

RC 34

Alaska Board of Fisheries
Committee Report
COMMITTEE A
Lower Cook Inlet Commercial Fishing Proposals
November 16, 2010

Board Committee Members:

1. Mel Morris, *Chair
2. Bill Brown
3. Mike Smith

Alaska Department of Fish and Game Staff Members:

1. Lee Hammarstrom – Area Manager, Commercial Fisheries
2. Ethan Ford – Asst. Area Manager, Commercial Fisheries
3. Charlie Trowbridge - Area Manager, Commercial Fisheries
4. Ted Otis – Area Research Biologist, Commercial Fisheries
5. Elisa Russ - Asst. Area Manager, Commercial Fisheries
6. Jeff Regnart – Regional Supervisor, Commercial Fisheries
7. Tracy Lingnau – Regional Mgmt. Biologist, Commercial Fisheries
8. Matt Miller - Regional Mgmt. Biologist, Sport Fisheries
9. Dan Bosch – Area Mgmt. Biologist, Sport Fisheries
10. Carol Kerkvliet, Asst. Area Manager, Sport Fisheries
11. Al Cain – Criminal Justice Planner
12. Chris Russ – Fisheries Technician, Commercial Fisheries
13. Sue Aspelund – Deputy Director, Commercial Fisheries
14. Kerri Tonkin – Regulation Program Coordinator, Commercial Fisheries

Advisory Committee Members:

1. David Martin – Central Peninsula AC
2. Diane Dubuc – Seward AC
3. Robert Purpura – Seldovia AC
4. Paul Shadura – Kenai/Soldotna AC

Public Panel Members:

1. Roland Maw – UCIDA
2. Mark Roth – CIAA BOD
3. Thomas Buchanan - Self
4. Sam Cotton – CIAA BOD
5. Beaver Nelson - Self
6. Gary Fandrei – CIAA, EA Dir.
7. David Chartier – Self
8. Alex Roth - Self
9. Leonard Miller - Self

The Committee met November 16, 2010 at 8:30 a.m. and adjourned at 12:45 p.m.

PROPOSALS BEFORE THE COMMITTEE WERE: (19 total) 1-19.

PROPOSAL 1 - 5 AAC 21.200(d)(2). Fishing districts, subdistricts, and sections. Change western most boundary line in Seldovia Bay Subdistrict.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 15 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PC 13.

Record Comments: RCs 19 and 23.

Narrative of Support and Opposition:

Department:

- Provided new regulatory language with coordinates in RC 23.
- Willing to accommodate with a “dogleg” from point in water at Reef Point to shore at Point Naskowhak.
- Enforcement can handle the proposed dogleg and similar scenarios occur other areas in the state.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Current leaseholder held lease for 16 years and been fishing in area that was recently deemed outside boundary after new GPS points were taken. New GPS point on bluff.
- Historical fishing area being utilized for 40 years.
- Reef where fishing occurs is exposed at certain tides.

Opposition: None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Supports with substitute language.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language:

5AAC 21.200. Fishing districts, Subdistricts, and Sections

(d) Southern District:

(2) Seldovia Bay Subdistrict: all waters [SOUTH] southeast of a line from Point Naskowhak at [59° 27.20' N. LAT., 151° 44.57' W. LONG] 59° 27.22' N. lat, 151° 44.56' W. long., then to 59° 27.37 N. lat., 151° 44.63' W. long., and then to Seldovia Point at 59° 28.22' N. lat., 151° 42.37' W. long.;

PROPOSAL 2 - 5 AAC 21.310(b)(6). Fishing seasons. Change the opening date for the Outer District to June 1.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 7 and 8.

Record Comments: RCs 5, 6, 7, 9, and 12.

Narrative of Support and Opposition:

Department:

- Oppose proposal because management decisions are based on in-season assessment.
- Exception is Port Dick which has a predetermined opening date because of robust pink production and system can handle exploitation early in season.
- Kamishak District is different. No tender, limited anchorage, harsh weather results in less effort.
- Other areas need to be assessed and smaller stocks would be at risk if opened June 1.
- Begin flying surveys late June.
- Oppose blanket opening because need to identify harvestable surplus.
- Department cannot ask legislature for more funds, but private citizens can.
- If blanket opening was approved, department may immediately have to close by EO due to lack of assessment.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Unharvested fish available.
- Takes pressure off CIAA harvests.
- Would be willing to compromise with July 1 opening.
- If opened earlier can fish early males from system and improve male/female ratio.
- LCI is a huge area; Eastern and Outer districts are neglected, department staff limited.
- Support June 1 opening and onus is on department staff to close areas if no fish; could petition legislature for more funds for survey and staff.
- Interest in making sure seiners are successful in LCI for 2% enhancement tax, otherwise falls to UCI fishermen.
- Surveys unreliable, need information on the ground from fishermen to help assess runs.

Opposition:

- Small systems could be negatively impacted.
- Need more survey flights by department to assess runs early enough to provide opportunity on strong years.
- Willing to consider short 6-hour opener June 1 to assess run strength and gauge interest of fleet.
- Opposes June 1 opening; likes idea of July 1 opening as a “test fishery”.
- Only fish available prior to July 1 are sockeye from small systems.
- Could have short opening in beginning of each week and then department could “react”.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions: Support:

- Seward
- Central Peninsula

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 3 - 5 AAC 21.310(b)(7). Fishing seasons. Change the opening date for the Eastern District to June 1.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 7 and 8.

Record Comments: RCs 5, 6, 7, 9, and 12.

Narrative of Support and Opposition:

Department:

- Aialik Bay is surveyed but it is a small system and there has not been a harvestable surplus the past few years. Begin surveys late June.
- Opposed to management via monitoring of fish tickets.
- In East Nuka Bay sockeye and pink run timing can overlap.
- June 1 opening would preclude late May opening for sockeye in Resurrection Bay.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- There are three stocks of interest – Day Harbor, Resurrection Bay, and Aialik Bay.
- No surveys in Day Harbor since 1988.
- Used to fish chums there, and there is a great pink run in Aialik area that has not been fished.
- Support with same comments mentioned for Proposal 2.
- 400 miles of beach with multiple runs and hardly any surveys.
- When there is a harvestable surplus, hopes the board would find a way to allow harvest and mandate development of new fisheries.
- Would still support with a change to a July 1 opening date with limited openings and same for Proposal 2.

Opposition:

- More in favor of opening this area than Outer District but favor July opening; June 1 is too early.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions: Support: Seward.
Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 4 - 5 AAC 21.310. Fishing seasons. Provide opportunity to harvest salmon by drift gillnet and setnet fishing.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 3, 7, and 8.

Record Comments: RCs 5, 6, 7, 9, and 12.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General:

- Proposer claimed proposal does not match original paperwork and will withdraw support because opposes proposal as written.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: None.

Board Committee Recommendation: No action. Proposal orally withdrawn.

Substitute Language: None.

PROPOSAL 5 - 5 AAC 21.200. Fishing districts, subdistricts, and sections. Establish drift gillnet as legal gear in Outer District and Resurrection Bay of the Eastern District.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 3, 7, and 8.

Record Comments: RCs 5, 6, 7, 9, and 12.

Narrative of Support and Opposition:

Department:

- Regulation prohibits commercial harvest of king and coho salmon in Resurrection Bay.
- Use of gillnets has always been a concern because it is difficult to live release king and coho salmon from that gear.
- Current regulation dictates it is illegal to take coho and king salmon in a commercial fishery in Resurrection Bay.
- Repealed drift gillnet gear in Resurrection Bay in 1964.
- Rotenoned Bear Lake in 1963 for coho project to remove competition and sockeye smolts experienced good growth. Strong runs predicted and returned in 1968-69. Drift gillnet gear allowed by board to harvest large numbers of returning sockeye and limit escapement.
- Gillnet gear removed as legal gear in 1976.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Drift gillnet proposals are due to unharvested stocks.
- Harvestable surplus is available.
- Historically drift gillnet gear was allowed in Resurrection Bay.
- Drift gillnet vessels are cheaper to operate.

Opposition:

- Opposed to the three drift gillnet proposals.
- Difficult to release kings and cohos from a gillnet. These are mixed stock fisheries.
- Why expand a fishery when all fish will go to cost recovery.
- There are 80 permit holders in LCI with only 20 active permits because economically cannot support more, therefore addition of drift gillnet gear would be economic disaster.

- Reason for original proposal in 1968 to allow drift gillnet gear in Resurrection Bay was because only hand purse seine was allowed at that time but not power seine to effectively fish harvestable surplus.
- Would likely be some interception of cost recovery fish.
- Potential conflicts between drift gillnet and seine gear.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral on allocative aspects of proposal but opposed if intent is to provide opportunities for interception of other stocks.

AC Positions: Support: None.

Oppose:

- Seward.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 6 - 5 AAC 21.3XX. New Section. Establish a terminal harvest area on the Kirschner Lake.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: RC 1, Public Comment Tab, PC 8.

Record Comments: RCs 6 and 7.

Narrative of Support and Opposition:

Department:

- Original intent of the proposer differs from the proposal as worded.
- Department willing to discuss possible solution with CIAA and fishermen for an inseason adjustment of SHA.
- May be able to reduce SHA but need to research target escapement before adjusting, possibly 75,000 fish.
- Agreed to have inseason latitude on whether or not it is appropriate to reduce the size of the Kirschner Lake SHA based on size of pink returns to Bruin Bay without negatively impacting CIAA's sockeye cost recovery.
- Will work together after committee adjourns to provide language.
- Department already has EO authority to adjust SHA.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- This SHA is last place CIAA goes for cost recovery. Ideally this would be open to common property for sockeye if CIAA met cost recovery goal.
- Bruin Bay has big boulders, large tides, and bad weather and there needs to be a way to fish Kirschner Bay on big westerly days in order to harvest pinks heading for Bruin Bay.
- Reduce SHA to within ¼ mile of Kirschner Creek when Bruin River pink escapement reaches 100,000 fish.

Opposition:

- This area is more critical in the short term than in the long term. If the board shrinks the SHA right now, fishermen will target sockeye needed badly for CIAA cost recovery for next two years. Would support idea of reducing SHA in the future if cost-recovery goals are met.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Support the following board intent:

It is the intent of the Alaska Board of Fisheries that the department, after consultation with the executive director of Cook Inlet Aquaculture Association, may use their existing emergency order authority to alter the boundaries of the Kirschner Lake Special Harvest Area inseason to allow additional directed commercial seine fishing opportunity on natural stocks of pink salmon bound for adjacent river systems.

Substitute Language: None.

PROPOSAL 7 - 5 AAC 21.330. Gear. Include gillnet as a legal gear type for commercial salmon fishing in the Southern, Barren Islands, Outer and Eastern districts of Lower Cook Inlet and the Chinitna Bay Subdistrict of Upper Cook Inlet.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 3, 7, and 8.

