

RYAN KAPP RC100

# MEMORANDUM

STATE OF ALASKA  
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Alaska Board of Fisheries

DATE: January 12, 2000

Dan K. Coffey, Chairman  
Ed Dersham  
Larry J. Engel  
Grant Miller  
Russell Nelson  
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FROM: Commercial Fisheries  
Entry Commission

SUBJECT: Board Proposals 168, 175 and 174—  
Optional Open Pounding  
Alternative for the Southeast Roe  
Herring Seine Fishery (Sitka Sound)

Marlene Johnson, Commissioner  
Mary McDowell, Commissioner  
Bruce Twomley, Chairman

Board Proposals 168 and 175 would authorize open pounding as an alternative means of harvesting roe herring in the Sitka Sound roe herring seine fishery. Board Proposal 174 opposes the change.

The Board previously considered this issue in January of 1997 (Proposal 441). Our comments at the time (coordinated with those of the Department of Law) remain current today. This memo is a recap.

Since our 1997 communications, (1) the Department has experienced managing the experimental, Sitka Sound open pound fishery authorized by the Board in 1997; and (2) the Board authorized a herring pound spawn-on-kelp alternative for Norton Sound herring limited entry permit holders (both gillnet and beach seine). 5 AAC 27.965.

If the Board were to act favorably on Proposals 168 and 175, the Board should be very clear its action affects only the existing, limited Sitka Sound roe herring purse seine fishery.

In turn, following favorable Board action on Proposals 168 and 175, CFEC would stand ready to propose complimentary changes to its regulations. To adopt such regulations after a public comment period, CFEC would be required to determine independently that the purposes of the Limited Entry Act would be served by doing so.

In particular, CFEC's current definition of the administrative area for the Northern Southeast herring spawn-on-kelp pound fishery includes the area in which the Sitka Sound roe herring purse seine fishery is conducted. Compare 20 AAC .230(a) and 5 AAC 33.200(m)(2). CFEC would likely propose

modification of its current definition of the administrative area for the Northern Southeast herring spawn-on-kelp pound fishery to exclude the area included within the Board's definition of the Sitka Sound roe herring purse seine fishery.

In making and considering this proposal, CFEC would be guided by the Limited Entry Act, AS 16.43.200, which reads in relevant part as follows:

The commission shall establish administrative areas suitable for regulating and controlling entry into the commercial fisheries. The commission shall make the administrative areas reasonably compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

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The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of [the Limited Entry Act].

Generally, the Entry Commission would also be guided by AS 16.43.950, which, in relevant part, provides:

Nothing in [the Limited Entry Act] limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. Holders of interim-use permits or entry permits issued under this chapter are subject to all regulations adopted by the Board of Fisheries.

Our regulatory procedure would allow us to meet our responsibility under the Limited Entry Act, and, additionally, help generate public awareness and comment (particularly from members of the public who believe they have interests under the limited entry system that should be addressed). Our procedure creates an opportunity for the commission to clarify potential ambiguity between regulations of the Board and of the commission. The commission must reserve judgment on the issue until it has received public comment.

Bruce Twomley plans to report to the Board on Saturday, January 15, 2000.

If the Board has additional questions during the following Board meetings, at least one of the following individuals will be available by phone at 789-6160: Bruce Twomley, Susan Haymes, or Kurt Schelle.

cc: Frank Rue, Commissioner, ADF&G  
Doug Mecum, Director of Commercial Fisheries  
Scott Marshall, Regional Supervisor  
Diana Cote, Executive Director, Board of Fisheries  
Stephen White, Assistant Attorney General