

MEMORANDUM

STATE OF ALASKA

Department of Law

To: Monica Wellard
Executive Director
Alaska Board of Fisheries

Date: September 26, 2012

File No.:

Tel. No.: 269-5232

From: Lance B. Nelson
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Subject: **Comments on Agenda Change
Requests for 2012-13 Cycle,
October 2012 Board of
Fisheries Work Session**

The Department of Law has the following comments on the agenda change requests (ACR's) to be considered by the Board of Fisheries (Board) at its work session on October 9-11, 2012:

ACR's 3, 5, 19, and 21: These requests are not actually ACR's because they do not require a change of the Board's agenda for consideration during the upcoming 2012-13 regulatory cycle because the matters raised are already on the Board's agenda.

ACR 3 proposes to allow times for the use of dipnet gear and beach seine in the Lower Yukon Area salmon fisheries. The Board is scheduled to consider such subjects during its January 15-20, 2013 meeting on AYK Finfish issues. ACR 5 would allow a different measuring scale for salmon seine gear in the Alaska Peninsula area. The agenda for the scheduled February 26-March 3, 2012 meeting covers these matters. ACR 19 would change the definition of a salmon stream terminus for closed waters statewide, a subject within the scope of the March 19-24, 2013 statewide finfish meeting. ACR 21 would clarify the commissioner's statewide inseason salmon management authority, also covered by the statewide finfish meeting.

The subjects in the request are already scheduled for consideration this cycle. These requests are simply late proposals that missed the filing deadline of the call for proposals. If the Board nevertheless considers any of these specific ideas to be worthy of consideration, it should generate its own proposals to be added to the proposals distributed to the public and advisory committees and considered at the appropriate meeting. The criteria in 5 AAC 39.999 to do not apply to Board-generated proposals.

ACR 10: ACR 10 requests that early-run Kenai River king salmon be declared a stock of concern by the Board. A stock of concern determination is not regulatory, so an agenda change request for a proposed regulatory change is not applicable. 5 AAC 39.999(a). Furthermore, the Board may not consider the request because stock of concern status is

determined under the guidelines of 5 AAC 39.222, the sustainable salmon fisheries policy. Under that regulation, only the department identifies and nominates stocks of concern in its reports on the status of salmon stocks and fisheries at regular meetings of the Board. 5 AAC 39.222(d)(1)(D)(ii). The Board's determination is then made in consultation with the department. 5 AAC 39.222(d)(3). There is no provision for nomination of a stock for concern status by a member of the public. Members of the public of course remain free to submit proposals and ACR's that request the adoption of actual regulatory management measures for the conservation of salmon.

ACR 14: This ACR may be beyond the authority of the Board to the extent it appears to authorize the erection and operation of "fish traps," which are prohibited by statutes AS 16.10.070 and AS 16.10.100. AS 16.10.070 reads:

Operation of fish traps. Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be operated in the state on or over state land, tideland, submerged land, or water. This section does not prevent the operation of small hand-driven fish traps of the type ordinarily used on rivers of the state that are otherwise legally operated in or above the mouth of a stream or river.

AS 16.10.100 reads:

Erection of fish traps prohibited on land or water owned by the state. Fish traps, including but not limited to floating, pile-driven, or hand-driven fish traps, may not be erected, moored, or maintained on or over land, tideland, submerged land, or water owned by the state. This section does not prevent the maintenance, use, or operation of small hand-driven fish traps of the type ordinarily used on rivers of the state which are otherwise legally maintained and operated in or above the mouth of a stream or river.

The Board may not authorize fishing activity inconsistent with these statutes. The "Selective Harvest Modules" described in ACR 14 appear to resemble and operate in the same fashion as historic fish traps used in pre-statehood salmon fisheries.

ACR 15: ACR 15 request that the Board change its meeting schedule to consider Pacific cod issues at the Alaska Peninsula – Aleutian Islands meetings. This is not an ACR because the setting of the Board's meeting schedule is not regulatory. The Board could consider this request during its miscellaneous business portion of the work session.