Record Comments: RCs 5, 6, 7, 9, and 12

Narrative of Support and Opposition:

Department:

- The department is neutral on allocative aspects of drift gillnet proposals.
- However, the department is opposed to this proposal if the intent is to allow drift gillnetting to occur in offshore areas or off capes and islands in waters in these areas.
- Fishing in such areas is likely to produce catches of salmon bound for other management areas and/or other districts in Lower Cook Inlet.
- No documented anadromous salmon runs in Barren Islands District. Therefore any salmon caught there are bound for other areas.
- No seine fishing has occurred in Chinitna Bay in 1982.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition:

- Chinitna Bay is an example of how seine and drift gillnet do not work well together; both legal gear in Chinitna Bay but only opens to gillnet gear.
- Set gillnetters already allowed in Southern District and allowing drift gillnets would reduce catch to setnetters.
- Set gillnetters had one of poorest seasons and to add another gear type would be disastrous.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral / Oppose.

AC Positions: Support: None.
Oppose: Seldovia.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 8 - 5 AAC 21.350(g). Eastern District Closed waters. Allow the historic fishery for gillnet.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 14 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 3, 7, and 8.

Record Comments: RCs 5, 6, 8, 9, and 12.

Narrative of Support and Opposition:

Department:

- Regulation cited in proposal refers allowing drift gillnet gear in closed waters in Eastern District.
- Tag return data suggests interception of PWS enhanced stocks in the Eastern District (e.g., Cape Aialik).
- Six out of last 50 years where pink escapements exceeded upper range of aggregated escapement goal in Resurrection Bay.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Proposer's intent was to target pinks and chums currently going unharvested.
- Sockeye runs for cost recovery come first and fishing on pinks and chums would not conflict.
- If state had not rotenoned then there would be a Resurrection Bay drift gillnet fishery now.
- Turned into recreational fishery for kings and cohos.
- There should be a happy medium with other gear types.
- There are ways to release kings live from drift gillnet gear.

Opposition:

- Pinks and chums were historically harvested by seine gear and were given 24, 48, and 72-hour openings in late '70s and '80s and would catch as much as 150,000 pinks. Then there was flood in 1986, oil spill in 1989, and new management in 1990 and basically aquaculture took over Resurrection Bay.
- There has been no problem harvesting pinks and chums.
- Doesn't believe a drift gillnet fishery would be sustainable.

- Seiners are able to harvest any surplus that is available.
- Regulations state that king and coho salmon may not be taken in waters of Resurrection Bay in a commercial fishery. Live release of these species from a drift gillnet is difficult.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 9 - 5 AAC 21.350. Closed waters. Amend closed waters boundaries with updated coordinates.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: None.

Narrative of Support and Opposition:

Department:

- Assign GPS coordinates to regulation markers on ground.
- This proposal is not allocative. The area currently available to fishing would not change.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Support because confusing when markers don't match regulations. There are more places that need updating.
- Supports what department is doing because they have seen others take advantage when markers and coordinates do not match; cited instance with 1800' difference.

Opposition: None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support.

AC Positions: Support:

- Seldovia AC.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language: None.

PROPOSAL 10 - 5 AAC 21.350. Closed waters. Amend regulation to update the appropriate closed waters boundary line for commercial salmon fishing in Resurrection Bay of the Eastern District in Lower Cook Inlet.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: RC 1, Public Comment Tab, PC 8.

Record Comments: RC 5.

Narrative of Support and Opposition:

Department:

- Proposed line has been in effect for 14 years by EO authority.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Supports as written.
- Support with amendment to draw alternative boundary lines to be submitted as an RC.
- Minimizes the potential for gear and traffic conflict between commercial and recreational users.

Opposition:

- Fishing in jitneys without plotters and boundary lines are too long so difficult to eyeball landmarks.
- Suggested alternative boundary markers that are closer together and also protect chum salmon at Tonsina and to avoid recreational fishers.
- Suggested boundary lines significantly reduce closed water area.
- Line down middle of Resurrection Bay too much of a burden.
- Stated there would be no gear conflicts in Resurrection Bay.
- Conflict between commercial fishermen who accuse one another of being over the line because they cannot see where the line is due to the distance between markers.
- Cited similar problems in other subdistricts (e.g., Port Dick)
- It is too difficult to use a plotter in an open skiff.
- This line cuts off the whole west side of Resurrection Bay.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support.

AC Positions: Support:

- Seward.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 11 - 5 AAC 77.549. Personal use coho salmon fishery management plan. Amend regulation to accurately reflect updated coordinates for closed waters near the Homer Spit in the Southern District (Kachemak Bay).

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: RC 25.

Narrative of Support and Opposition:

Department:

- Substitute language proposed in RC 25.
- Language in CF regs that applies in bays and streams as depicted in (h) and (i) should also be included to PU fisheries in order to protect small runs in bays and stream mouths.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support with substitute language.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support as amended.

Board Committee Recommendation: Support with substitute language.

Substitute Language: Next page.

5 AAC 77.549. PERSONAL USE COHO SALMON FISHERY MANAGEMENT PLAN.

(b) Salmon may not be taken in the following waters:

(3) Those waters described in 5AAC 21.350(d)(1), [and] (d)(3)-(d)(8), **(h) and (i)**;

(4) west of a line from an ADF&G regulatory marker at “Green Timbers” (**59° 37.67'** [59°37.90']_N. lat., **151° 28.38'** [151°28.70']_W. long.) on the Homer Spit to an ADF&G marker 300 yards east of the Homer airport access road (**59° 38.35' N. lat., 151° 28.71' W. long.**).

PROPOSAL 12 - 5 AAC 21.373. Trail Lakes Hatchery Sockeye Salmon Management Plan.
Remove the sunset clause from regulation so as to make the Trail Lakes Hatchery Sockeye Salmon Management Plan permanent.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RCs 13 and 22.

Timely Public Comment: RC 1, Public Comment Tab, PCs 7, 8, and 9.

Record Comments: RCs 5, 6, 9, and 21.

Narrative of Support and Opposition:

Department:

- If the plan sunsets, it would revert to a public process (e.g., Cook Inlet Regional Planning Team) to get stakeholders together to develop a plan. CIAA identifies what each year's fiscal needs are and what they need for brood source. A hatchery annual management plan (AMP) is developed, signed, approved, and subsequently used for inseason management each year. AMP is under commissioner's authority.
- Regulations exist to address SHAs.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- CIAA requests sunset clause is removed, which does not preclude Trail Lakes Hatchery (TLH) management plan from being amended during regular 3-year board cycle.
- No hatchery can rely solely on sockeye salmon to fund its organization. Need CIAA to survive to get Tutka Hatchery online to provide reliable revenue from pinks.
- 100% of harvest went to cost recovery only during low years in otherwise viable aquaculture operations (e.g., Valdez Fisheries Development Association (VFDA)).
- CIAA is working towards a viable business plan and all aspects of the operation are being reviewed. They have scheduled time to meet with VFDA and Prince William Sound Aquaculture Corporation (PWSAC) to review business plan. CIAA gets funds from grants for capital projects including \$1M received from legislature. They have identified a number of priority capital projects to improve the success of hatchery operations including currently resurfacing concrete raceways to control disease and installing variable speed water pumps.
- CIAA is currently seeking alternative broodstock sources to improve sockeye returns (e.g., English Bay Lakes and Kenai Lake).

- With multiple viable broodstock sources, CIAA will have a better chance for success.
- CIAA has done a lot in the past and when they used Tustemena Lake broodstock (before feds disallowed), they had good returns in '80s and all 85 seine permits were being fished. Generated a lot more for economy than only exvessel value.
- CIAA is more than Resurrection Bay programs and if it is gone, there will be no reds in Kachemak Bay. There will be no commercial, personal use, or sport fishery. Seward will still have some small natural reds from Resurrection Bay; the board needs to look at all perspectives, not just from the Resurrection Bay perspective.
- Intent is to determine the cost to operate TLH and recover that amount.
- Goal is not to take 100% of the fish but simply to recover costs and get more projects going. To share revenues with the common property fishery is the ultimate goal.

Opposition:

- Originally 50/50 split, common property/cost recovery. Now, state gave CIAA 100% and still can't make enough money.
- By giving them 100% of runs, CIAA will never meet cost-recovery goals. They will take it all as long as they can.
- In 2009 there were lots of fish and good prices and CIAA still did not achieve cost recovery goals.
- Seward AC requested to revert to previous Bear Lake Management Plan and opposes proposal as written.

General:

- 2% enhancement tax would stay in effect if TLH management plan is repealed. CIAA would use those funds for HQ operations, flow structures, fish passageways, and Susitna drainage projects. The enhancement tax has generated \$190k to \$1.8 million in revenue for CIAA and recently \$350-400k.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.

Oppose:

- Seward AC: Sunset TLH Sockeye Salmon Management Plan and revert back to Bear Lake Plan.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 13 - 5 AAC 21.373. Trail Lakes Hatchery Sockeye Salmon Management Plan; and 5 AAC 21.376 Resurrection Bay Salmon Management Plan. Modify Trail Lakes Management Plan for noncommercial users.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: RC 1, Public Comment Tab, PC 8.

Record Comments: RCs 5, 9, and 21.

Narrative of Support and Opposition:

Department:

- Inriver goal of 5,600 to 13,200 sockeye salmon has been met since 1992.
- The freshwater fishery is almost nonexistent and virtually all of the harvest occurs in saltwater.
- There is cost recovery out front and taken at the weir.
- Taking of broodstock and cost recovery are intertwined.
- If cost recovery efforts aren't being met, the department can use EO authority to restrict the sport fishery for taking of brood, but not cost recovery.
- There is an SEG in place and broodstock needs are added to that SEG which becomes the inriver goal.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- If there needs to be a restriction, everyone should be restricted.
- If cost recovery is closed, then the sport fishery should be closed.
- When at the low end of the escapement goal, CIAA has a hard time getting broodstock.

Opposition:

- Department already has EO authority to close sport fishery.
- Escapement goals have been achieved in the last decade.
- Sport fishery occurs upstream of cost recovery.
- No biological reason to restrict the sport fishery.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 14 - 5 AAC 77.545. Kachemak Bay Personal Use Salmon Fishery Management Plan. Allow PU fishery after CIAA meets cost recovery goals and after reason a reasonable commercial fishery has occurred.

Staff Reports: RC 3, Oral Tab 3 and 4, Written Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: RCs 5, 9, and 21.

Narrative of Support and Opposition:

Department:

- Department estimates 5,000 sockeye sport-harvested in Kachemak Bay in 2009 (average 2,300) and has confidence in statewide harvest survey estimates.
- This is a terminal fishery and the fish are in the creek past the cost recovery fishery.
- There is no biological reason not to let folks clean the fish up during the PU fishery.
- Restricting the sport fishery goes against a provision of the Trail Lakes Hatchery (TLH) management plan which states that no restrictions can be imposed on noncommercial fisheries inside SHAs in order to achieve hatchery objectives.

Department of Law:

- Indicated proposal could be rewritten to address snagging during sport fishery and submitted as a board-generated proposal.

Federal Subsistence Representative: None.

Support:

- PU fishermen have taken view that cost-recovery activities in this area are inappropriate and cause conflicts.
- The fishermen are paying for this run and would like to see some benefit come back to commercial fisheries or cost recovery.
- If CIAA decides not to take cost recovery, those fish should be harvested by someone, including PU fishermen.

