



October 21, 2019

Mr. Reed Morisky, Chair  
Alaska Board of Fisheries  
1255 W 8th Street  
Juneau, AK 99811-5526

**RE: Sitka Sound Herring: Open Pound Fishery**

Dear Mr. Morisky:

In the briefing materials for the Board of Fisheries (BOF) October workshop, PC032 on ACR 4<sup>1</sup> references past actions and communications on proposals to consider an open pound alternative for herring seine permit holders in Sitka Sound. While you do not have a proposal before you this cycle, this question has been raised with regularity and some background might be in order.

On several occasions, the Board of Fisheries (BOF) has asked Commercial Fisheries Entry Commission (CFEC) to remove Sitka Sound from Northern Southeast Herring Spawn-on-Kelp Pound fishery administrative area, so that you might consider providing Southeast Roe Herring Purse Seiners the option to utilize open pounds. CFEC's 2018 statewide comments<sup>2</sup> referenced previous correspondence to the BOF and reminded the BOF that CFEC has already conducted a regulatory process to consider this change.

At the request of the BOF,<sup>3</sup> CFEC developed and gave public notice on a proposal to exclude Sitka Sound from the administrative area for the Northern Southeast Herring Spawn-on-Kelp Pound fishery.<sup>4</sup> In November 2015, CFEC held a hearing on the proposed regulation. Twenty people testified at the hearing or via teleconference with all but one participant opposing the area change. CFEC also received dozens of written public comments. In all, over 60 unique comments were received in writing or at the hearing, but only one person issued support for the proposal. Individuals participating included a range of interests: Northern and Southern pound permit holders and crew, herring seiners, commercial gear groups, and the Sitka Tribe.

<sup>1</sup> [PC032 regarding ACR 4 Board of Fisheries Workshop, October 2019.](#)

<sup>2</sup> [CFEC Comment EF-F17-067](#)

<sup>3</sup> [BOF Chair Tom Kluberton to CFEC Chair Bruce Twomley regarding Proposal 126, March 3, 2015.](#)

<sup>4</sup> [20 AAC 05.230\(a\)\(9\)](#)

CFEC ultimately decided against modifying the area and informed the BOF. The full public record was provided at the time and can be found in the meeting materials for the 2018 statewide meeting<sup>5</sup>. To recap Commissioner Bruce Twomley's January 2016 letter:

After due consideration, the Commission has decided to take no further action on the proposal, as we believe the record at this point does not support a change in the boundaries of the administrative area for the pound fishery.

... Nothing in our research or the public comment we received on this latest proposal convinces us that a change is needed at this time in the administrative area definition for the fishery that has been in place since 1995.

... If the Board of Fisheries decides to go forward with Proposal 126, or something like it, we would reconsider the matter.

... Without prejudging the issue, I must tell you that, based on the overwhelmingly negative public comment we received, proponents of such a change will have a significant burden of persuasion.<sup>6</sup>

While CFEC's hearing was specific to the proposed administrative area change, the record<sup>7</sup> shows clearly that most commenters also opposed then tabled BOF Proposal 126<sup>8</sup>, which requested an open pound alternative to herring seines in Sitka and was the impetus for BOF's request for CFEC to amend the administrative area.

It is important to note that CFEC designated the current spawn-on-kelp administrative areas according to ADFG's recommendation to define just two areas for management flexibility.<sup>9</sup>

CFEC has not seen a draft BOF management plan or regulations for review; this is important, because **the issue involves more than simply modifying an administrative area**. In fact, allowing more fishermen to utilize herring pounds in a region where limited entry has already been imposed on both herring seine and spawn-on-kelp pound fisheries could impact existing herring harvesters. This would also require CFEC to determine whether the action would be consistent with the principals of the Limited Entry Act. Without a BOF preferred management option to evaluate that just isn't possible.

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<sup>5</sup> [See CFEC materials under Memo on Miscellaneous Section Material](#)

<sup>6</sup> [CFEC Chair Bruce Twomley letter to BOF Chair Tom Kluberton, January 8, 2016.](#)

<sup>7</sup> [CFEC Hearing Record, November 6, 2015.](#)

<sup>8</sup> [Proposal 126](#)

<sup>9</sup> Memorandum from ADFG Commissioner Carl Rosier to CFEC Commissioner Bruce Twomley, p.5, Nov. 21, 1994.

