

# MEMORANDUM

STATE OF ALASKA

*Department of Law*

To: Glenn Haight  
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Alaska Board of Fisheries

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Date: November 25, 2013

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Subject: **Comments on Proposals for  
2013 Board of Fisheries  
Meeting on Lower Cook Inlet  
Finfish Issues**

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its December 2013 meeting on regulations for Lower Cook Inlet Area finfish issues.

**Proposals 57:** This proposal would impose a limit of 100 pounds (filet-weight) of sport-caught fish that could be exported from Alaska. While the Board has general authority to adopt regulations for the “utilization” or “use” of fish,<sup>1</sup> most Board regulations have a fairly close connection to the harvest and possession of fish. This proposal would extend regulatory reach to the transportation of fish long after harvest and quite distant from the fishing grounds. Other Board regulations on the use or transportation of fish have a closer tie and are adopted to make bag limits and other fishing regulations enforceable. If the Board is inclined to adopt this proposal, or a modified version of it, it should keep in mind several concerns.

The Board has rarely, if ever, addressed limitations on the the export of sport-caught fish from the state. The legislature, in AS 16.10.240, has itself imposed restrictions on the export of certain species of live crab. But the legislature has not granted the board express authority to regulate the export of fish from the state.

The proposal would have a discriminatory impact on non-residents, even though it applies to residents, as well as non-residents, because most residents would not be likely to export large amounts of fish from the state, as most fish caught would be consumed in

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<sup>1</sup> See, e.g., AS 16.05.251(a)(7), (12).

residents' homes. While the Board is authorized to allocate between resident and nonresident sport fishing<sup>2</sup> in favor of residents, that is usually done on a fishery-by-fishery basis with a record that explains the need for a resident preference. We do not believe that the proposal necessarily presents concrete Federal constitutional concerns, but before adopting this proposal, the Board should make a very careful record as to why the export limit is needed even though bag limits in specific fisheries may allow the total harvest of much more than 100 pounds for nonresidents.

This proposal would present very difficult enforcement challenges. Some kind of extensive reporting, record-keeping, and monitoring procedures would need to be adopted to provide any chance of effective enforcement of such an export ban.

**Proposal 81:** This proposal presents a conglomeration of ideas to address the decline of king salmon in Cook Inlet. Part 4 of the proposal states: "Require all salmon aquaculture projects to be certified as not promoting or advancing one stock at the expense of other stocks." We have opined in the past that the Board and Department split management authority over aquaculture projects, with the department having primary authority over hatchery operations.<sup>3</sup> While the sustained yield of wild fish stocks is the first priority in hatchery management, and the Board does have the authority to adopt regulations to see that hatchery brood stock harvest and cost recovery are consistent with sustained yield,<sup>4</sup> we believe that the board's authority to decide what species are produced at a particular hatchery is limited. Those decisions are more squarely within the province of the Department in approving issuing hatchery permits and approving management plans for hatcheries.<sup>5</sup> The Department's views and authorities should be carefully considered in considering this kind of sweeping proposal.

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<sup>2</sup> AS 16.05.251(a)(15).

<sup>3</sup> 1997 AG Op. File No. 661-98-0127 (November 3, 1997).

<sup>4</sup> AS 16.05.730.

<sup>5</sup> AS 16.10.400-445 (salmon); AS 16.40.100-199 (shellfish); *see also* 5 AAC 40.800-.990.