

RC 039

December 2, 2017

Dear Alaska Board of Fisheries,

We oppose Proposal 46.

On November 14, 2017 and December 1, 2017 we provided comment on Prince William Sound Finfish Proposal 46. These comments supplement our prior comments. We believe the Proposer provided inaccurate information to the Board in his testimony today. While we would rather not delve into this level of detail about a specific leasing matter during the Board process, we do feel compelled to provide factual information to help the Board make an informed decision on Proposal 46.

David Fleming (Proposer of Proposal 46) testified today that “my permit has always been 2nd on the line in the Main Bay Subdistrict.” The Proposer included the same statement in a written document provided to the Board. According to ADNR records, this statement is not accurate. The Proposer holds Shore Fisheries Lease (ADL 32881), which includes three lease tracts near Falls Bay. These lease tracts are not located in Main Bay. The Proposer’s older brother does have a lease in Main Bay; but the Proposer does not. The Proposer testified he has held a set gillnet permit for 15 years; whereas, CFEC records show 11 years.

On September 24, 2015, the Proposer submitted a Competing Application for a Shore Fishery Lease to take the first spot in line. The Proposer’s application requested ADNR to grant a shore fishery lease site on the Main Bay Subdistrict Line matching the GPS coordinates Proposal 46 now contests.

The Proposer did not apply for a lease at the rock pile site. Instead the Proposer offered to trade one of his Falls Bay lease sites for a new lease site on the Main Bay Subdistrict Line matching the GPS coordinates in regulation. If successful, this would have given the Proposer the first place in line, and his older brother the 3rd place in line, displacing Susan Harvey from her first spot in line.

To retain first position on the Main Bay Subdistrict line, Susan filed a Competing ADNR Shore Fisheries Lease Application. ADNR lawfully, correctly, and professionally granted the lease to Susan in accordance with criteria set in State Law for adjudicating competing lease applications [Alaska Statute § 39.05.082 (b)].

During the leasing process we reached out to the Fleming Family numerous times to reach an amicable resolution, and to discuss ways in which leaseholders could move up on the line in an orderly fashion. As the Board is aware, there is a formal lease application process, and lease order doesn’t not just automatically cascade. Unfortunately, the Proposer and his older brother would not engage in collaborative resolution with our family.

While Proposal 46 and the Proposer’s family state the Fleming Family is aggrieved since they are no longer second in line; the Board should note there was no Shore Fisheries Lease application from any member of the Proposer’s family for a lease second in line for the state to even consider. Nor did the Proposer, or any member of his family appeal the state’s decision.

In 2016, Proposer’s father contacted ADNR, ADF&G and enforcement to complain. Enforcement personnel found the Proposer’s older brother had been fishing with a resident commercial fishing permit for many years, when he was not an Alaska resident. The Proposer’s brother plead guilty to Unsworn Falsification of a CFEC permit, and was issued a guilty conviction by the court pursuant to Alaska Statute § 11.56.210. The Board can confirm this information with the court.

Alaska Statute § 16.43.970 includes suspension of commercial fishing privileges and revocation of commercial fishing permits for those who make false statements to CFEC to secure a resident permit, (this includes losing state shore fishery leases sites, because a valid CFEC permit is required to hold a shore fishery lease). The state granted leniency by issuing a small monetary fine and allowing the CFEC permit, and lease sites in Main Bay to be retained.

It is unfortunate that this matter could not have been amicably resolved through collaborative process. We would rather put this all behind us, but the Proposer persists in attempting to re-adjudicate a matter that was already settled by the state, and resulted in enforcement action against his brother. We think it is time for the Proposer to retract his proposal, and bring this matter to a peaceful resolution.

Unfortunately, personal and work matters did not allow us to attend the Board meeting in person. We are available by phone to speak with Board or Board staff on this matter if you have further questions.

ADF&G Staff Jeremy Botz and ADNR Staff Andrew Miller worked on this matter in 2015-2016 and have our contact information if you would like to reach us. We recommend the Board consult Mr. Botz and Mr. Miller on this matter.

Thank you for the opportunity to comment.

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