The question of alternative gear for Sitka Sound herring is not new, as you can see from the attached chronology. In 1993, the BOF considered utilizing gillnets as an alternative to herring seines. Attorney General Charlie Cole wrote that while the BOF does have the authority to change the gear type:

... changing the legal gear from purse seines to gill nets would not be a “modification” of the existing Sitka roe herring seine fishery, *but would be an expansion of the existing Southeast gill net fishery* (Emphasis added).<sup>10</sup>

Since that time, both the Northern and Southern Spawn-on-Kelp Pound Fisheries (SOK) have been brought under limited entry; SOK fisheries can choose to use either open or closed pounds. In the letter referenced above, Cole seemed to portend the possibility that the Northern SOK fishery would be limited and that the BOF might want to allow seiners to use pounds:

... it is unlikely the Limited Entry Act would allow the Commission to limit the pool of eligible applicants for the pound fishery to Sitka Sound herring seiners.

From 1997-2000, the BOF considered a request for open pounds as alternative gear for Sitka herring seiners (Proposal 441). Both Assistant Attorney General Steven Daugherty and CFEC encouraged the BOF to use caution and carefully clarify its intent if it chose to allow this modification, emphasizing that BOF should, “*establish a strong record of support of any such allocation or differential treatment.*” Daugherty further reminded the BOF to ensure any decisions do not intrude on CFEC authority or conflict with the Limited Entry Act, stating:

Board action on proposal 441 could have impacts on the limited entry provisions in the Southeast Alaska herring fisheries, particularly since pound fisheries already exist. ... The Board should not adopt this proposal without considering possible impacts on CFEC regulations, limited entry provisions, and participants in the various fisheries that might be affected by such action.<sup>11</sup>

He also suggested to the BOF that:

... it might be advisable to develop draft regulations and put them out to a second notice. It might also be advisable in adoption of such regulations to make them conditional and effective only if the CFEC determines that the regulations do not conflict with the Limited Entry Act and adopts complimentary regulations.

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<sup>10</sup> Letter from Attorney General Charles Cole to CFEC Christine Kelley, January 29, 1993.

<sup>11</sup> Assistant Attorney General Steven A. Daugherty on January 1997 Board of Fisheries Proposals, 1/17/1997.

CFEC is also a regulatory body, so any changes to administrative areas or other actions that could impact limited entry fisheries and the attendant regulations must be carefully analyzed under existing law and brought before the affected public for comment. CFEC has consistently reminded both the BOF and members of the public that the agency will not presuppose the outcome of this important process.

Redrawing the administrative area in Sitka Sound has no purpose unless the BOF thinks the concept of alternative gear for the herring seiners has merit and intends to develop a management plan. But as the Department of Law indicated in 2015, “*the Board likely doesn’t have authority to allow new entrants to limited entry herring pound fisheries without approval by the Commercial Fisheries Entry Commission (CFEC).*”<sup>12</sup> This implies that CFEC would have to act in some fashion to enable the Board to exercise its means and measures authority to allow open pounding as an alternative gear type. Prior to defining what remedy CFEC might be able to provide, we would need more specifics to determine whether the Board’s preferred alternative is consistent with the principals of the Limited Entry Act.

The Limited Entry Act requires CFEC to promote conservation and sustained yield management of Alaska’s fishery resources and help prevent economic distress among fishermen and those who depend upon them for a livelihood. CFEC accomplishes its mission by controlling and regulating entry of participants into various commercial fisheries without unjust discrimination.<sup>13, 14</sup>

CFEC limited the Southeast Roe Herring Purse Seine (G01A) fishery in 1977 and in 1992 determined the optimum number of entry permits to be 46. Currently, there are 48 active G01A permits. The administrative area for this fishery was designated as the Southeastern Alaska Area.<sup>15</sup>

In 1989, the BOF adopted a proposal to create a spawn-on-kelp herring pound fishery in Southeast Alaska. In 1995, CFEC limited the SOK herring pound fisheries and issued two permits – Northern Southeast Herring Spawn-on-Kelp Pound (L21A) and Southern Southeast Herring Spawn-on-Kelp Pound (L21C). The administrative lines were designated for two areas – Northern Southeast and Southern Southeast.<sup>16</sup>

The first permanent SOK permits were issued in 1998. The maximum number of permits for the Northern SOK was set at 109. CFEC originally issued 112 transferrable permits and one was cancelled; currently there are 111 active permits – two permits over the maximum number originally set. Each of these permit holders can use open or closed pounds.

