

RC-26

Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526 Juneau, AK 99811-5526

March 5, 2018

Re: Miscellaneous Business March Statewide Meeting

Dear Chairman Jensen and Board Members,

Thank you for continuing discussion on Open Pound Roe on Kelp as an alternative to seining for existing permit holders in the Sitka Sound sac roe fishery. Your briefing packets contain a substantial amount of information on this subject so I only want to add a couple more things to the discussion:

As you are aware, our proposal was not allowed inclusion for action this cycle. What you were not made aware of was the effort made, before the proposal was submitted, to have a proposal the Board could act on. In February of 2017 I contacted CFEC Commissioner Twomley and asked what I could do to ensure a submitted proposal would be heard before the Board. In the attached letter Commissioner Twomley asks Department of Law to consider allowing the Board to deliberate the proposal first and further asked for assurance no legal obstacle prevents the Board from hearing and considering the merits of the proposal. This letter is consistent with what you already have seen in previous letters from CFEC to the Board asking the Board to consider the proposal first and then make change recommendations to CFEC if there is a positive outcome on the proposal. In addition to the letter there were a couple meetings between CFEC lawyers and the Board's lawyers and, unfortunately, no resolved outcome other than the Board still has the option to express their view of the proposal to CFEC in letter form. With a statement of support from the Board stating their reasons in some detail CFEC would consider taking up the issue again.

There have been submitted comments stating that CFEC determined the Sitka area to be in the northern pound area but this is not completely true. According to the minutes, CFEC could not find a reason why the Sitka area was included. After testimony was concluded there was nothing to compel CFEC to make a change so no action was taken. However, CFEC has still provided no answer as to why the northern pound area was allowed to include the Sitka Sound area in the first place. Therefore, with a no action decision, CFEC didn't determine or affirm anything... CFEC still doesn't know why the Sitka area was included! They didn't change the area definition because there was no regulation made by the Board that CFEC needed to propose complementary action for.

In closing, I thank the Board for continuing the discussion on this concept. Hopefully, by the conclusion of this meeting, the Board will have a clear direction to go with this proposal and can make final determination on it in the near future.

Respectfully submitted,  
Ryan Kapp

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THE STATE  
of ALASKA

GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

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To: Seth Beausang  
Assistant Attorney General  
State of Alaska

Date: February 28, 2017

From: Bruce Twomley, Chair  
Commercial Fisheries Entry Commission

Subject: Ryan and Darrell Kapp Proposal for  
Alternative Gear in Southeast Roe  
Herring Purse Seine Fishery

Sorry to bother you in the middle of a demanding Board meeting. We had an extended discussion with Vanessa Lamantia and Tom Lenhart about the following issue. They suggested that, given current demands on you, we try to reach you by email.

By way of background, you will likely recall that Ryan Kapp in the past submitted a proposal to the Board to approve open pounds as an alternative gear type for the Sitka Sound roe herring purse seine fishery. Much earlier, his father, Darrell Kapp and others, had brought a similar request before the Board, which led DFG to conduct an apparently successful experimental fishery in 1998. (Ryan sent me a copy of the report if anyone would like to see it.)

In response to Ryan's proposal, the Board noted that Sitka Sound was within CFEC's administrative area definition for the Northern spawn-on-kelp pound fishery, and that Ryan's proposal could not be approved unless CFEC modified its administrative area definition for the Northern Southeast spawn-on-kelp pound fishery to exclude Sitka Sound.

Former Chair Tom Kluberton wrote to CFEC asking CFEC to propose such a modification, which we agreed to do. At the end of our hearing, we faced substantial testimony from both the Northern and Southern herring spawn-on-kelp pound permit holders, that their markets in Japan had substantially diminished and continue to shrink. They argued that the infusion of more product would destroy their markets. Ryan has argued that there are more seiners who support the proposal and that new products and markets could be pursued. The pound fishermen called for research to support his claim. CFEC concluded and communicated back to Tom and the Board that we had not been persuaded to act on Ryan's proposal.

Subsequently, at the Board's work session in Soldotna in October 2016, Ryan and his father requested the Board to grant an Agenda Change Request (ACR) to take up their proposal. The Board declined to do so.



This year by April 11, Ryan and his father have the opportunity to submit a timely proposal in cycle to the Board, but they are a little confused by the proceedings so far. They are hoping for some assurance that there is no legal obstacle to the Board hearing and considering the merits of their proposal. As has happened on similar proposals in the past, it would appear to CFEC that the Board could consider the proposal on the merits and, if moved to act favorably, could condition their action on subsequent regulatory action by CFEC to modify the administrative area for the Northern Southeast roe-on-kelp pound fishery.

