

MEMORANDUM

State of Alaska **RC 025**
Department of Law

To: Glenn Haight
Executive Director
Alaska Board of Fisheries

Date: December 1, 2017

File No.: JU2017200511

Tel. No.: (907) 269-5289

From: Seth M. Beausang
Assistant Attorney General

Subject: Additional comments from
Department of Law on
proposals for the December 1-5,
2017 Board of Fisheries
meeting for Prince William
Sound finfish

The Department of Law has the following additional comments on the proposals by the Board of Fisheries at its December 1-5, 2017 meeting for Prince William Sound finfish. This memorandum supplements Law's memo dated November 21, 2017.

Proposal 44: This proposal would clarify that in 5 AAC 24.331(b)(3), which requires that "the operation of each gillnet shall be performed or assisted by" the permit holder, the term "gillnet" includes "set or drift" gillnets. This clarification may not be necessary for the reason that under 5 AAC 39.105(d) the term "gillnet" refers to both set and drift gillnets.

To the extent the proposal is intended to prohibit a single permit holder from fishing at multiple set net sites at the same time, the board is reminded that AS 16.05.253 allows the board to require a permit holder to be physically present at a beach or riparian fishing site during the operation of set net gear **except** when the permit holder is "at or traveling to or from the location of (1) a sale of fish caught in the gear; or (2) other stationary gear of the permit holder." Under this statute, in an area such as the Eshamy District where a permit holder is allowed under board regulations to operate more than one set gillnet, the permit holder can fish more than one set gillnet at the same time, and does not need to be physically present during the operation of the net under the limited circumstances described in AS 16.05.253. Board regulations at 5 AAC 39.107(e) require a permit holder to be within a "reasonable distance" of set net gear being operated, which is defined as "a distance that ensures that the CFEC permit holder retains competent supervision of the gear." Regarding the comments by CFEC, we do not interpret AS 16.43.140(b) as limiting the ability of a permit holder to fish more than one set net at the same time consistent with 5 AAC 39.107 and other board regulations.

Proposal 45: This proposal seeks to limit the number of set net sites on which a permit holder may have deployed lines and buoys during an announced fishing opener. CFEC in its comment points out that “Proposal 45 may be activity that is under the authority of [the Alaska Department of Natural Resources].” While it is true that DNR has authority to issue leases for tidelands for the purpose of commercial fishing, the board has independent authority under AS 16.05.251(a)(5) to regulate the means used for fishing. The board has authority to adopt this proposal.

Proposals 48 & 49: These proposals concern the harvest of enhanced chum salmon stocks in the Armin F. Koernig Hatchery Terminal Harvest Area and Special Harvest Area. The board and department have overlapping statutory authority to regulate the harvest of enhanced fish stocks. The precise confines of the board’s and department’s overlapping authority at times can be difficult to determine and is the subject of a lengthy Attorney General opinion. I will refer to that opinion as necessary if questions arise during the meeting about this subject.

For now, Law reminds the board that under AS 16.10.440(a) & (b) the board has authority to regulate the harvest of enhanced fish by common property fisheries and by hatchery operators, and the specific locations designated by the department for harvest. The board may not, however, (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.