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<sup>12</sup> [Assistant Attorney General Seth Beausang on 2015 Southeast-Yakutat BOF Finfish Proposals, 2/11/15.](#)

<sup>13</sup> [Article 8 §15 Alaska Constitution](#)

<sup>14</sup> [AS 16.43.010](#)

<sup>15</sup> [5 AAC 27.100](#)


<sup>16</sup> [5 AAC 33.200](#)

Some Northern SOK permit holders have permits for other limited herring fisheries. In 2017, 34 permit holders had just the Northern SOK permit. 65 permit holders had both Northern and Southern SOK permits. Six Northern SOK permit holders also held sac roe herring seine permits, and six Northern SOK fishermen held all three permits.

Allowing alternative gear for herring seiners in Sitka Sound could have a range of impacts across multiple users. We encourage the BOF to be very clear with respect to intent and rationale if you choose to develop such an option. Should that happen, CFEC stands ready to analyze the resulting BOF management plan and propose complimentary changes to CFEC regulations. However, to adopt such regulations, CFEC would be required to engage in its own regulatory process and determine independently whether the purposes of the Limited Entry Act would be served by so doing.

If we can provide additional information on this matter, please don't hesitate to contact us.

Best regards,



Dale Kelley  
Commissioner



Fate Putman  
Chair

cc:

Doug Vincent-Lang, Commissioner, ADFG  
Sam Rabung, Director Commercial Fisheries, ADFG  
John Moller, Policy Advisor, Office of the Governor

## Chronology

### Select Southeast Alaska Herring Fisheries Limited Entry and the proposed Open Pound Alternative for Sitka Sound Roe Herring Purse Seine Fishery

1960 to 1985	Winter food and bait herring fisheries that averaged 210 tons per year were occurring in Southern Southeast (Section 3-B).
1977	CFEC limited the Sitka Sound sac roe herring purse seine fishery in 1977; in 1992 the optimum number of entry permits was set at 46. <sup>1</sup> There are 48 active G01A permits. The administrative area for this fishery was designated as the Southeastern Alaska Area. <sup>2</sup>
Feb 1989	Board of Fisheries (BOF) creates herring spawn-on-kelp (SOK) fishery in Southeast Alaska. <sup>3</sup>
1990	1. First commercial SOK fishery occurred in Hoonah Sound; 99 persons made landings. 2. Five petitioners from Sitka and Willow ask CFEC to limit entry in the Hoonah Sound fishery. Petition denied – not enough time to gather and analyze data under Administrative Procedures Act; and only a single year’s data.
1991	BOF adopts proposal for Craig/Klawock SOK fishery; winter bait fishery GHF reduced 15% to allow for pound fishery.
1992	First commercial SOK fishery occurred in Craig/Klawock; 229 persons made landings.
1993	In 1993, the BOF considered utilizing gillnets as an alternative to herring seines in Sitka Sound. Attorney General Charlie Cole wrote that while the BOF has the authority to change the gear type: ... changing the legal gear from purse seines to gill nets would not be a “modification” of the existing Sitka roe herring seine fishery, <i>but would be an expansion of the existing Southeast gill net fishery</i> (Emphasis added). <sup>4</sup>
1993	An individual petitions CFEC to implement an Individual Fishing Quota (IFQ) for SOK pound fisheries. Petition denied because CFEC had no legal authority to implement IFQs and inadequate time to consider limited entry within the statutory timeframe. CFEC committed to study the issue.
1994	CFEC receives third petition to limit entry into Hoonah Sound SOK. Petition was denied for statutory time constraints, but CFEC continued its research on the fishery. <sup>5</sup>

<sup>1</sup> [Southeastern Alaska Roe Herring Purse Seine Fishery - Optimum Number Report, CFEC Report 92-2.](#)

<sup>2</sup> [5 AAC 27.100.](#)

<sup>3</sup> Northern Southeast Herring Spawn-on-Kelp Pound Fishery Rationale, CFEC, May 25, 1999.

<sup>4</sup> Letter from Attorney General Charles Cole to CFEC Christine Kelley, January 29, 1993.

