

MEMORANDUM

STATE OF ALASKA
Department of Law


To: Monica Wellard
Executive Director
Alaska Board of Fisheries

Date: December 28, 2011

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From: Lance B. Nelson 
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Subject: Comments on Specific Proposals
for February 2013 Board of
Fisheries Meeting:
Alaska Peninsula/Aleutian Islands
Finfish

The Department of Law has the following comments on the following proposals to be considered by the Board of Fisheries at its February 2013 meeting on Alaska Peninsula and Aleutian Islands finfish issues.

Proposals 179, 180, 181: These proposals contain provisions asking the Board to set harvest caps on chum salmon in the June fishery in South Unimak and Shumagin Islands that would require closure of the fishery when the cap amounts are reached. Some of the proposals state or imply that current regulations for the June fishery are inconsistent with other legal provisions, including the Sustainable Salmon Fisheries Policy, 5 AAC 39.222, and the Mixed Stock Policy, 5 AAC 39.220. The Department of Law disagrees with those conclusions. Our opinion is supported by the holding in the case of *Native Village of Elim v. State*, 990 P.2d 1 (Alaska 1999), where similar challenges were made to regulations for the June fishery in effect in the 1990's. The *Elim* court found that the Board had considerable discretion in defining "stock" for the purposes of the application of legal standards for subsistence and sustained yield, including the fact that specific western Alaska chum salmon stocks were not manageable as a unit in the South Unimak and Shumagin Islands June fishery.

The Board has considerable discretion to adopt conservation and allocation management measures in the June fishery. Board members could choose to adopt more conservative measures based on concerns and guidelines set out in the Board's regulatory policies, but not, in our opinion, because of any presumption of illegality of the current regulations.