Opposition:

- Most comments spoke to opposition of snagging during the saltwater sport fishery in China Poot Bay and Tutka Bay as opposed to the PU fishery.

- Once fish were up China Poot Creek and available to dipnetters, the fish were no longer available for cost recovery.
- Department estimates of sport harvest were challenged.
- There are a lot of families that rely on China Poot and closing it down would shift effort to the Kenai or Kasilof.
- Cost recovery has occurred last four years at China Poot. Once fish get into the dipnet fishery, should let PU fishery on them. However, the snag fishery is another matter and interferes with cost recovery.
- There are charter snag fisheries that take place here. Those are the fisheries that need to be restricted, not the dipnet fishery.
- While doing cost recovery in Tutka, observed sport boats with snag hooks taking their limit. Every day, every tide there was a minimum of 10 and sometimes 30 boats (some w/charters).
- Have seen 10,000 fish taken out of Tutka Bay and there is no enforcement.
- Would support an amendment to proposal to target sportfish snagging versus PU harvesters.
- Unable to identify a reasonable commercial fishery.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions: Support: None.

Oppose:

- Seward.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 15 - 5 AAC 27.430. Lawful gear for Cook Inlet Area. *(This proposal should be cited as 5 AAC 77.531. Personal use herring fishery.)*

Staff Reports: None.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: None.

Narrative of Support and Opposition:

Department:

- The proposal incorrectly cites a commercial regulation, but should cite personal use regulation 5 AAC 77.531 as noted in RC 2.
- Department has little experience with cast nets, is neutral, and doesn't believe passage would have a significant biological effect.
- Enforcement concern about targeting other species because the Southern District is open to personal use herring fishing year round when other species are present. Might consider restricting the cast net fishery to a specific season to help minimize that concern. Perhaps limiting it to the same dates as in Northern District (November – May).
- Present lawful gear for herring is allowed year-round in the Southern District.

Department of Law:

- Upper Cook Inlet regulations would have to be dealt with at that board meeting.

Federal Subsistence Representative: None.

Support:

- Would be fun.

Opposition: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 16 - 5 AAC 28.310. Fishing Seasons For Cook Inlet Area (d)(1) and (2); 5 AAC 28.365 Cook Inlet Area Rockfish Management Plan; and 5 AAC 28.367 Cook Inlet Area Pacific cod Management Plan (i).

Staff Reports: None.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: RC 24.

Narrative of Support and Opposition:

Department:

- Submitted by department to centralize all rockfish regulations to the same location and set bycatch (and retention) levels to 10% in a directed groundfish or halibut fishery, and to 20% non-pelagic rockfish during a directed pelagic rockfish fishery. All the bycatch percent change will do is affect the bycatch overage and not the total harvest of bycatch.
- Current regulations are confusing to the public.
- National Marine Fisheries Service (NMFS) regulations do not have mandatory retention as Cook Inlet regulations require.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- New language simplifies regulations.

Opposition: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support with substitute language.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support with substitute language.

Substitute Language:

5 AAC 28.310 FISHING SEASONS FOR COOK INLET AREA.

(d) Pelagic shelf rockfish may be taken in a directed fishery from July 1 until closed by emergency order, and as specified under 5 AAC 28.365.

- (1) Repeal. during a parallel fishing season for Pacific cod, opened under 5 AAC 28.367(b), a person may retain rockfish taken as bycatch in an amount not to exceed five percent of the gross round weight of all groundfish species taken in directed fisheries that are on board the vessel; and
- (2) Repeal. during a directed fishery for halibut, a person may retain rockfish taken as bycatch in an amount not to exceed 10 percent of the gross round weight of all groundfish species and halibut taken in directed fisheries that are on board the vessel; and
- (3) Repeal. during a directed fishery, other than a directed fishery for rockfish, a CFEC permit holder must retain all rockfish taken; except as otherwise specified in this subsection, 5 AAC 28.365 and 5 AAC 28.367, all rockfish in excess of 10 percent, round weight, of all directed target species on board the vessel must be weighed and reported as bycatch overage on ADF&G fish ticket; all proceeds from the sale of excess rockfish shall be surrendered to the state.

5 AAC 28.365. COOK INLET ROCKFISH MANAGEMENT PLAN.

- (c) If the commissioner determines a closure is necessary to ensure that the guideline harvest level for rockfish is not exceeded, The commissioner shall close, by emergency order, the directed fishery for rockfish and other groundfish species in the Cook Inlet Area and immediately reopen a season during which a bycatch limit of rockfish not to exceed 20 percent of the gross round weight of all delivered groundfish species and halibut will be established may adjust rockfish bycatch allowances, if the commissioner determines a closure is necessary to ensure that the guideline harvest level for rockfish is not exceeded.

- (f) In the Cook Inlet Area, in a directed groundfish or halibut fishery, other than for rockfish, a CFEC permit holder must retain all rockfish, and, unless otherwise specified in this section or by emergency order, all rockfish in excess of 10 percent, round weight, of aggregate targeted groundfish species and halibut on board the vessel must be weighed and reported as bycatch overage on an ADF&G fish ticket. Proceeds from the sale of excess rockfish shall be surrendered to the state.
- (g) In the Cook Inlet Area the directed rockfish fishery targets pelagic shelf rockfish, defined as the following Sebastes species: *S. ciliatus* (Dark), *S. entomelas* (Widow), *S. flavidus* (Yellowtail), *S. melanops* (Black), *S. mystinus* (Blue), and *S. variabilis* (Dusky). During the directed rockfish fishery, a CFEC permit holder must retain all rockfish. All non-pelagic rockfish species in excess of 20 percent, combined round weight, of the gross round weight of all pelagic shelf rockfish on board the vessel must be weighed and reported as bycatch overage on an ADF&G fish ticket. Proceeds from the sale of excess rockfish shall be surrendered to the state.

5 AAC 28.367. COOK INLET PACIFIC COD MANAGEMENT PLAN.

- (i) ~~Repealed. During a closure of the directed rockfish fishery, a vessel registered to fish groundfish pots or mechanical jigging machines and hand troll gear for Pacific cod may retain rockfish only in an amount that does not exceed five percent of the gross round weight of all groundfish species on board the vessel.~~

PROPOSAL 17 - 5 AAC 28.330. Lawful Gear for Cook Inlet Area. Repeal the definition of mechanical jigging gear that provides for “a single continuous line with not more than 150 hooks.”

Staff Reports: None.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: RC 22.

Narrative of Support and Opposition:

Department:

- Would repeal a previously board-approved legal gear that no one is using and is confusing. There is a companion proposal in Kodiak.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language: None.

PROPOSAL 18 - 5 AAC 28.350. Closed waters in Cook Inlet Area. *(NOTE: The regulatory reference of this proposal to Chinitna Bay and Cape Douglas conflicts with the text in the proposal. Based upon a conversation with the proposer, the department has provided comment to his original intent.)*

Staff Reports: None.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: None.

Narrative of Support and Opposition:

Department:

- Regulatory reference in the proposal conflicted with the text of the proposal, which was intended for Kachemak Bay.
- Do not have an estimate of crab bycatch mortality but limb loss, skip molt, delayed mortality, and harm to eggs are potential cold temperature effects of handling Tanner crab.
- Department is willing to work with fishermen to adjust the closure area if warranted.
- If new information develops, department could adjust closure area by EO.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Pacific cod prey on Tanner crab, and it seems that it would enhance the Tanner crab population if Pacific cod were removed from the crab sanctuary. However, would oppose the proposal if department staff and fishermen can work together on this issue.

Opposition:

- Everything eats Tanner crab.

General:

- There does need to be work between fishermen and the department on this issue. This is a large area.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 19 - 5 AAC 28.367. Cook Inlet Pacific Cod Management Plan (c). Reallocate Pacific cod in Cook Inlet between gear groups.

Staff Reports: None.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1 and 2; RC 22.

Timely Public Comment: None.

Record Comments: None.

Narrative of Support and Opposition:

Department:

- The fishery has been open all year to jig gear.
- If jig allocation is not achieved by September 1, the remainder becomes available to both pot and jig gear.
- Fall harvest has never exceeded 450,000 lb.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- There seems to be a harvestable surplus that should be caught.

Opposition:

- Recommended leaving alone for this cycle.
- Jig boats are small. This provides an entry level fishery opportunity.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: None.
Oppose: None.

Public Panel Recommendation: No Consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

RC 35

Alaska Board of Fisheries Committee Report

COMMITTEE B

Sport Fisheries
November 16, 2010

Board Committee Members:

1. Karl Johnstone, *Chair
2. John Jensen
3. Tom Kluberton

Alaska Department of Fish and Game Staff Members:

1. Charles O. Swanton – Director, SF
2. John Hillsinger – Director, CF
3. Tom Brookover – Deputy Director, SF
4. Craig Fleener – Director, Subsistence
5. Jim Hasbrouck – Region 2 Regional Supervisor, SF
6. Tom Vania – Cook Inlet Regional Management Biologist, SF
7. Matt Miller – North Gulf Coast Regional Management Biologist, SF
8. Nicky Szarzi – LCI Area Management Biologist, SF
9. Carol Kerkvliet – LCI Assistant Area Management Biologist, SF
10. Mike Booz - LCI Biologist, SF
11. Dan Bosch – Anchorage/PWS/NGC Area Management Biologist, SF
12. Sam Hochhalter – PWS Assistant Area Management Biologist, SF
13. Sam Ivey – NCI Assistant Area Management Biologist, SF
14. Barbi Failor – Groundfish Harvest Assessment Biologist, SF
15. Al Cain – Enforcement specialist, SF
16. Eric Volk – Chief Scientist, CF
17. Charlie Trowbridge – LCI Area Groundfish Management Biologist, CF
18. Davin Holen – Subsistence Resource Specialist, Subsistence

Advisory Committee Members:

1. Marvin Peters – Homer AC
2. Jim Stubbs – Anchorage AC
3. Diane Debuc – Seward AC
4. Robert Purpura – Seldovia AC

Public Panel Members:

1. Brian Emard
2. Dwight Kramer
3. Bruce King
4. Zach Stubbs
5. Lynn Whitmore
6. Steve Walli
7. Gary Sinnhuaber
8. Aaron Wiesser
9. Tom Hagberg

Federal Subsistence Representative:

1. Rod Campbell – U.S. Fish and Wildlife Service
2. Dave Nelson – National Park Service

The Committee met November 16, 2010 at 8:45 a.m. and adjourned at 3:30 p.m.

PROPOSALS BEFORE THE COMMITTEE WERE: (32 total) 20-51.

PROPOSAL 20 - 5 AAC 62.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the West Cook Inlet Area.
Designate portion of Silver Salmon Creek as fly fishing only area.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4, PC 5, PC 14, PC16.

Record Comments: RC 14, RC 15, RC 22.

Narrative of Support and Opposition:

Department:

- No sustainability issues with this fishery.
- Harvest is stable.

Department of Law: None.