<sup>5</sup> [Southeast Alaska Herring Spawn-on-kelp Pound Fisheries: Hoonah Sound and Craig/Klawock Supplemental Report, CFEC 94-10N.](#)

1994	ADFG Commissioner Carl Rosier provided background on both Hoonah Sound and Craig/Klawock SOKs as part of the petition process, along with his thoughts on administrative areas: <i>If the Commission decides to propose both the Craig/Klawock and Hoonah Sound pound fisheries for limited entry, an option would be to split Southeast Alaska into northern and southern administrative areas. It is my understanding that this option will provide the greatest flexibility to the Commission and the Board of Fisheries when new fisheries are proposed; they could be either open-to-entry or limited as the situation warrants. I do not believe that it would be in the economic best interest of the public or the state to create a situation that would preclude the creation of new pound fisheries in which those without limited entry permits could participate.</i> Rosier also outlined a 'less flexible' option for the two existing areas, which would leave the rest of the Southeast region open access. Rosier expressed concern that increased participation in the existing SOK fisheries was already complicating management; GHs were being exceeded and there had been a recent decline in spawning biomass in the Craig/Klawock area. <sup>6</sup>
Dec 1994	CFEC proposes regulations to limit the Northern Southeast (Districts 9-16, incl. Hoonah Sound) and Southern Southeast (Districts 1-8, incl. Craig/Klawock) SOK fisheries. <sup>7</sup> Maximum numbers were set based on the year with the highest number of permit holders who made landings; 229 Northern & 109 Southern. 221 applications were received for Northern SOK and 189 applications were received for the Southern SOK.
Jan 1995	CFEC limited the SOK pound fisheries, effective Feb. 11, 1995. The Northern qualification date was Jan. 1, 1995 and the qualifying years were 1990-1994 (entire history of the fishery); maximum <sup>8</sup> numbers set at 109 and 112 permits were issued (L21A). The Southern qualification date was Jan. 1, 1995 and the qualifying years were 1992-1994 (entire history of the fishery); maximum number set at 221 and 208 permits were issued (L21C). <sup>3,9</sup>
1998	BOF Proposal 441 by Paul Gronholdt sought to, <i>[a]llow Sitka Sound herring sac roe purse seine permit holders the option of using open pound racks to harvest herring roe in the form of kelp in lieu of or in addition to using purse seines.</i> The BOF took no action, but instead directed ADFG to conduct an experimental fishery to explore the perceived conservation and economic merits of the proposal, investigate any conflicts with subsistence or other fisheries, and gather data on both kelp and herring. Paul Gronholdt and Associates was awarded the contract; the team included 13 sac roe herring seiners, 40 deckhands, and 5 consultants. Harvesting occurred March 16-25; four platforms were fished using 10,236 pounds (65,280 blades) of kelp from the north shore of Hecate Island. 104 tons of herring were used in the experimental SOK fishery; 6,900 tons of herring were harvested in the herring sac roe fishery. The fishery produced 57,038 pounds of roe on kelp. 74% of the SOK product was grade #1 or #2 with an average price of \$5.46/pound; Grade #1 paid \$7.58 per pound, versus \$0.45 for Grade #5. Product was quite silty, which made processing difficult and ultimately had a negative impact on final pricing. Market challenges were detailed by experts in the field; some think the issues can be overcome through processing improvements and increased product volumes. There were no known user conflicts or concerns reported. <sup>10</sup>

<sup>6</sup> Memorandum from ADFG Commissioner Carl Rosier to CFEC Commissioner Bruce Twomley, p.5, Nov. 21, 1994.

<sup>7</sup> [5 AAC 33.200](#)

<sup>8</sup> [AS 16.43.240](#)

<sup>9</sup> [Limited Fisheries Status Report](#), CFEC, January 12, 2018

<sup>10</sup> [Sitka Sound Herring Spawn on Kelp Open Harvest Platform Experimental Fishery Report, Paul Grunhold and Associates, Spring 1998.](#)



