

MEMORANDUM

State of Alaska
Department of Law

To:	Glenn Haight Executive Director Alaska Board of Fisheries	Date:	January 14, 2018
		File No.:	JU2017200511
		Tel. No.:	(907) 269-5289
From:	Seth M. Beausang Assistant Attorney General	Subject:	Comments from Department of Law in response to RC 45 and RC 69 submitted at the January 2018 Board of Fisheries meeting for Southeast Alaska shellfish

RC 45 is a draft Board Generated Proposal based on the Sitka Fish and Game Advisory Committee petition regarding shrimp stocks in District 13. The draft proposal would implement a bag and possession limit of 5 gallons of spot shrimp, whether whole or deheaded, for the subsistence shrimp fishery in District 13. The board has not determined the amounts reasonably necessary for subsistence uses of this stock. The board has very limited household subsistence harvest data for this stock set forth in RC 44.

RC 69 expresses concerns about the draft proposal, including over the proposed bag and possession limit.

Under the subsistence statute, AS 16.05.258, the board is obligated to determine amounts reasonably necessary for subsistence uses of fish stocks customarily and traditionally used for subsistence. However, the board on occasion has declined to determine these amounts especially when there is limited data available. Regardless of whether the board is able to determine these amounts, the board is still obligated to adopt regulations that provide a reasonable opportunity for subsistence uses. "Reasonable opportunity" is defined as "an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of taking of fish or game."

When the harvestable portion of a stock customarily and traditionally used for subsistence is not sufficient to provide for all uses, the board is obligated to provide a reasonable opportunity for subsistence uses before it provides for any other uses.

With that in mind, in determining whether to implement a bag and possession limit in the subsistence shrimp fishery, the board should consider that a bag and possession limit should not be implemented for the purpose of restricting existing subsistence uses. There are other uses of this stock, including commercial uses, that the law requires the board to eliminate before restricting subsistence uses.

So long as the board provides a reasonable opportunity for subsistence uses of the shrimp stock in District 13, the board could implement a bag and possession limit in the subsistence fishery for other reasons, such as management reasons, while maintaining other uses of the stock. The board's regulations should provide a preference for subsistence uses.