Federal Subsistence Representative:

- The proposed area is within Lake Clark National Park with joint jurisdiction with USFWS.
- FWS and NPS are opposed to this proposal.
- May limit harvest opportunities for subsistence users.
- Reduce the efficiency of subsistence users to harvest coho salmon.
- There are no specific federal subsistence regulations for this area, so state sport regulations are the default subsistence regulations.
- No federal subsistence permits have been issued for this area.
- There has been no customary and traditional subsistence determination for this area.
- May not accomplish intent of reducing discard mortality.

Support:

- The area is a small portion of the stream.
- May reduce conflict with different anglers (fly vs. spinners).
- There is limited access to Silver Salmon Creek.
- Fly fishing only areas have worked in the Kenai and Russian rivers.

Opposition:

- Plenty of room for multiple gear types.
- The proposed area is the most accessible and popular section of the stream.
- Effort is low on Silver Salmon Creek.

- Complicates enforcement with more regulations.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.
Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 21 - 5 AAC 62.122. Special provisions and localized additions and exceptions to the seasons, bag possession, and size limits, and methods and means for the West Cook Inlet Area.

Decrease coho salmon bag limit from 3 fish to 2 fish south of West Forelands to, and including, Chinitna Bay.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4, PC 5, PC 14, PC16.

Record Comments: RC 14, RC 15, RC 22.

Narrative of Support and Opposition:

Note: This proposal is also listed for consideration during the Upper Cook Inlet Finfish meeting and will be acted in there.

Department:

- No sustainability issues with the fisheries in this area.
- Harvest is sustainable.
- Kustatan River supports the most effort and harvest which has been stable over recent years.
- In Silver Salmon Creek effort and harvest has been stable over recent years.

Department of Law: None.

Federal Subsistence Representative:

- The proposed area is within Lake Clark National Park with joint jurisdiction with USFWS.
- FWS NPS are opposed to this proposal.
- May limit harvest opportunities for subsistence users.
- Reduce the efficiency of subsistence users to harvest coho salmon.
- There are no specific federal subsistence regulations for this area, so state sport regulations are the default subsistence regulations.
- No federal subsistence permits have been issued for this area.
- There has been no customary and traditional subsistence determination for this area.

Support:

- None.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Table to Upper Cook Inlet BOF meeting.

Substitute Language: None.

PROPOSAL 22 - 5 AAC 62.120(2). General provisions for season, bag, possession, and size limits, and methods and means for the West Cook Inlet Area. Increase coho salmon bag and possession limit from 2 fish to 3 fish in West Cook Inlet streams between the Susitna River and West Foreland.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4, PC 14.

Record Comments: RC 14, RC 15, RC 22.

Narrative of Support and Opposition:

Note: This proposal is also listed for consideration during the Upper Cook Inlet Finfish meeting and will be acted in there.

Department:

- Harvest increase would be sustainable.
- Harvest would increase by 200-500 fish.
- Streams not easily accessible.
- No inseason monitoring of coho salmon in West Cook Inlet.
- Management is based on annual trends in catch and harvest.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Lightly used sport fisheries.
- The conservation concerns identified in 2000 for coho salmon in Cook Inlet systems are no longer present.
- Bag limit of 3 fish/day is consistent with saltwater bag limit.

Opposition:

- No data on run strength to manage inseason.
- Opposed to blanket increase in bag limit regulations.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Table to Upper Cook Inlet BOF meeting.

Substitute Language: None.

PROPOSAL 23 - 5 AAC 56.120. General provisions for seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Increase coho salmon bag and possession limit from 2 fish to 3 fish in the Kenai Peninsula Area.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 22.

Narrative of Support and Opposition:

Note: This proposal is also listed for consideration during the Upper Cook Inlet Finfish meeting and will be acted in there.

Department:

- Large fluctuations in coho salmon escapements across Kenai Peninsula streams.
- Exploitation rates can be quite high when abundance is low for some stocks with the current bag limit.
- May not be sustainable for some stocks.
- Harvests have increased rather than decreased with the bag limit of 2 coho salmon.

Department of Law: None.

Federal Subsistence Representative:

- Neutral; conservation concerns with some stocks but defer assessment of sustainability to the Department of Fish and Game and the Board of Fish.

Support:

- None.

Opposition:

- Opposed to blanket increase in bag limit regulations in an area with limited data except the Anchor River.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: None.

Oppose: Homer.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Table to Upper Cook Inlet BOF meeting.

Substitute Language: None.

PROPOSAL 24 - 5 AAC 56.1XX. New Section. Change the Anchor River king salmon escapement goal from a lower bound sustainable escapement goal to a goal that is bounded by a range.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4, PC 14.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- The proposed SEG of 3,800-10,000 is the most conservative range that the department could recommend based on available data.
- Lower bound of SEG is the point estimate of escapement that produces maximum sustained yield. In nearly all situations the escapement goal range encompasses this point estimate.
- The goal will change as additional escapement and recruitment data is collected.
- Sonar/weir project has provided more accurate information and suggests that the exploitation rate for Anchor River king salmon is low (9-21%).
- King salmon stocks can support exploitation rates up to 40-50%.
- The Anchor River king salmon fishery is a heavily restricted sport fishery: limited area available to fish and a limited number of days the river is open to sport fishing.
- The threshold goal of 5,000 was chosen as a conservative starting point when data availability was more limited (prior to weir and sonar efforts).
- Establishing an SEG range will allow the department to respond with management actions when runs are low and when runs are high.
- Recent data and analyses suggest there is potential for increased harvest opportunity for Anchor River king salmon.
- SEG will be reviewed every 3 years with board cycle.
- Sonar/weir project is a good tool for managing inseason.

Department of Law:

- The department has authority for establishing SEGs and BEGs.
- Board can establish SEGs and BEGs but it would be inconsistent with the board's escapement goal policy.
- Board can establish OEGs.

Federal Subsistence Representative: None.

Support:

- Healthy stock and fishery.
- Inappropriate to just have threshold escapement goal due to historic data.
- Unsure why the board cannot set an escapement goal on the Anchor River when it does so in other areas.
- Adequate fishing power to keep escapement within the goal.

Opposition:

- Should be managed for a quality fishery; lower bound of 3,800 produces poor fishing.
- Should see returns from poor escapement before goal is changed.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: No action.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action.

Substitute Language: None.

PROPOSAL 25 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area.

Require management actions taken for fish populations on the Anchor River to be duplicated for fish stocks in Deep Creek, based on Anchor River data.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition:**Department:**

- Anchor River and Deep Creek are managed with separate escapement goals and monitoring tools.
- Any liberalization to Deep Creek is likely unsustainable.
- The department is cognizant of ballooning effects from closures on other fisheries.
- Deep Creek made escapement goal in 2009, despite not being closed by emergency order when Anchor River was closed by emergency order.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- None.

Opposition:

- Like portion of proposal that would require if management actions are taken on the Anchor River then actions should be taken on Deep Creek.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: None.

Oppose: Homer, Anchorage.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 26 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Modify king salmon season on the Anchor River and Deep Creek beginning weekend before Memorial Day and the following three weekends.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Unnecessarily restricts the king salmon sport fishery in Anchor River.
- Current regulations provide sustainable harvests.
- Will result in harvest well below sustainable levels.
- Opportunity will be lost with the elimination of the 5th weekend opening and Wednesdays.
- Any liberalization to Deep Creek is likely unsustainable.
- The department would prefer to manage the fishery as it is in regulation now.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Start more conservatively.
- Proposer requested that it should only be for the Anchor River.
- Should eliminate Wednesday openings.
- Trend of decreasing weir counts.

Opposition:

- First weekend has very little harvest.
- The department can manage inseason.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 27 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Modify king salmon season on Anchor River and Deep Creek beginning weekend before Memorial Day and the following three weekends.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 26.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action based on the action taken in proposal 26.

Substitute Language: None.

PROPOSAL 28 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Reduce annual limit of king salmon on Anchor River from 5 to 2 per year and combine the annual limit with Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC18.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Unnecessarily restricts the king salmon sport fishery in Anchor River.
- Current regulations provide sustainable harvests.
- Will result in harvest well below sustainable levels.
- The department can restrict fishery inseason.
- The sport fishery can only be liberalized when the escapement is projected to exceed the SEG.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- No fishing opportunity is lost; only harvest opportunity is lost.
- There is a lot of proxy fishing in the Anchor River.
- Little enforcement on checking proxy.
- Concern over illegal proxy fishing.
- Start more conservatively.
- Prefer reducing harvest limits over eliminating bait or modifying gear.
- Unless you adopt a regulation that prohibits fishing after you have reached an annual limit this won't be effective.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 29 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Reduce annual limit of king salmon on Anchor River from 5 to 2 per year and combine the annual limit with Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC18.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 28.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 30 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Reduce annual limit of king salmon on Anchor River from 5 to 2 per year and combine the annual limit with Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC18.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 28.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 31 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula area.

Require only 1 unbaited, single hook, artificial lure in Anchor River and Deep Creek August 20-December 31, and Memorial Day-June 30.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 1, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition:

Department:

- Unnecessarily restricts the king salmon sport fishery in Anchor River.
- Current regulations provide sustainable king and coho salmon harvests.
- Could result in the reduction of king salmon harvest by 50%.
- Will result in harvest well below sustainable levels.
- The department can restrict fishery inseason.
- May reduce coho salmon harvest.
- May reduce steelhead bycatch in king salmon sport fishery.
- Complex regulations are difficult to enforce.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Ensures the king salmon escapement goal is met.
- Steelhead mortality would be reduced in king salmon sport fishery.
- Support no catch and release with bait.

Opposition:

- Artificial lures can cause mortality as well as bait.
- Deep Creek king salmon is monitored postseason and therefore would not open to the use of bait during king salmon season.
- There are very few days to sport fish for king salmon.
- Bait is effective in turbid conditions.
- May increase the number of anglers using lining technique.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 32 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula area.
Allow bait in Anchor River and Deep Creek only after goals are met and until August 20.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 31.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action based on the action taken in proposal 31.

Substitute Language: None.

PROPOSAL 33 - 5 AAC 56.122(2)-(5). Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Prohibit the use of bait in the Anchor River or Deep Creek year round.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition:

Department:

- Unnecessarily restricts the king salmon sport fishery in Anchor River.
- Current regulations provide sustainable king and coho salmon harvests.
- Could result in the reduction of king salmon harvest by 50%.
- May reduce coho salmon harvest.
- May reduce steelhead bycatch in king salmon sport fishery.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Concern for higher catch and release mortality for king salmon and outmigrating adult steelhead trout with the use of bait.
- Support no catch and release with bait.

Opposition:

- Proposal picks on user groups; creates hard feelings.
- Desire for simple regulations such as season and bag limit restrictions.
- Would limit kids who are not as proficient with more sophisticated gears.
- Current regulations result in 40% of season limited to no bait.
- Restrictions to prohibit catch and release after harvesting bag limit should apply to all anglers not just bait anglers.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 34 - 5 AAC 56.122(2)-(5). Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Require only one unbaited, single hook (3/4" or less gap), artificial lure year-round in Anchor River and Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 33.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action based on the action taken in proposal 33.

Substitute Language: None.