April 1999	ADFG Commissioner Frank Rue writes to Robert Loescher of Sealaska regarding the <i>Overview and Status Report on Sitka Experimental Open Pond Spawn on Kelp Fishery Preliminary</i> , submitted to Sealaska Corporation by Norman Staton, March 5, 1999. <sup>11</sup> Rue points to the need to gather information and fully inform all participants prior to the upcoming BOF meeting. He commits to work with Department of Law (DOL) and CFEC to review various issues identified in the overview.
Jan 2000	BOF Proposal 168 & 175 (requested open pound alternative) / 174 (opposed alternative)
Jan 2000	<p><b>CFEC Comment to BOF regarding Herring Management.</b><sup>12</sup></p> <p>CFEC Commissioner Bruce Twomley says if the BOF approves proposals 168 &amp; 175:</p> <ol style="list-style-type: none"> <li>1. <i>...the Board should be very clear its action affects only the existing, limited Sitka Sound roe herring purse seine fishery.</i></li> <li>2. <i>...CFEC would stand ready to propose complimentary changes to its regulations. To adopt such regulations after a public comment period, CFEC would be required to determine independently that the purposes of the Limited Entry Act would be served by doing so.</i><sup>13</sup></li> <li>3. <i>CFEC would likely propose modification of its current definition of the administrative area<sup>14</sup> for the Northern Southeast spawn-on-kelp pound fishery to exclude the area included within the Board's definition of the Sitka Sound roe herring purse seine fishery.</i></li> <li>4. CFEC guided by the Limited Entry Act and statutes governing powers of the BOF.<sup>15</sup></li> <li>5. CFEC procedure helps meet responsibilities under Limited Entry Act, generate public awareness and comment, and clarify potential ambiguity between BOF and CFEC regulations.</li> <li>5. <i>The commission must reserve judgement on the issue until it has received public comment.</i></li> </ol>
Jan 2000	<b>Sitka Spawn on Kelp Open Platform Workgroup.</b> <sup>16</sup> Group was formed, to develop solutions to problems identified by the Board of Fisheries related to implementation of a new platform spawn on kelp fishery in Sitka Sound. A charge statement was drafted with directions to report in writing by Feb. 16, 2000.
Jan 2003	BOF creates herring L21C SOK and bait pound fisheries in Ernest Sound (District 7), which has a herring stock threshold of 2,500 tons. SOK GHs in 6 years from 2004-2017; no fishery in 2017-18.
Oct 2003	<b>Sitka Spawn on Kelp Open Platform Workgroup.</b> <sup>17</sup> BOF Agenda Change Request (ACR) 5 & 7 to allow open pound fishery in Sitka Sound. Proposals did not meet ACR criteria, but a working group was formed and a charge statement drafted. BOF John Jensen was designated chair and the group was instructed to report in writing by Oct. 2005.

<sup>11</sup> Letter from ADFG Commissioner Frank Rue to Robert Loescher of Sealaska re: Sitka herring pounds, Apr.14, 1999.

<sup>12</sup> [CFEC Commissioner Bruce Twomley letter to BOF Chair Tom Kluberton, January 8, 2016.](#)

<sup>13</sup> [AS 16.43.200 Limited Entry Act](#)

<sup>14</sup> [Administrative Areas](#) See: 20 AAC 230(a) and 5 AAC 33.200(m)(2)

<sup>15</sup> [AS 16.43.950](#)

<sup>16</sup> [2000-194-FB Board of Fisheries Charge to Sitka Spawn on Kelp Open Platform Workgroup.](#)

<sup>17</sup> [2003-224-FB Board of Fisheries Charge to Sitka Spawn on Kelp Open Platform Workgroup.](#)



