



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

DIVISION OF SPORT FISH
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TO: Tom Kluberton, Chair
Alaska Board of Fisheries

DATE: February 27, 2016

THRU: Tom Brookover, Director
Division of Sport Fish

SUBJECT: Petition to Allow
Possession,
Transport and
Delayed Release of
Sport-caught Fish
during Sport
Fishing Derbies

FROM: Tom Taube, Deputy Director
Division of Sport Fish

This letter provides Alaska Department of Fish and Game (department) staff assessment of a petition received from Jason A. Perrego on February 16, 2016 to the Alaska Board of Fisheries (board) to consider an emergency action out-of-cycle.

Action Requested

This petition seeks to allow anglers participating in sport fishing derbies to transport and hold live fish for an unspecified period of time or manner. The petitioner believes this would reduce mortality associated with fishing derbies because fish caught during the derby could be transported in holding bags or tanks, held in a holding tank, weighed or measured, and released, as opposed to killed and retained as is allowed in regulation. The petitioner recommends changing several regulations and definitions in 5 AAC 75 to accomplish this request and that these changes apply to lakes of the southcentral region of Alaska only.

Background

Current statewide regulations do not provide for anglers to possess or transport live fish caught under sport fishing regulations, with the exception of certain species that can be used as live bait in saltwater. Under 5 AAC 75 there are several regulations or definitions related to the possession or transport of live sport-caught fish:

5 AAC 75.055. *Possession or marking of live fish or live fish eggs.* Except as provided in 5 AAC 75.026, or under the terms of a permit issued by the commissioner under 5

AAC 41 or AS 16.05.930(a), it is unlawful to possess, transport, and release live fish or live fish eggs, or in any way mark any live fish before release.

5 AAC 41 and AS 16.05.930(a) apply to fish transport or fish resource permits issued for the transportation, possession, or release of live fish for hatchery production and release, and scientific and educational purposes.

5 AAC 75.026(c) allows the use of herring and other species of fish for which no seasonal or harvest limits are specified in 5 AAC 47 — 5 AAC 75 to be used as live bait, except that live fish may not be used as bait for sport fishing in fresh water. Live bait may be possessed, transported, or released only in the salt waters of the regulatory area in which it was taken.

In 5 AAC 75, bag limit and transport are defined as follows (5 AAC 75.995(4) and (29)):

“bag limit” means the maximum legal take of fish per person per day, in the area in which the person is fishing, even if part or all of the fish are immediately preserved; a fish when landed and not immediately released becomes a part of the bag limit of the person originally hooking it;

“transport” means ship, transport, carry, import, export or receive or deliver for shipment, transportation, carriage or export;

In AS 16.05.940, fish derby and take are defined as follows (AS 16.05.940(13) and (34)):

“fish derby” means a contest in which prizes are awarded for catching fish;

“take” means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

There are no regulations specific to sport fishing derbies and tournaments or requirements for these events to register with the department. The commissioner may issue a permit to qualified fishing derby associations to sell fish caught as a result of a fishing derby (AS 16.05.662). If entry fees are collected and prizes or monies are awarded for catching fish, a sport fishing derby or tournament organizer must obtain a permit from the Department of Revenue to conduct gaming activities (15 AAC 160.010).

Existing regulations do not permit anglers to hold fish for any purpose. If a fish is not immediately released, it becomes part of the angler’s bag limit. Anglers do take pictures of fish and/or weigh and measure fish prior to release (some regulations include minimum or maximum size limits that require an angler to measure a fish to determine if it is legal to retain). This activity is considered to fall within “immediately released” in the definition of bag limit.

This petition requests amending the above regulatory language for possession of fish and definitions of bag limit and transport to allow anglers to hold fish for an undetermined amount of time and release these fish if the angler determines the fish is capable of swimming on its own power. These proposed changes are not specific to fishing derbies, but would apply to all anglers. This has the potential of increasing the amount of “high-grading” or “culling” of fish, or anglers releasing smaller fish after taking a larger fish so that their bag limit contains the largest fish they caught that day. It may also increase the number of

fish caught since anglers who normally would stop fishing after reaching their bag limit may continue to fish in an attempt to take a bag limit of large fish. It would likely not reduce mortality significantly, since it would be at the interpretation of the angler or derby organizer to determine if the fish was capable of swimming on its own power. Particularly, in winter ice fisheries, once a fish is released through the ice, determining condition of the fish is limited.

This would not necessarily reduce mortality and may possibly increase mortality during fishing derbies because holding fish in live wells/boxes has shown to increase stress and increase long term mortality and result in injury to fish if they attempt to escape the holding tank. Other states that allow fishing derbies or tournaments to hold fish for weigh-in generally provide guidelines or regulations on the volume of the holding tank and transport tanks or bags, recommended water temperatures and oxygen levels, and other best practices to reduce stress and mortality. This would require regulations specifying a minimum volume for fish holding tanks and fish transport tanks/bags to reduce handling and holding stress of fish.

Current “best practices” as recommended on the department website and regulations requiring the immediate release of fish not intended to be part of the anglers’ bag limit have been shown to reduce fishing mortality.

Finding of Emergency

Under the criteria listed in the *Joint Board Petition Policy* used by the board in determining whether or not an emergency exists, paragraph (f) of 5 AAC 96.625 reads, in pertinent part:

...In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

Discussion

Based on the information presented, it does not appear that either: (a) an unforeseen or unexpected event that threatens a fish resource; or (b) an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action has been shown. Current regulations provide for anglers or fishing derby participants to weigh or measure fish immediately prior to release. The petitioner did not specifically reference the emergency regulation criteria; rather, he asked for the department to allow the holding of sport-caught fish through the emergency order authority. The Division of Sport Fish does not have the authority to take this action through either AS 16.05.060 or 5 AAC 75.003.

cc: Sam Cotten, Commissioner
Glenn Haight, Executive Director, Boards Support Section
Forrest R. Bowers, Deputy Director, Division of Commercial Fisheries
Lisa Olson, Deputy Director, Division of Subsistence