PROPOSAL 35 - 5 AAC 56.122(2)-(5). Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Require only one unbaited, single hook (3/4" or less gap), artificial lure year-round in Anchor River and Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 33.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action based on the action taken in proposal 33.

Substitute Language: None.

PROPOSAL 36 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area.
Require use of circle hooks in the Anchor River.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition:

Department:

- May reduce snagging and catch and release mortality.
- Effectiveness of gear is not well understood.
- Bait and hook location more important than hook type.
- Would need to define circle hook.
- Current regulations provide sustainable harvest of king salmon.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Possible solution to deal with snagging or lining problems.
- Would reduce catch rates.

Opposition:

- Questionable on whether or not circle hooks would reduce snagging or lining.
- Circle hooks are not well understood gear for salmon.
- Extreme measure.
- Would require anglers to replace their gear with a gear not commercially available on lure and flies.
- Gear has not been tried in the Anchor River or other locations.
- Would need to be adopted for all lower Kenai Peninsula streams.
- Lining problem is overstated and more of a problem with steelhead.
- Lining is another method of fishing that is evolving and is only effective in certain stream locations.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer, Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 37 - 5 AAC 56.122(2). Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Prohibit fishing within 300 yards of the weir on the Anchor River.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: None.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Increase crowding in the rest of river.
- The department can adjust the regulations inseason if there are conservation concerns with king salmon.
- Sport fishing in July is already limited to lower 2 miles of the river.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Would reduce the number of king salmon being caught and released in July.
- With low water king salmon will stage in this area.
- Influences a small amount of fishing season.
- Very few dollies in the area in early July.
- Anglers are illegally targeting king salmon in this area.
- The area above the weir is already closed to sport fishing in July.
- Some king salmon spawn below the weir and are getting hammered.

Opposition:

- Increases crowding on the river.
- Reduces the area open to sport fishing.
- Proposed closure to 300 yards is excessive.
- Department is able to close the proposed area by emergency order.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 38 - 5 AAC 56.122(2)-(5). Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula Area. Close the Anchor River and Deep Creek to all fishing from November 1 to king salmon opening in the spring.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Will not significantly reduce the catch of steelhead trout in the Anchor River and Deep Creek.
- Limited amount of fishing in the Anchor River and Deep Creek in November and December.
- Streams are likely to be frozen by early November.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Increased number of people fishing for steelhead in the Anchor River over recent years.
- More conservative approach because of a lack of data.
- Steelhead trout are lethargic in November-December due to cold water temperature.
- Steelhead trout are landed on ice and snow which increases mortality.

Opposition:

- No information on the potential for increased mortality of steelhead trout in cold water.
- Financial burden to Anchor Point community.
- No biological concern.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 39 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bag, possession, and size limits, and methods and means for the Kenai Peninsula area. Close the Anchor River and Deep Creek to all fishing from November 1 to king salmon opening in the spring.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 38.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 40 - 5 AAC 56.122. Special provisions and localized additions and exceptions to the seasons, bags, possessions, size limits and methods and means for the Lower Kenai Peninsula Area. Close Anchor River, Deep Creek, Ninilchik River and Stariski Creek to steelhead fishing from November 1 to king salmon opening in spring.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Will not significantly reduce the catch of steelhead trout in the Anchor River and Deep Creek.
- Limited amount of fishing in the Anchor River and Deep Creek in November and December.
- Streams are likely to be frozen by early November.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Author wanted to amend to include all fishing.
- Steelhead trout stop moving in cold water temperatures and are more exposed to multiple captures.
- The department has limited data on steelhead trout.
- Needs to include all four Lower Kenai Peninsula streams.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 41 - 5 AAC 56.xxx. New regulation. Limit guides on Anchor River and Deep Creek to 2 clients a day; guides may not fish while client is present.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition:

Department:

- No increasing or decreasing trend in guided effort on Deep Creek or the Anchor River.
- 80-100% of the guided clients in the Anchor River and Deep Creek are nonresidents.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Most guided clients are nonresidents and most advantageous to restrict nonresidents.
- Concerns with large groups taking over some fishing holes.
- Support with a higher number of clients.

Opposition:

- Guides provide valuable service.
- Families exceed proposed 2 person limit.
- Guides need to show anglers how to fish not just tell them.
- Resident and nonresident anglers should be treated the same.
- May have economic impact.
- Guides are helpful interpreting complex regulations.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 42 - 5 AAC 56.xxx. New regulation. Limit guides on Anchor River and Deep Creek to 2 clients a day; guides may not fish while client is present.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 2, PC 4, PC 10, PC 11, PC 15, PC 17, PC 18.

Record Comments: RC 14, RC 15, RC 16, RC 17, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 41.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: Anchorage.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to take no action based on the action taken in proposal 41.

Substitute Language: None.

PROPOSAL 43 - 5 AAC 58.022. Waters; seasons; bag, possession, and size limits; and special provisions for Cook Inlet – Resurrection Bay Saltwater Area; and 5 AAC 58.055. Upper Cook Inlet Salt Water Early-run King Salmon Management Plan. Allow fishing from shore for early-run king salmon in the closed marine waters near Ninilchik River and Deep Creek concurrent with freshwater openings for king salmon in Ninilchik River and Deep Creek.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Anglers are already sport fishing at the mouths of these streams.
- Not likely to increase harvest of Ninilchik River or Deep Creek king salmon stocks.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Might spread out the inriver sport fishing effort and reduce angler conflicts.
- Would legalize the current sport fishing occurring at the mouths of these streams.
- Hard to mark the boundary.
- No boat traffic in the area.
- Difficult to harvest fish.
- Would create a new opportunity.

Opposition:

- Would allow people to fish up and down beach from the mouth.
- Boats are not allowed to fish in this area.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: Anchorage.

Oppose: Homer.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to support with substitute language.

Substitute Language:

5 AAC 58.022(b)(1)(C)(i) is amended to read:

- (i) south of the latitude of the Ninilchik River to the latitude of an ADF&G regulatory marker located two miles south of Deep Creek at 60.0068' N. lat.; **except that sport fishing from shore is allowed;**

PROPOSAL 44 - 5 AAC 58.022. Waters; seasons; bag, possession, and size limits; and special provisions for Cook Inlet – Resurrection Bay Saltwater Area; and 5 AAC 58.055. Upper Cook Inlet Salt Water Early-run King Salmon Management Plan. Increase total closed area at mouth of Anchor River from 2 miles to 4 miles in the Early-run King Salmon Special Harvest Area.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Unnecessarily restricts the marine sport fishery near the mouth of the Anchor River.
- The department can manage inseason if there are conservation concerns with the Anchor River king salmon stock.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Start more conservatively; need to keep resources from going bust.
- Trend of decreasing weir counts.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer, Anchorage.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 45 - 5 AAC 58.022. Waters; seasons; bag, possession, and size limits; and special provisions for Cook Inlet – Resurrection Bay Saltwater Area; and 5 AAC 58.055. Upper Cook Inlet Salt Water Early-run King Salmon Management Plan. Increase total closed area at mouth of Anchor River from 2 miles to 4 miles in the Early-run King Salmon Special Harvest Area.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 44.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer, Anchorage.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 46 - 5 AAC 58.022. Waters; seasons; bag, possession, and size limits; and special provisions for Cook Inlet – Resurrection Bay Saltwater Area; and 5 AAC 58.055. Upper Cook Inlet Salt Water Early-run King Salmon Management Plan. Increase total closed area at mouth of Anchor River from 2 miles to 4 miles in the Early-run King Salmon Special Harvest Area.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition: See discussion points on proposal 44.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer, Anchorage.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 47 - 5 AAC 58.055. Upper Cook Inlet Salt Water Early-run King Salmon Management Plan. Close marine waters within 1 mile of shore from Bluff Point north to Ninilchik River if the Anchor River or Deep Creek are closed by emergency order.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Mixed stock fishery.
- Small contribution (4%) from local stocks.
- Unnecessarily restricts the marine sport fishery near the mouth of the Anchor River.
- The department can manage inseason if there are conservation issues with the Anchor River king salmon stock.
- In 2010, the department extended the emergency order to close marine waters adjacent to the Anchor River into July.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- None.

Opposition:

- Mostly feeder king salmon are harvested in the area.
- Won't protect Anchor River king salmon.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 48 - 5 AAC 58.060. Lower Cook Inlet Winter Salt Water King Salmon Sport Fishery Management Plan. Increase the king salmon bag limit to 2 fish with no recording requirement during the winter king fishery north of Bluff Point in Cook Inlet.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Would not cause a conservation concern.
- Nonlocal stocks.
- Harvests have been within the guideline harvest level and any increased harvest would not result in exceeding the GHL.

Department of Law: None

Federal Subsistence Representative: None.

Support:

- Simplifies regulations.
- The proposed area north of Bluff Point is already being fished.
- Not likely to increase the catch.
- Current land marker unidentifiable.
- No adverse affects on Canadian stocks being harvested in this fishery.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support with substitute language.

Substitute Language:

5 AAC 58.060. Lower Cook Inlet Winter Salt Water King Salmon Sport Fishery Management Plan

(c) For the purposes of this section, Lower Cook Inlet consists of the salt waters south of the latitude of **the Anchor Point Light (59 46.14')**, [BLUFF POINT (59ø 40.00' N. lat.)] **including all of Kachemak Bay**, to the latitude of Cape Douglas (58ø 51.10' N. lat.), and east to the longitude of Gore Point (150ø 57.85' W. long.).

PROPOSAL 49 - 5 AAC 58.030. Methods, means and general provisions - Finfish. Allow for use of bow and arrow to take salmon in Kachemak Bay marine waters except in the Nick Dudiak Fishing Lagoon.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Concerns of safety.
- Potentially wasteful.
- Would set precedent in sport fish management in salt water.
- Would need to define gear.
- Could not find any other state that allows bow and arrow to take game fish.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Would need to define gear.

Opposition:

- None.

SSFP: Not discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: Homer.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 50 - 5 AAC 58.022. Waters; seasons; bag, possession and size limits; and special provisions for Cook Inlet-Resurrection Bay Saltwater Area. Prohibit removing salmon from saltwater before releasing the fish.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 22.

Narrative of Support and Opposition:

Department:

- Does not support in a wide variety of fisheries.
- Used only in specific fisheries but no broad application.
- Enforcement mechanisms in place to prohibit molestation of all fish intended for release.
- Does not address the issue of wanton waste.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- None.

Opposition:

- Current regulations are in place to restrict molestation of salmon.

SSFP: Not Discussed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Opposes.

AC Positions: Support: None. Seldovia withdrew support.

Oppose: None.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 51 - 5 AAC 58.XXX. New Section. Create a management plan for rockfish, lower daily bag limit, require harvest recording in Cook Inlet, and educate the public.

Staff Reports: RC 3, Written Tab 2.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1, AC 2.

Timely Public Comment: RC 1, Public Comment Tab, PC 4.

Record Comments: RC 14, RC 15, RC 16, RC 20, RC 22.