Feb 2015	<b>DOL comment to BOF on 2015 SE Finfish Proposal 126.</b> <sup>18</sup> <i>Southeast Alaska herring pound limited entry permit holders are generally the only users who can participate in a pound fishery in their administrative area, not seiners. ... The board likely does not have authority to allow additional users into this limited entry fishery without prior action by the Commercial Fisheries Entry Commission.</i>
March 2015	<b>BOF Proposal 126 Requests open pound SOK alternative for Sitka sac roe fishery.</b> BOF tables the proposal due to lack of regulatory authority pending request for action from CFEC.
March 2015	<b>BOF Letter to CFEC regarding Proposal 126.</b> <sup>19</sup> <ol style="list-style-type: none"> <li>1. Sitka Sound herring fishery value has declined to below \$200/ton.</li> <li>2. Sitka Tribe asking BOF to reduce harvest and area.</li> <li>3. BOF 'intrigued' that open pound fishery might provide higher price point.</li> <li>4. <i>Board likely doesn't have authority to allow new entrants to limited entry herring pound fisheries without approval by the Commercial Fisheries Entry Commission (CFEC).</i> (See DOL Feb. 11, 2015). DOL suggested various options, <i>including passing the proposal contingent on eventual approval by CFEC.</i></li> <li>5. Majority BOF members voted to consider Prop 126 next year if CFEC redefined administrative area for Northern SE SOK herring pound to exclude Sitka Sound; no herring pound operations are currently authorized there. Said it's difficult to craft language contingent on CFEC taking action.</li> <li>6. BOF has suggested proposer talk to CFEC.</li> <li>7. BOF tells CFEC they are open to further consideration of this proposal and <i>encourages CFEC to assess feasibility of acting to allow this fishery when approached by the proposer.</i></li> </ol>
May 2015	<b>CFEC Commissioner Bruce Twomley Letter to BOF Chair Tom Kluberton on Proposal 126.</b> <sup>20</sup> <ol style="list-style-type: none"> <li>1. <i>[CFEC is] accustomed to the Board first making a methods decision conditioned on subsequent independent regulatory action by the commission.</i></li> <li>2. CFEC commits to develop and publish a regulatory proposal for public comment, noting that <i>...we will have to reserve judgement, until we have heard all the public testimony, as to whether the proposal is or is not consistent with the purposes of the Limited Entry Act. I can think of competing analyses, and I am not sure about where this proposal will end up. But we can ensure that all sides are heard and fairly considered.</i></li> </ol>
Oct 2015	<b>CFEC publishes Notice of Proposed Regulations</b> to exclude Sitka Sound from the Northern SE SOK pound fishery administrative area.

<sup>18</sup> [Assistant Attorney General Seth Beausang on 2015 Southeast-Yakutat BOF Finfish Proposals, 2/11/15.](#)

<sup>19</sup> [BOF Chair Tom Kluberton to CFEC Chair Bruce Twomley regarding Proposal 126, March 3, 2015.](#)

<sup>20</sup> [CFEC Chair Bruce Twomley to BOF Chair Tom Kluberton regarding administrative areas, May 13, 2015.](#)

Nov. 2015	<p><b>CFEC holds public hearing on proposed regulations.</b><sup>21</sup></p> <p><b>1. More than 60 people testified at the hearing and/or submitted written comments;</b> many also commented on BOF Proposal 126. With the exception of the proponent, <b>nearly all comments received were in opposition</b> to the CFEC proposed area change.</p> <p><b>2. CFEC took no action to modify administrative area, due to lack of public support.</b></p>
Jan. 2016	<p><b>CFEC Chair Bruce Twomley writes BOF Chair Tom Kluberton.</b><sup>22</sup></p> <p><b>1. CFEC completed a public process on proposed regulations</b> to exclude Sitka Sound from the administrative area for Northern Southeast herring SOK pound fishery.</p> <p><b>2. <i>After due consideration, the Commission has decided to take no further action on the proposal, as we believe the record at this point does not support a change in the boundaries of the administrative area for the pound fishery.</i></b></p> <p><b>3. Twomley outlines ADFG’s 1994 preference for two comprehensive administrative areas, which CFEC ultimately chose in 1995.</b></p> <p><b>4. <i>Nothing in our research or the public comment we received on this latest proposal convinces us that a change is needed at this time in the administrative area definition for the fishery that has been in place since 1995.</i></b></p> <p><b>5. <i>If, however, the Board of Fisheries decides to go forward with Proposal 126 or something like it, we would reconsider the matter and examine whether allowing the Southeast roe herring seine permit holders to participate as pound fishermen would be consistent with the Limited Entry Act. Without prejudging the issue, I must tell you that, based on the overwhelmingly negative public comment we received, proponents of such a change will have a significant burden of persuasion.</i></b></p>
March 2016	<p><b>Assistant Attorney General Seth Beausang memo on March 2016 BOF Proposals.</b><sup>23</sup></p> <p>Proposal 126 ... <b><i>The board does not have the authority to allow new entrants into the Northern Southeast herring pound limited entry fishery by allowing non-permit holders to use open pounds in the fishery. We understand from PC16<sup>24</sup> that CFEC considered changing the administrative areas of this limited entry fishery, in order to allow the board to act on this proposal, but that CFEC ultimately declined to change the administrative area. The board does not have the authority to adopt this proposal.</i></b></p>
March 2016	<p><b>The BOF votes 6-0 to take no action on Proposal 126,</b> based on a lack of regulatory authority.</p>
Jan. 2018	<p>A proponent of open pound alternative for Sitka herring seiners asks the BOF to request CFEC to modify its administrative areas so herring seine permit holders can use herring pound gear in Sitka Sound. In response, the board sought additional information to be made available at its March 2018 Statewide meeting. Materials were provided and found in the March record.<sup>25</sup></p>

