting would be eliminated during the Chinook-sensitive early chum harvest periods, and only approved fish wheels would be allowed to be used to harvest chum, which have been shown by scientific studies to have a mortality rate of less than .3 percent.

The current regulation failed to properly consider and weigh the equal protection and due process rights of Kaltag tribal members, in particular, and other similarly situated Alaskan Native communities on the Yukon with historical commercial fisheries. In addition, the Yukon Summer Chum Management Plan was last updated in the 90s, and has not been revised/implemented in association with the Chinook management plan to address the legitimate concurrent needs of commercial and subsistence fisheries in the Yukon under the current scenario, where chum salmon returns are at historically high levels with overescapement in many systems and poor overlapping Chinook salmon runs.

Under the current regulations, no commercial summer chum salmon fishing is opened on the Yukon until subsistence fishing for Chinooks has begun upstream from Kaltag. The regulatory linkage of the two fisheries by ADF&G does not appear to be clearly supported in any federal or state law, treaty, or regulation. The net effect, however, is that commercial fishing for summer chum salmon does not open until over half the chum run has passed Kaltag. Two different species of salmon are harvested by two radically different methods, one subsistence and the other commercial, but they are linked under the current management plans despite that harvest techniques, e.g., fish wheels, can adequately address the department's conservation concerns without the unintended commercial consequences.

WHAT WILL HAPPEN IF NOTHING IS DONE? Allowable harvest will continue to be unharvested. The processing plant in Kaltag will close permanently prior to the upcoming harvest season if the proposed changes are not approved.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? NA.

WHO IS LIKELY TO BENEFIT? Commercial fishermen of Yukon Area 4-A.

WHO IS LIKELY TO SUFFER? None.

OTHER SOLUTIONS CONSIDERED? Closure of the Kaltag processing plant.

PROPOSED BY: Doug Karlberg and Gary Nelson

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PROPOSAL 386 - 5 AAC 02.010. Methods, means and general restrictions; 5 AAC 75.035. Methods and means; 5 AAC 77.010. Methods, means and general restrictions. Add marking requirements for ring nets in the subsistence, sport, and personal use shellfish fisheries as follows:

5 AAC 02.010(e)(2) is amended to read:

kegs or buoys attached to subsistence crab pots **or ring nets** also must be inscribed with the name or the division of motor vehicles boat registration number, issued under 2 AAC 70, of the vessel used to operate the pots **or ring nets**.

5 AAC 75.035(1) is amended to read:

on a keg or buoy attached to each pot **or ring net**, the sport fisherman shall plainly and legibly inscribe the fisherman's first initial, last name, home address, and the name or the division of motor vehicles boat registration number, issued under 2 AAC 70, of the vessel used to operate the pot **or ring net**;

5 AAC 77.010(d) is amended to read:

Each personal use fisherman shall plainly and legibly inscribe the fisherman's first initial, last name, and home address on a keg or buoy attached to a gillnet, **ring net**, or pot. A keg or buoy attached to a pot **or ring net** must also be inscribed with the name or the division of motor vehicles boat registration number, issued under 2 AAC 70, of the vessel used to operate the pot **or ring net**.

ISSUE: At the Alaska Board of Fisheries' (board) January 2012 Southeast and Yakutat Shellfish meeting, the board adopted Proposal 149, which limited the number of subsistence, sport, and personal use ring nets that could be operated by individuals from vessels. During the process it came to light that there are presently no marking requirements for ring nets. The board has generated this proposal to require marking of ring net buoys statewide.

WHAT WILL HAPPEN IF NOTHING IS DONE? Persons could operate unmarked ring nets. This would be counterproductive and may led to conservation concerns as persons who commit violations by fishing in closed seasons or areas with ring nets would not be accountable without required buoy markings.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? No.

WHO IS LIKELY TO BENEFIT? The public, shellfish resources, and enforcement will benefit since persons operating unmarked ring nets in violation of regulations can be held accountable. Required marking for ring net buoys will deter unlawful activity in general.

WHO IS LIKELY TO SUFFER? No one.

OTHER SOLUTIONS CONSIDERED? None.

PROPOSED BY: Alaska Board of Fisheries.

(HQ-XXX-XXX)