In turn, CFEC would be greatly helped if the Board would consider the proposal first this time around. AS 16.43.200 governs the commission's adoption and modification of administrative areas. Subparagraph (a) requires the commission to establish administrative areas that are "reasonably compatible" with the Board's administrative areas for a fishery. Subparagraph (b) authorizes CFEC to change boundaries of its administrative areas (1) "when necessary" and (2) when consistent with the purposes Limited Entry Act.

In this context, the only necessity we can identify would be when necessary to give effect to a Board action. We recognize that there has always been a sound conservation argument in favor of open pounding. At the same time, the Sitka Sound roe herring purse seine fishery remains controversial.

Therefore, it would be helpful to CFEC, if the Board were to hear and consider Ryan's proposal first. If the Board were to act favorably on Ryan's open pound proposed alternative, we could meet our "when necessary" condition for going forward and have an incentive to take up the issue a second time. (We would still have to address the issue of whether the proposal was consistent with the purposes of the Limited Entry Act.)

In short, it would be functional, if Ryan and his father could be assured that no legal obstacle prevents the Board from hearing and considering the merits of their proposal (even if conditioned upon further action by CFEC).

**On a separate but somewhat similar matter**, you recall that Chair John Jensen wrote to the commission asking the commission to propose pot gear as an alternative type of gear that could be employed by the Southern Southeast inside sablefish longline fishermen. The commission has not acted formally yet, but, having completed our hearing process, we are persuaded to adopt pot gear as an alternative gear. John had asked that we reach our decision by March to facilitate the Board's timely action in response. We fully expect to meet that schedule.

In short, CFEC would very much welcome any encouragement you and the Board may be able to offer Ryan and Darrell Kapp.

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**Ryan Kapp**

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**From:** Twomley, Bruce C (CFEC) <bruce.twomley@alaska.gov>  
**Sent:** Thursday, April 06, 2017 4:07 PM  
**To:** Ryan Kapp (kappjr@comcast.net)  
**Cc:** Brown, Ben (CFEC)  
**Subject:** open pounds as alternative gear for SE roe herring purse seine fishery

Hi Ryan—

We just concluded another 5-lawyer discussion of your issue, and I am sorry to report that we failed to achieve a meeting of the minds.

Seth Beausang is not persuaded that the Board can take up your issue on the merits and reach a final decision, even if conditioned upon subsequent complementary action by CFEC.

Seth did say (and told us that he had said this to you before) that the door is open to your asking the Board to express their view of your proposal to CFEC.

In turn, a statement of support from the Board stating their reasons in some detail would help CFEC determine whether to take up the issue again.

So there we are.

--bruce (b) (6)



Comments on submitted PC material:

The arguments against Open Pound Roe on Kelp in Sitka Sound have been somewhat consistent but I would like to touch on a few things:

The market for Roe on Kelp (ROK) products will not be destroyed with the additional production from Sitka. In fact, the additional product supplied from Sitka could create opportunities for existing ROK fisheries. The demand for the product has fallen to such a low point that the continued constriction of supply would be a further detriment to the market. It has been said that simple supply and demand theories should be followed but in reality there is no demand for the product so it cannot be expected that a higher price will be paid for something the consumer no longer regards in high esteem. The overall vision of the proposal is the thinner product produced in Sitka would expand the market to a broader base of consumers and increase awareness of the product which would lead to increased demand. A friend of mine who has sold herring products for 40 plus years recently said, "After attending an industry meeting in Japan, it seems to me that the faster we can convert from roe herring to roe on kelp which would diversify product forms for year round consumption and lower available for year-end kazunoko product, the better our business would be both in Sitka and B.C." With increased, more consistent, supply domestic markets would be explored as well. Demand will not increase without increased exposure in the marketplace. Controlling and limiting supply with hope of creating a higher price only works when the product is in high demand. Roe herring products are no longer in high demand. By producing more product, at a more attainable price point, market exposure would increase and result in an increase in demand for the product.

The weight conversion factor used was taken from an ADFG report: Report to the Alaska Board of Fisheries 1998 & 1999 Sitka Sound Herring Spawn on Kelp Experimental Test Fisheries By: Bill Davidson, Dave Gordon, and Dave Carlile. Regional Informational Report No: 1J00-01 January 2000. Conversion information cited in the Gronholdt and Associates report contained information from this ADFG report.

This proposal has never stated that there is not room for every Sitka permit holder to participate but simply that the transition to ROK will not happen overnight. There are those who would want to continue to seine for sac roe and this proposal would not prevent them from doing that but would give the option, for those who choose, of an alternative harvest method to produce ROK. Many in the fishery would not want to participate in ROK until it was seen as a success so it is unrealistic to think everyone would transition at once.

The effects of this proposal will not be immediate but, in the long run, will contribute to higher value and an increased chance of sustainability for the Sitka Sound herring fishery. The opportunity to increase value while harvesting less fish should not be overshadowed by arguments designed to create more heat than light.