<sup>21</sup> [CFEC Hearing Record, November 6, 2015.](#)

<sup>22</sup> [CFEC Commissioner Bruce Twomley letter to BOF Chair Tom Kluberton, January 8, 2016.](#)

<sup>23</sup> [DOL Comments on Proposals BOF Statewide Meeting, March 4, 2016.](#)

<sup>24</sup> [PC16 CFEC Comments Board of Fisheries Statewide Meeting, March 2016.](#)

<sup>25</sup> [BOF Southeast-Yakutat Finfish Meeting Summary, January 2018.](#)

<p>March 2018</p>	<p><b>CFEC reiterates previous comments to the BOF on Statewide EF-F17-067 (Prop.126).</b><sup>26</sup></p> <p><i>At the request of the Board, CFEC proposed a regulatory change to exclude Sitka Sound from the CFEC Administrative Area for Northern Southeast herring spawn-on-kelp pound fishery. CFEC received numerous written comments and public testimony opposed to the proposed regulatory change. CFEC's January 8, 2016 letter notified the Board of its determination and stated in part as follows: <b>Nothing in our research or the public comment we received on this latest proposal convinces us that a change is needed at this time in the administrative area definition for the fishery that has been in place since 1995. <u>If, however, the Board of Fisheries decides to go forward with Proposal 126 or something like it, we would reconsider the matter and examine whether allowing the Southeast roe herring seine permit holders to participate as pound fishermen would be consistent with the Limited Entry Act.</u> Without prejudging the issue, I must tell you that, based on the overwhelmingly negative public comment we received, proponents of such a change will have a significant burden of persuasion.</b></i></p>
<p>March 2018</p>	<p><b>BOF Ruffner submits to the record a draft letter to CFEC</b> for a proponent of pound alternative for herring seiner, who requests that the BOF once again ask CFEC to modify the administrative areas in Sitka Sound.<sup>27</sup> BOF agrees to send a similar letter.</p>
<p>March 2018</p>	<p><b>BOF Chair Reed Morisky letter to CFEC Commissioners Putnam and Kelley.</b><sup>28</sup></p> <ol style="list-style-type: none"> <li>1. BOF again requesting CFEC consider whether to adjust Northern Southeast SOK boundary, ‘so that herring seine permit holders can have the option to utilize open pounds to harvest SOK in Sitka Sound.’</li> <li>2. CFEC would have to remove Sitka Sound and then consider whether to allow seine permit holders to utilize open pounds as alternative gear.</li> <li>3. BOF regulations allow use of pounds in Sitka Sound, even though no fishery currently authorized.</li> <li>4. If CFEC took these actions, it is likely the BOF would approve an open pound fishery in Sitka Sound for herring seiners.</li> <li>5. Reasons the BOF is favorable: reduced demand/price for sac roe; open pounds don’t kill fish; and the Sitka Tribe wants to reduce harvest of herring.</li> <li>6. ... <i>the historical back and forth delays are not serving the public process.</i></li> </ol>
<p>March 2018</p>	<p><b>After the statewide meeting, BOF Robert Ruffner and CFEC Kelley discuss regulatory process</b> already conducted by CFEC, to explore a change in administrative area to allow sac roe seiners to SOK pound in Sitka Sound. Multiple conversations reveal that BOF might benefit from more background on this issue. No proposal was in process at the time, so CFEC held additional comments.</p>
<p>Oct. 2019</p>	<p>In PC032 related to ACR 4, proponent of open pound as alternative to herring seine in Sitka Sound writes to urge the BOF to insist that CFEC change the administrative area.<sup>29</sup></p> <p>CFEC provides information to BOF on actions taken to date on the issue of open pounding and the request for CFEC to change administrative area in Sitka Sound.</p>

<sup>26</sup> [CFEC Comment EF-F17-067](#)

<sup>27</sup> [RC66 proposed letter to CFEC from BOF, submitted to BOF Statewide meeting, March 2018.](#)

<sup>28</sup> Chair Reed Morisky letter to Commissioners Putman and Kelley re: Administrative Areas, March 16, 2018.

<sup>29</sup> [PC032 regarding ACR 4 Board of Fisheries Workshop, October 2019.](#)