Department:

- Opposes a bag limit of 2 rockfish /day without specifying pelagic and/or non-pelagic due to the potential for increased harvest of non-pelagic species.
- Could result in a 28-43% reduction in rockfish harvest in Lower Cook Inlet waters and 28-31% reduction in North Gulf Coast waters.
- Requiring harvest reporting by species would likely be problematic and result in data of questionable utility due to difficulties inherent with rockfish identification to the species level.
- The divisions of Sport Fish and Commercial Fisheries will collaborate on research and management projects with the ultimate goal of developing a rockfish management plan in the near future.
- Identification of Marine Protected Areas would be a complicated and involved process.
- Oral report summarizing subsistence uses of rockfish in Cook Inlet (see RC-20).

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Want more careful management of rockfish and lingcod.
- General support for the concept of a rockfish management plan.
- Change in small boat access increased harvest and perceived localized depletion of rockfish.
- GPS units make rockfish vulnerable to localized depletion.
- Limited entry in charter halibut fishery has raised concern that some charter operators will shift to rockfish and lingcod.
- Concern for nearshore depletion of lingcod.

Opposition:

- The proposal is too broad.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral on allocative aspects; opposes bag limit of 2 rockfish any species; opposes a requirement to report harvest by species.

AC Positions: Support: Homer with amendment to include lingcod.

Oppose: Seward.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

Substitute Language with edits accepted - Proposal 16
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5 AAC 28.310. FISHING SEASONS FOR COOK INLET AREA.

- (d) Pelagic shelf rockfish may be taken in a directed fishery from July 1 until closed by emergency order, and as specified in 5 AAC 28.365.

5 AAC 28.365. COOK INLET ROCKFISH MANAGEMENT PLAN.

- (c) The commissioner shall close, by emergency order, the directed fishery for rockfish and may adjust rockfish bycatch allowances, if the commissioner determines a closure is necessary to ensure that the guideline harvest level for rockfish is not exceeded.
- (f) In the Cook Inlet Area, in a directed groundfish or halibut fishery, other than for rockfish, a CFEC permit holder must retain all rockfish, and, unless otherwise specified in this section or by emergency order, all rockfish in excess of 10 percent, round weight, of aggregate targeted groundfish species and halibut on board the vessel must be weighed and reported as bycatch overage on an ADF&G fish ticket. Proceeds from the sale of excess rockfish shall be surrendered to the state.
- (g) In the Cook Inlet Area the directed rockfish fishery targets pelagic shelf rockfish, defined as the following *Sebastes* species: *S. ciliatus* (Dark), *S. entomelas* (Widow), *S. flavidus* (Yellowtail), *S. melanops* (Black), *S. mystinus* (Blue), and *S. variabilis* (Dusky). During the directed rockfish fishery, a CFEC permit holder must retain all rockfish. All non-pelagic rockfish species in excess of 20 percent, combined round weight, of the gross round weight of all pelagic shelf rockfish on board the vessel must be weighed and reported as bycatch overage on an ADF&G fish ticket. Proceeds from the sale of excess rockfish shall be surrendered to the state.

Date: November 17, 2010

RC 37

Lower Cook Inlet Board of Fish Hearings

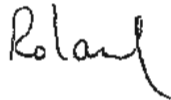
Mel Morris, Committee A Chairman

Re: Proposal #4

Mr. Morris,

When proposal number 4 was prepared, we were under the impression that two different gear types in the same area would stack permits. We have since learned that combining gear types in a permit stacking program is not permitted. We therefore withdraw our support for that portion of Proposal #4.

Thank you,



Roland Maw, PhD
UCIDA Executive Director

Regarding Escapement Goals for Lower Cook Inlet Salmon Stocks Department Report RC-3

I oppose abandoning any escapement goals in Resurrection Bay.

On page 12 of RC-3, submitted by ADF&G, they propose to abandon four stocks in Resurrection Bay.

I was born and raised in Seward, and have fished in Resurrection Bay all my life. I walk the streams, hike the area and I have personal knowledge of the over-escapement of these streams year after year.

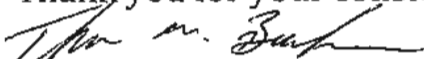
ADF&G rarely, if ever, visits these streams and the area biologist never flies Resurrection Bay to survey these stocks for potential harvest.

I live in Seward and I own property on one of the creeks that is named in the report and I have personal knowledge and photos of the substantial escapement on this creek.

ADF&G is basing their recommendations on a 50 year period, however there have been many circumstances that have prevented us from fishing in the last 20 years, and those are not part of the report, which I fear presents a very one sided view of the fish in the area. For instance, there has been no opening, no opportunity to harvest pinks, in Resurrection Bay since 1987. Floods and the oil spill were an impact on these stocks but they have rebounded as so many streams do.

The combined lack of surveying, lack of commercial opening and the incompleteness of the data in the department report should not be used as a tool for ADF&G to eliminate an escapement goal and abandon their responsibility to monitor these historically viable fishing stocks.

Thank you for your consideration,



Thomas M Buchanan

Commercial Fishing Permit Holder, Lower Cook Inlet

Submitted by Thomas M Buchanan PO Box 925, Seward, AK 99664

1997 Alaska Op. Atty. Gen. 219, 1997 WL 1089542 (Alaska A.G.)

Office of the Attorney General
State of Alaska

File No. 661-98-0127

November 6, 1997

SUBJECT: Authority of the Board of Fisheries Over Private Nonprofit Hatchery Production

Dr. John White
Chair

The Honorable Frank Rue
Commissioner

I. Introduction

In your memorandum of June 24, 1997, and in discussions at the recent Board of Fisheries (Board) work session, you requested guidance regarding the authority of the Board over private, nonprofit salmon hatcheries and their operations. Specifically, you asked for a review of (1) statutes and regulations relating to the authority of the Board and the Commissioner of the Department of Fish and Game (commissioner) over hatchery salmon production and cost recovery, (2) the historical development of Board authority in this area, (3) the scope of the Board's authority over hatchery salmon production, and (4) the relationship between the Department of Commerce and Economic Development's hatchery loan program, the Board, and the Department of Fish and Game (department). We understand that you require an analysis of these issues to assist the Board in its discussions during its upcoming meetings.

II. Summary Answers

1. The legislative scheme for the regulation of private, nonprofit hatcheries vests the more detailed, comprehensive authority in the commissioner and department.
2. Although the board initially had broad rule-making authority over all aspects of the private, nonprofit hatchery program, the legislature significantly restricted that authority by an amendment to AS 16.10.440(b) in 1979.
3. The Board may exercise indirect authority over hatchery production by regulating the harvest of hatchery-released fish in the common use fishery, hatchery brood stock and cost-recovery harvests, and by amending those portions of hatchery permits relating to the source and number of salmon eggs, hatchery harvests, and the designation of special harvest areas by the adoption of appropriate regulations. However, Board action that effectively revokes, or prevents the issuance of, a hatchery permit is probably not authorized.
4. The Commissioner of the Department of Commerce and Economic Development is independently responsible for the implementation of the hatchery loan program under AS 16.10.500 - 16.10.560.

III. Discussion

This discussion focuses primarily upon an evaluation of existing Board authority over the operation of private, non-

profit salmon hatcheries. It opens with a review of the extensive statutory authority of the commissioner and the department over hatcheries.

Beginning in 1974, the legislature adopted various statutory provisions regulating the construction and operation of private, nonprofit salmon hatcheries in Alaska. The goal of the program was “the rehabilitation of the state's depleted and depressed salmon fishery.” Sec. 1, ch. 111, SLA 1974. Although the legislature initially granted both the department and the Board responsibility for the program, it limited what was initially a broad grant of rule-making authority to the Board over the implementation of the program by statutory amendment in 1979.

A. Commissioner/Department Authority over Hatcheries

*2 The hatchery statutes place direct and nearly comprehensive responsibility for the private, nonprofit hatchery program in the hands of the commissioner and the department. The legislature has granted exclusive authority to the commissioner to issue permits for the construction and operation of salmon hatcheries. *Id.* at § 2; AS 16.10.400-16.10.430 (as amended). We believe this broad and detailed permitting authority was intended to assign responsibility for the fundamental policy determination of whether to authorize the operation of a private, nonprofit hatchery to the commissioner and department.

1. Pre-permit Responsibilities

Pursuant to AS 16.10.375 the commissioner must designate regions of the state for salmon production and develop a comprehensive salmon plan for each region through teams consisting of department personnel and nonprofit regional associations of user groups. The commissioner also has the task of classifying an anadromous fish stream as suitable for enhancement purposes before a permit for a hatchery on that stream may be issued. AS 16.10.400(f). AS 16.10.400(g) requires a determination by the commissioner that a hatchery would result in substantial public benefits and would not jeopardize natural stocks. The statutes also require the department to conduct public hearings near the proposed hatcheries, and to consider comments offered by the public at the hearings before issuance of a permit. AS 16.10.410.

2. Permit Issuance and Hatchery Operation Responsibilities

For issuing a private, nonprofit hatchery permit, the legislature delegated to the department the power to control the following:

- (1) the specific location where eggs or fry may be placed in the waters of the state (AS 16.10.420(2));
- (2) the source of salmon eggs procured by the hatchery (AS 16.10.420(1));
- (3) the resale of salmon eggs procured by the hatchery (AS 16.10.420(3));
- (4) the release of salmon by the hatchery (AS 16.10.420(4));
- (5) the designation of the manner and place for the destruction of any diseased salmon (AS 16.10.420(5));
- (6) the specific locations for the harvest of adult salmon (AS 16.10.420(6));
- (7) the first option to purchase surplus eggs from a hatchery and inspection of eggs and the approval of sale of those eggs to other hatcheries (AS 16.10.420(7));
- (8) the determination of reasonable segregation by location of hatchery from natural stocks (AS 16.10.420(10));
- (9) the source and number of salmon eggs to be used by the hatchery (AS 16.10.445(a)); and
- (10) the inspection of hatchery facilities (AS 16.10.460).

3. Alteration, Suspension, or Revocation Authority

The commissioner may suspend or revoke a permit after determination of a failure to comply with conditions and terms of the permit. AS 16.10.430(a). Upon a finding “that the operation of the hatchery is not in the best interests of the public, the commissioner may alter the conditions of the permit to mitigate the adverse effects” and, in extreme cases, may “initiate termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years.” AS 16.20.430(b).

*3 The foregoing authorities demonstrate that the legislature granted detailed and broad authority to the commis-

Department's
cost recovery fishing authority in statute, AS 16.10.455,
added in 2006.

sioner and the department for the implementation and day-to-day regulation of salmon hatcheries. On the other hand, the specific authority given to the Board is more circumscribed.

B. Board of Fisheries' Authority over Hatcheries

Although the legislature placed primary administrative authority over the permitting and day-to-day operation of hatcheries within the department, it also vested considerable general and specific authority in the Board of Fisheries. The Board's regulatory authority over private, nonprofit hatcheries is governed primarily by AS 16.05.251, 16.10.440 and 16.10.730.

1. Board Authority under AS 16.05.251

The Board's general rule-making powers over fish and the taking of fish are set out in AS 16.05.251. These powers include setting time, area, and methods and means limitations on the taking of fish. AS 16.05.251(a)(2), (4). The Board also establishes quotas, bag limits and harvest levels. AS 16.05.251(a)(3).

