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Commercial Fisheries Entry Commission

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To: John Wood, Chair  
Alaska Board of Fisheries

Date: February 8, 2024

Thru: Glenn Haight, Commissioner  
Commercial Fisheries Entry Commission

From: Reid Johnson, Research Section Lead  
Commercial Fisheries Entry Commission

Subject: CFEC Comments on BOF  
Proposal 103, 104, 139 and 140

The Commercial Fisheries Entry Commission (CFEC or Commission) recognizes the intent to explore alternative fishing gear in response to emerging challenges in fisheries management. Board of Fish (the board) proposals 103, 104, 139, and 140 seek to allow alternative gear types.

## I. Authorities

Under AS 16.05.251 the Board of Fisheries has a very broad scope of authority, while the Commission's authority is very narrow. The Commission's narrowly defined role is to act as a "regulatory and quasi-judicial agency" for the purposes of administering the Limited Entry Act. AS 16.43.020. The stated purpose of the Limited Entry Act is:

...to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry into the commercial fisheries in the public interest and without unjust discrimination.

In *Commercial Fisheries Entry Comm'n v. Apokedak*<sup>1</sup> the Alaska Supreme Court determined three primary purposes of the Limited Entry Act:

1. Enhancing the economic benefit to fishermen since too many involved in the industry prevented those relying on fishing for a livelihood from securing adequate remuneration;
2. conserving the fishery; and
3. avoiding unjust discrimination in the allocation of a limited number of entry permits.

The Commission administers the Limited Entry Act generally through the regulation of fishing permits and the limitation of fisheries. Thus, while the Commission has authority over the regulation of commercial fishing permits – including the limiting of fisheries, the board has authority over commercial fishing in general.

## II. Proposals 103 and 104

Proposals 103 and 104 both seek to allow the use of dip nets in the Upper Subdistrict commercial salmon fishery. Allowing CFEC set gillnet (S04H) permit holders to use dip nets in lieu of set nets

<sup>1</sup> 606 P.2d 1255, 1259 (Alaska 1980).

would not be in violation of the Limited Entry Act (Act or AS 16.43). Dip nets are not a gear type currently in CFEC regulations, and no commercial user group exists currently for this gear type in this area. If the board were to pass this proposal with the intent of allowing set gillnetters to use dip nets under specific circumstances, CFEC would review current gear code regulations and, if necessary, propose changes to the administrative code that would attach “dip nets” as a gear type to set gillnet permits in Cook Inlet. Not to presuppose the outcome of the proposed regulatory process, CFEC would expedite the process so that if there was an affirming regulation change aligned with the use of dip nets it would come into effect for the coming fishing season.

In addition to seeking the allowance of dip nets, proposal 104 also seeks to allow a 10 or 15 fathom drift gillnet in lieu of a set gillnet. The proposal also makes mention of the possible use of seine gear for set gillnet permit holders. The addition of both these gear types to CFEC set gillnet permit types would have to be done through a CFEC regulatory process. It may be possible to add either drift gillnet gear or seine gear to set gillnet permits without violating the Limited Entry Act, but it would take significant time to review and investigate this possibility. The addition of these gear types to the Cook Inlet set gillnet permit type may not happen at all if it would pose a risk to limited entry. Both the Cook Inlet salmon seine permit type and the Cook Inlet drift gillnet permit types are limited entry permits.

### III. Proposals 139 and 140

Proposals 139 and 140 seek to allow the use of a reef net in lieu of a set gillnet in the Upper Cook Inlet commercial salmon fishery. Allowing reef nets to be used would not be in violation of the Act. If the board were to pass this proposal, CFEC would simply attach “reef net” as a gear type to set gillnet permits in Cook Inlet. CFEC would require guidance from the board as to the exact definition of a reef net. CFEC would expedite this process so that it would come into effect for the coming fishing season.

#### a. Reef Nets vs. Fish Traps

Reef nets appear to be a unique and sustainable method of harvesting target fish species in which bycatch and over harvest is easily avoidable. It is clear to CFEC that differences between reef nets and fish traps needs some discussion.

Reef nets appear to differ greatly from fish traps historically used in Alaska before they were made illegal. AS 16.10.070-130. Reef nets may be managed so they do not block off large areas of water, and do not have the same potential to block entire river systems as fish traps can. Reef nets are also deployable by individual fishing operations and groups of fishermen, and do not appear by their very nature to exclude others from the common resource. The intent of anti-fish trap legislation has previously been interpreted by the state attorney general as<sup>2</sup>:

“to relieve economic distress among fishermen, to conserve the dwindling supply of salmon, and to insure fair competition in commercial fishing.”

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<sup>2</sup> Alaska Op. Att’y Gen. (Inf.) 71 (1994).

Reef nets are not defined in Alaska Statute or Administrative Code. Fish traps have been clearly defined by the Alaska supreme court in *Metlakatla Indian Com., Annette Island Res. v. Egan*<sup>3</sup>:

"A trap consists of tall stakes or mechanically driven piling extending from the shore to varying distances seaward, depending on the depth of the water. Wire or webbing is stretched across the stakes or piling from the shore to the seaward end and from the ocean bottom upward to a point above high water. Located at the seaward end is an extended wing or hook and an opening into the heart and pot. When the webbing is on the ocean bottom, fish cannot pass around the trap at the shoreward end. One tendency of migrating fish is to parallel the shoreline and travel with the incoming tide. Fish stopped by the webbing of a trap will eventually follow it seaward in an attempt to by-pass the obstruction. The wing or hook is constructed so as to discourage by-passing and divert the fish into the heart and pot, where they remain. With some variations in construction, floating traps adapted to deep water are commonly used, and are highly productive."

The definition and legality of a gear type is beyond the purview of CFEC. As an organization we offer the preceding definition for the sake of discussion. It does not appear to CFEC that reef nets either run afoul of the intent of anti-fish trap legislation, nor do they meet the definition of what a fish trap is according to the Alaska Supreme Court.

#### IV. Final Considerations

We are at a time, it would seem, in which it is difficult to allow the exploitation of sockeye salmon in Cook Inlet while still allowing for the conservation of Chinook salmon in the same fishery. CFEC feels that alternative gear types should be considered if they could possibly be regulated in such a fashion as to avoid the unsustainable harvest of fishery resources. Could fishery management over these gear types be crafted to maintain a consistent approach to the current conservation, social, and economic goals of Alaska's fisheries, it seems only appropriate to consider them seriously. CFEC recognizes it is far afield to make statements related to fisheries management, and fully respects the Board's role in defining and shaping Alaska's fisheries.

In closing, if any proposed regulatory changes can be applied equally throughout a permit category and do not impinge upon any other defined permit categories, CFEC is fully in support of the exploration of alternative gear types.

Should there be any questions or a need for further clarification, we are at your disposal. Please contact us at your convenience: reid.johnson@alaska.gov, (907)-717-6512.

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<sup>3</sup> *Metlakatla Indian Cmty., Annette Island Rsr. v. Egan*, 362 P.2d 901, 903 (Alaska 1961), vacated sub nom. *Metlakatla Indian Cmty., Annette Islands Rsr. v. Egan*, 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962), and aff'd sub nom. *Organized Vill. of Kake v. Egan*, 369 U.S. 60, 82 S. Ct. 562, 7 L. Ed. 2d 573 (1962).