



February 17, 2022

Märit Carlson-Van Dort, Chair  
Alaska Board of Fisheries  
1255 W 8th Street  
Juneau, AK 99811-5526

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

Dear Ms. Carlson-Van Dort:

During the Southeast-Yakutat Board of Fisheries (BOF) meeting, the BOF will consider Proposals 166 and 233, which seek changes to a Northern Southeast administrative area and select fishery regulations to provide an open pound alternative for herring seine permit holders in Sitka. Similar requests have been made over the years and we hope the following background information will prove useful during your deliberations.

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>1</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>2</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>3</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.

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<sup>1</sup> [CFEC Comment EF-F17-067](#)

<sup>2</sup> [BOF Chair Tom Kluberton to CFEC Chair Bruce Twomley regarding Proposal 126, March 3, 2015.](#)

<sup>3</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>4</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>5</sup>

While CFEC's hearing was specific to the proposed administrative area change, the record<sup>6</sup> shows clearly that most commenters also opposed then tabled BOF Proposal 126<sup>7</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>8</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 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>4</sup> [See CFEC materials under Memo on Miscellaneous Section Material](#)

<sup>5</sup> [CFEC Chair Bruce Twomley letter to BOF Chair Tom Kluberton, January 8, 2016.](#)

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

<sup>7</sup> [Proposal 126](#)

<sup>8</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 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, *but would be an expansion of the existing Southeast gill net fishery* (Emphasis added).<sup>9</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>10</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>9</sup> Letter from Attorney General Charles Cole to CFEC Christine Kelley, January 29, 1993.

<sup>10</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>11</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>12, 13</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>14</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 established for two areas – Northern Southeast and Southern Southeast.<sup>15</sup>

The first permanent SOK limited entry 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>11</sup> [Assistant Attorney General Seth Beausang on 2015 Southeast-Yakutat BOF Finfish Proposals, 2/11/15.](#)

<sup>12</sup> [Article 8 §15 Alaska Constitution](#)

<sup>13</sup> [AS 16.43.010](#)

<sup>14</sup> [5 AAC 27.100](#)

<sup>15</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



Melvin Smith  
Chair

cc:

Doug Vincent-Lang, Commissioner, ADFG  
Sam Rabung, Director Commercial Fisheries, ADFG