The Board has broad authority to "adopt regulations it considers advisable ... for regulating commercial, sport, guided sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries." AS 16.05.251(a)(12). This authority includes the power to allocate fishing opportunities between competing user groups. *Meier v. State*, 739 P.2d 172, 174 (Alaska App. 1987); AS 16.05.251(e). The Board's authority extends to the regulation of the harvest of hatchery fish and egg collection. See 1990 Inf. Op. Atty Gen. 41 (August 1; 663-90-0327) (Board's regulatory authority extends to management of hatchery brood stock and allocation of cost-recovery fishing). Existing regulations reflect this principle. See 5 AAC 40.005 (harvest of hatchery-produced fish governed by Board regulation). The Board also has general authority to adopt regulations for "prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs." AS 16.05.251(a)(9). This provision would include, but is not limited to, regulation of the capture, possession, transportation, and release of salmon and their eggs by hatcheries. *Id.*

2. Board Authority under AS 16.10.440

In former AS 16.10.440, the legislature initially vested broad rule-making authority in the Board of Fisheries and Game [FN1] over hatchery-produced fish and the implementation of the hatchery program in general. Sec. 2, ch. 111, SLA 1974. Former AS 16.10.440 provided:

REGULATION: (a) Fish released into the natural waters of the state by a hatchery operated under secs. 400 - 470 of this chapter are available to the people for common use and are subject to regulation under applicable law in the same way as fish occurring in their natural state until they return to the specific location designated by the department for harvest by the hatchery operator.

*4 (b) The board may promulgate regulations necessary to implement secs. 400 - 470 of this chapter.

Alaska Statute 16.10.440 (a), which has remained unchanged since 1975, confirms that fish released by hatcheries into the natural waters of the state are, as are all wild fish and game within the state, available for common use and subject to lawful regulation. See generally *McDowell v. State*, 785 P.2d 1, 5-9 (Alaska 1989) (equal access clauses of art. VIII of Alaska Constitution are intended to provide the broadest possible public access to state's fish and game.)

Alaska Statute 16.10.440(a) does purport to exempt the effect of at least some applicable law to hatchery-produced fish once the fish arrive at areas designated by the department for harvest by the hatchery operator. See AS 16.10.440(a) (fish subject to regulation "until they return to the specific location designated by the department for harvest by the hatchery operator"). For reasons discussed in greater detail below, AS 16.10.440(a) does not significantly limit the authority of the Board or the department to regulate hatchery-produced fish at these locations, since AS 16.10.440(b) goes on to grant specific authority for regulation at the point of return.

Former AS 16.10.440(b) vested in the Board of Fisheries and Game broad authority to "promulgate regulations necessary to implement sec. 400 - 470 of this chapter." This broad language purported to give the Board of Fisheries

and Game expansive rule-making authority over all aspects of carrying out the hatchery program.

In 1979, the legislature amended AS 16.10.440(b), eliminating the broad authority “to promulgate regulations necessary to implement” the hatchery program, and replacing it with more specific, but limited responsibilities:

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with the Administrative Procedures Act (AS 44.62), the terms of the permit relating to the source and number of salmon eggs, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt any regulations nor take any action regarding the issuance or denial of any permits required in AS 16.10.400-16.10.470.

Sec. 3, ch. 59, SLA 1979. [FN2]

The legislative history of the 1979 amendment reveals the legislative intent behind the new, more restricted language:

Section 2 of the bill [HB 359] amends AS 16.10.440(a)(b). The amendment clarifies the role of the Board of Fisheries. The role of the Board of Fisheries as envisioned by the original legislation was to *regulate the harvest of salmon returning to the waters of the state. That role extends to regulating those fish which are returning as a result of releases from natural systems and also from hatchery releases.* There are provisions in other portions of the non-profit hatchery Act which allow the designation of specific locations for the harvest of salmon by the hatchery operator for sale, and use of the money from that sale, for the specific purposes as stated in AS 16.10.450. *The added language clarifies that the Board of Fisheries may adopt regulations relating to the harvest of the fish by hatchery operators at the specifically designated locations.* The Board of Fisheries in the past year or two has enacted regulations relating to those harvests for several of the private non-profit hatcheries in the state.

*5 The intention of the original bill relating to the non-profit hatchery Act as amended in recent years was that the permits for the construction and operation of the private non-profit hatcheries were to be issued by the Commissioner of the Department of Fish and Game. Specific language in AS 16.10.400 lays out the grounds for the issuance of the permits and AS 16.10.420 lays out the statutory guidelines that must be included in such a permit. Those statutory provisions remain the same under this amendment.

In this bill AS 16.10.440(b) is deleted and the necessary powers are substituted in the language which is added to (a). [FN3] That deletion helps clarify a technical problem which has arisen because the original section (b) stated that the Board of Fisheries may promulgate regulations necessary to implement subsections 400 - 470 of this chapter. That in effect gave the Board of fisheries the power to enact regulations regarding a requirement by the Department of Commerce and Economic Development. In section 470(b) the Department of Commerce and Economic Development is instructed to provide a form to the permit holder for submission of an annual report regarding the financial aspects of the hatchery operation, if such a hatchery operator has obtained a loan from the State of Alaska.

House Journal, March 15, 1979 (remarks of Rep. Fred Zharoff, Chm. House Resources Committee regarding HB 359) (emphasis added).

3. Board Authority under AS 16.05.730

In 1992, the legislature enacted AS 16.05.730 [FN4], which requires the department and Board to manage all fish stocks consistent with the sustained yield of wild fish stocks and authorizes, but does not require, management consistent with the sustained yield of enhanced stocks. AS 16.05.730(a). In addition, the statute mandates Board consideration of the need of enhancement projects to obtain brood stock when allocating enhanced fish stocks, and authorizes the Board to direct the department's management to achieve an adequate return for brood stock. AS 16.05.730(b). The Board may also consider the need for enhancement projects to harvest and sell fish to obtain funds for project operation, may direct the department to provide a reasonable harvest of fish to the hatchery for those purposes, and may adopt **management plans** to provide fish to a hatchery to obtain funds for the purposes allowed under AS 16.10.450 or AS 16.10.480(d). AS 16.05.730(c). Significantly, while the statute requires Board consideration of hatchery brood stock needs, it does not mandate any particular level of hatchery harvest of enhanced fish stocks. Consideration of harvest and sale of fish for project funding is authorized, but not required.

C. The Balance between Department Commissioner and Board Authority over Private Nonprofit Hatchery Production

As the foregoing discussion suggests, the department and the Board share regulatory authority over private, non-profit hatcheries. Although primary responsibility over permitting and the administration of the hatchery program rests with the department, the Board has substantial, indirect control over hatchery production by virtue of its regulatory authority to amend hatchery permits with respect to special harvest areas, the harvest of brood stock [FN5] and cost-recovery fish. [FN6]

*6 Though no statute expressly grants the Board regulatory authority over hatchery production *per se*, it may exercise considerable influence over hatchery production by virtue of its authority to directly amend hatchery permit terms relating to fish and egg harvesting. [FN7] We have previously advised that while the Board is authorized to do so, it is not required to allocate cost recovery fish to a hatchery. 1990 Inf. Op. Atty Gen. 41 (Aug. 1; 663-90-0327); AS 16.05.730(c). Similarly, we have advised that the Board has authority to regulate brood stock harvest. *Id.*

The Board must *consider* hatchery brood stock needs in determining appropriate harvest levels. AS 16.05.730(b). The Board may also consider hatchery cost recovery needs. AS 16.05.730(c). However, it is not *required* to provide harvest opportunities that are inconsistent with what the Board reasonably determines to be appropriate. 1990 Inf. Op. Atty Gen. 41 (August 1; 663-90-0327). For example, to the extent the Board believes that a hatchery permit issued by the department provides too liberal or restrictive an opportunity to harvest salmon or collect eggs, [FN8] it may amend the permit by adopting appropriate regulations.

As previously noted, AS 16.05.730 requires the Board to manage all stocks of fish consistent with the sustained yield of wild fish stocks and to consider the need of fish enhancement projects for brood stock. Accordingly, in evaluating whether to amend a hatchery permit or adopt regulations governing hatchery harvests, the Board must carefully consider the needs of fish enhancement projects to obtain brood stock and manage harvests so as to be consistent with the sustained yield of wild fish stocks. AS 16.05.730(a), (b).

The Board's authority over hatchery production is circumscribed by the 1979 amendment to AS 16.10.440(b) and, to a lesser extent, by AS 16.05.730. The Board's authority to amend permits is limited to terms in the permit "relating to the source and number of salmon eggs, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest." [FN9] Under AS 16.10.440(b) the Board "may not adopt any regulations or take any action regarding the issuance or denial of any permits required in AS 16.10.400-16.10.470." Although the meaning of this limitation is not completely clear, we conclude for the reasons set forth below that the limiting language contained in AS 16.10.440(b) was intended to clarify that the Board's specific regulatory authority over the amendment [FN10] of hatchery permits is to be limited to the authority set out in AS 16.10.440(b). [FN11]

The following principles would guide a court in interpreting AS 16.10.440(b). In interpreting a statute, a court's goal is to give effect to the intent of the legislature with due regard to the plain meaning of the statute. *Cook v. Botelho*, 921 P.2d 1126, 1129 (Alaska 1996). In addition, a court may consider the overall purpose of a statute and its legislative history. *Muller v. BP Exploration (Alaska), Inc.*, 923 P.2d 783, 789-91 (Alaska 1996). Whenever possible, each part or section of a statute must be interpreted to create a harmonious whole. *Rydwell v. Anchorage School District*, 864 P.2d 526, 528 (Alaska 1993). Finally, where a potential conflict or ambiguity exists, a statute that deals more specifically with a particular issue must govern over a more general statute. *Welch v. City of Valdez*, 821 P.2d 1354, 1363 (Alaska 1991).

*7 Given (1) the detailed statutory scheme granting specific authority to the department over nearly every aspect of the permitting and operation of nonprofit hatcheries, (2) the more general statutory authority of the Board over the harvest of fishery resources, and (3) by contrast, the limitations imposed upon the specific statutory authority of the Board over hatchery permits by the amendment to AS 16.10.440(b) in 1979, we conclude the following. Though the

Board may effectively amend hatchery permits by regulation in a manner that affects hatchery fish production, we do not believe the Board may either (1) adopt regulations that effectively veto or override a fundamental department policy decision regarding whether to authorize the operation of a particular hatchery or (2) adopt regulations preventing the department from exercising its authority to permit a hatchery operation. We believe that Board actions falling into either of these two categories would risk being viewed by a court as constructing an impermissible impediment to the department's role as the primary government agency responsible for the regulation of hatcheries. In particular, such actions would risk being deemed incompatible with the limitations imposed by the 1979 amendment to [AS 16.05.440\(b\)](#).

