Submitted by the Alaska Department of Fish and Game at the request of Board Member Fritz Johnson
February 24, 2019

Substitute language for proposal 145:

**5 AAC 09.369. Northern District Salmon Fisheries Management Plan.**

...  

(j) In the Ilnik Section,

(B) if the commissioner closes that portion of the Egegik District specified in 5 AAC 06.359 (c) [FOR CONSERVATION OF UGASHIK RIVER SOCKEYE SALMON STOCKS], the commissioner **shall** [MAY], by emergency order, close the Ilnik Section and immediately reopen the Ilnik Section, with additional fishing restrictions that the commissioner determines necessary;

...

(I) The Outer Port Heiden Section is open from June 20 through July 31 to commercial salmon fishing in those waters west of a line from 57° 05.52’ N lat., 158° 34.45’ W long. to 57° 08.85’ N lat., 158° 37.50’ W long. based on the abundance of Meshik River sockeye salmon. If the commissioner closes the portion of the Egegik District specified in 5 AAC 06.359 (c) [FOR CONSERVATION OF UGASHIK RIVER SOCKEYE SALMON STOCKS], the commissioner **shall** [MAY], by emergency order, close the Outer Port Heiden Section, and immediately reopen the Outer Port Heiden Section, with additional fishing restrictions that the commissioner determines necessary.
The Department of Law has the following specific comments should the Board of Fisheries decide to consider the following petition at its Alaska Peninsula, Chignik, Bering Sea-Aleutian Islands Finfish 2019 Meeting or a subsequent meeting.

Emergency Petition Yakutat Bay Subsistence Salmon Fishery (RC36): This petition asks the board to repeal paragraph (e) of 5 AAC 01.670. The board can adopt emergency regulations if it “makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare.” AS 44.62.250. The board typically evaluates whether an emergency exists with respect to a petition before considering whether to take action in response to the petition. The board has defined in regulation at 5 AAC 96.625(f) what constitutes an “emergency,” and for petitions dealing with subsistence, the board should also consider the two criteria in 5 AAC 96.615(a):

(1) the proposal must address a fish or game population that has not previously been considered by the board for identification as a population customarily and traditionally used for subsistence under AS 16.05.258; or

(2) the circumstances of the proposal otherwise must require expedited consideration by the board, such as where the proposal is the result of a court decision or is the subject of federal administrative action that might impact state game management authority.
Should the board at this or a subsequent meeting, find an emergency and take action on this petition, and for all proposals affecting subsistence fisheries, the board should consider whether adoption or repeal of a regulation is needed to provide a reasonable opportunity for subsistence uses of the amount of fish reasonably necessary for those uses. “Reasonable opportunity” means 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 success of taking fish or game.” The board can base its determination of whether the regulations provide a reasonable opportunity for subsistence uses on: the amounts of a fish stock that have been established as reasonably necessary for subsistence uses, information pertaining to subsistence harvest data, bag limits, access, methods and means regulations and gear necessary to achieve the harvest, and other factors.

Finally, if the board decides to make a change, under AS 44.62.260 a regulatory change adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with certain regulatory steps prior to submitting the regulation to the lieutenant governor. In other words, if the board decides to make a change, the board may want to consider whether to also direct the department to make the change permanent otherwise the change will expire after 120 days.