A recent decision by the Alaska Supreme Court supports this view. In *Peninsula Marketing Ass'n v. Rosier*, 890 P.2d 567, 573 (Alaska 1995), the court held that in absence of specific statutory authority for the commissioner to issue emergency orders concerning a question previously considered by the Board, the commissioner could not effectively veto a decision by the Board for which there was specific statutory authority. The court ruled that “[i]nferring a broad veto power would make superfluous the detailed provisions dividing power and authority within the Department” and effectively eviscerate the powers explicitly granted to the Board. *Id.* Similarly, to read the limited grant of authority to the Board over hatcheries set out in [AS 16.10.440\(b\)](#) to permit the Board to effectively veto fundamental policy decisions by the department for which there is specific statutory authority would upset the balance of the statutory scheme chosen by the legislature.

Additional reasons support that conclusion. As previously noted, the Board “may not adopt any regulations or take any action regarding the *issuance* or *denial* of any permits required under [AS 16.10.400-16.10.470](#).” [AS 16.10.440\(b\)](#) (emphasis added). We believe that a Board regulation that so drastically amends a hatchery permit to render the hatchery's operation impracticable might be viewed by a court to be an impermissible action by the Board “regarding the issuance or denial ... of a permit.” See [AS 16.10.440\(b\)](#). In other words, a Board amendment that puts a hatchery out of operation might be construed as an effective revocation or denial of a hatchery permit, an action that is expressly prohibited by [AS 16.10.440\(b\)](#). Similarly, Board regulations prohibiting the establishment of a hatchery in a particular area deemed by a court as an action by the Board regarding the issuance of a permit and, therefore, unlawful under [AS 16.10.440\(b\)](#). [FN12]

*8 One additional aspect of Board and department authority merits some discussion. [AS 16.05.251\(a\)\(9\)](#) specifically authorizes the Board to adopt regulations “prohibiting and regulating the live capture, possession, transport, or *release* of native or exotic fish or their eggs” (emphasis added). This statute must be read, if possible, to be harmonized with [AS 16.10.420](#), the statute governing the department's authority to issue hatchery permits, and the limitation on Board authority with respect to Board “amendment” of hatchery permits set out in [AS 16.10.440\(b\)](#). See *Borg-Warner v. Avco Corp.*, 850 P.2d 628 (Alaska 1993). Although [AS 16.10.420](#) requires the department to issue hatchery permits specifying that a hatchery may not place or release salmon eggs or fry in the waters of the state other than those provided in the permit, the statute does not directly conflict with the Board's authority over the release of fish set out in [AS 16.05.251\(a\)\(9\)](#). However, [AS 16.10.440\(b\)](#) does not specifically authorize the Board to adopt regulations that amend the terms of the permit governing the release of hatchery fish.

Currently, the Board has delegated its authority over the release of fish to the department commissioner by the adoption of 5 AAC 41. These regulations establish a process for the issuance of permits by the commissioner according to regulatory criteria for the release of fish. Accordingly, absent a repeal by the Board of this delegation of authority, there may not be significant potential for conflict between the Board and the department.

D. Fisheries Enhancement Loan Program

In 1977, the legislature created the fisheries enhancement revolving loan fund within the Department of Commerce and Economic Development for making loans to private, nonprofit hatchery permit holders and to regional associations for long-term, low-interest loans for the planning, construction, and operation of salmon hatcheries, and the rehabilitation and enhancement of salmon fisheries. Sec. 9, ch. 154, SLA 1977; [AS 16.10.500-16.10.500](#). The Commissioner of the Department of Commerce and Economic Development independently administers this loan

program. [FN13] See AS 16.10.500-16.10.560.

The Commissioner of the Department of Commerce is authorized to make loans from the fisheries enhancement revolving loan fund to holders of private, nonprofit salmon hatchery permits issued by the Department of Fish and Game under AS 16.10.400-16.10.470, AS 16.10.505, 16.10.510. The commissioner may also make grants to qualified regional associations for "organizational and planning purposes." AS 16.10.510(9).

While this loan and grant program is administered independently from the Department of Fish and Game and the Board, only qualified regional associations and private, nonprofit hatchery permit holders are eligible to receive them. See AS 16.10.510-16.10.520.

IV. Conclusion

We hope this discussion provides answers to your questions. Please do not hesitate to contact us if we can provide additional assistance.

*9 Robert C. Nauheim

Lance B. Nelson
Assistant Attorneys General
Natural Resources-Anchorage

[FN1]. Prior to 1975, regulatory authority over the harvest of fish and game resources was vested in the Board of Fisheries and Game. In 1975 the legislature abolished the Board of Fisheries and Game and simultaneously created a separate Board of Game and Board of Fisheries, each having broad regulatory powers. Ch. 206, SLA 1975; see also AS 16.05.221, 16.05.241, 16.05.251, 16.05.255. The legislature also amended AS 16.10.440(b) to clarify that the authority over hatcheries formerly resting in the Board of Fisheries and Game was to be held by the newly created Board of Fisheries.

[FN2]. In 1979, the legislature also authorized the Commercial Fisheries Entry Commission to issue special harvest area limited entry permits to operators of private, nonprofit hatcheries. Sec. 1, ch. 64, SLA 1979; AS 16.43.400-16.43.440. Special harvest areas may be designated by the department in a hatchery permit, by emergency orders under AS 16.10.420, or by regulation adopted by the Board under AS 16.05.251 or AS 16.10.440(a). See 1993 Inf. Op. Atty Gen. 273 (July 16; 663-93-522).

[FN3]. In the final version of the bill passed by the legislature, the language referenced here was again divided into two subsections, leaving AS 16.10.440(a) intact and moving the new language into subsection (b).

[FN4]. AS 16.05.730 provides:

Management of wild and enhanced stocks of fish. (a) Fish stocks in the state shall be managed consistent with sustained yield of wild fish stocks and may be managed consistent with sustained yield of enhanced fish stocks.

(b) In allocating enhanced fish stocks, the board shall consider the need of fish enhancement projects to obtain brood stock. The board may direct the department to manage fisheries in the state to achieve an adequate return of fish from enhanced stocks to enhancement projects for brood stock; however, management to achieve an adequate return of fish to enhancement projects for brood stock shall be consistent with sustained yield of wild fish stocks.

(c) The board may consider the need of enhancement projects authorized under AS 16.10.400 and contractors who operate state-owned enhancement projects under AS 16.10.480 to harvest and sell fish produced by the enhancement project that are not needed for brood stock to obtain funds for the purposes allowed under AS

16.10.450 or 16.10.480(d). The board may exercise its authority under this title as it considers necessary to direct the department to provide a reasonable harvest of fish, in addition to the fish needed for brood stock, to an enhancement project to obtain funds for the enhancement project if the harvest is consistent with sustained yield of wild fish stocks. The board may adopt a fishery management plan to provide fish to an enhancement project to obtain funds for the purposes allowed under AS 16.10.450 or 16.10.480(d).

(d) In this section, “enhancement project” means a project, facility, or hatchery for the enhancement of fishery resources of the state for which the department has issued a permit.

[FN5]. In this memorandum, we use the term “brood stock” to designate fish returning to the hatchery as a result of hatchery operations that are harvested for the purpose of the biological reproduction of fish.

[FN6]. In this memorandum, we use the term “cost-recovery” fish to designate those fish or eggs authorized to be harvested for purposes of sale under AS 16.10.450.

[FN7]. It might be argued that the authority set out in AS 16.10.440(b) to amend hatchery permits, particularly as to the “source and number of salmon eggs,” is express and direct authority to regulate hatchery production. Since the statute does not expressly address “hatchery production” or any similar concept, we have, in previous oral comments to the Board, characterized the authority over this area to be “indirect” and “implied.” We continue to believe that this advice is correct.

[FN8]. It has been suggested that the Board's authority to regulate the harvest of eggs from returning hatchery fish may be distinguishable from its authority to regulate the harvest of eggs from wild fish stocks. We see no reason to distinguish between these two. The Board has authority to amend hatchery permits as they relate to “the source and number of salmon eggs.” AS 16.10.440(b). We believe this language covers the harvest of eggs from both wild and hatchery stocks.

[FN9]. AS 16.10.440(a) provides that hatchery-released fish are subject to Board regulation “until they return to the specific location designated by the department for harvest by the hatchery operator.” However, given the Board's general authority over the allocation of fishery resources under AS 16.05.251 and its specific authority to amend hatchery permits by regulation under AS 16.05.440(b), it may, therefore, regulate the harvest of salmon or collection of eggs *after* salmon have returned to the location designated for harvest or egg collection in that manner.

[FN10]. The legislature's use of the concept of “amending” permits by the adoption of Board regulation presents an unusual mixture of administrative law principles. We believe the legislature's use of the concept of amending a hatchery permit by regulation was not intended to vest the Board with administrative adjudicatory authority over permits. *See* AS 16.05.241 (the Board has rule-making authority, but does not have other administrative powers). Instead, we interpret the legislature's use of the term “amend” to allow the Board to adopt regulations that may *effectively* change or modify an existing permit by virtue of the change in regulatory setting created by appropriate Board regulation. *See also* AS 16.10.400(a) (commissioner-approved permits are “subject to the restrictions imposed by statute or regulation under AS 16.10.400-16.20.470”).

[FN11]. This view is supported by AS 16.10.400(a), which specifically provides that permits are subject to “restrictions imposed by ... regulation under AS 16.20.400-16.10.470.”

[FN12]. We realize that without additional clarification from the legislature the parameters of permissible Board regulations remain somewhat murky. However, we believe that the more significantly a particular Board regulation restricts the effective functioning of a hatchery in a way that is incompatible with a departmental decision to permit the hatchery's operation, the greater is the risk that the Board regulation may be invalidated by a reviewing court.

[FN13]. As the legislative history set out previously in this memorandum suggests, the broad rule-making authority

under former AS 16.10.440 created uncertainty regarding whether the Board could, by adopting appropriate regulations, affect the requirement of hatcheries to report to the Department of Commerce and Economic Development under AS 16.10.470. The 1979 amendment to AS 16.10.440 clarifies that the Board may not regulate in this area.

1997 Alaska Op. Atty. Gen. 219, 1997 WL 1089542 (Alaska A.G.)
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Nov. 17, 2010

RC 40

Comment regarding AC positions in Committee A & Committee B reports.

We object to the way the AC positions are presented in the Committee reports under the positions and recommendations section. We were instructed to only give new information. Therefore, the AC's did not reiterate their votes and comments at the Board committee meeting. Yet in the Committee reports, there is the AC positions for support or opposition stated as none if the AC representative followed the committee rules to only bring up new information.

By not reiterating the AC position's and vote of support or opposition for every proposal the committee report states the AC position as none. This is misleading, incomplete and inaccurate and does not represent the AC's position which is critical for deliberations.

To correct this problem and make it absolutely clear what the AC position is, the AC position should either be eliminated from the Committee's report or the AC position should be reported for each proposal as reflected in the AC's minutes to the Board.

David R. Smith, Chair Central Peninsula AC
Robert Puspura Vice Chair Seldovia AC
Diane Duke VICE CHAIR - SEWARD
Paul A. Shadurak VICE-CHAIR - KENAI/SOLDOTNA AC
Jim Stubbs Vice-Chair - Anch / AC