

March 6, 2020

RC 015

To: Board of Fisheries
Alaska Department of Fish and Game
PO Box 115526
Juneau, AK 99811-5526

Re: Sitka Sound Roe on Kelp Proposal

Dear Board Members,

Attached to this letter is the most recent round of dialogue between ourselves and CFEC regarding our proposal to allow existing Sitka Sound sac roe permittees to use open pound roe on kelp as an alternative harvest method to seining sac roe. Also attached is a brief background on how Spawn on Kelp would be a benefit to the Sitka herring fishery.

In March of 2018 the Board of Fisheries sent a letter to CFEC requesting Sitka Sound be excluded from the Northern pound administrative area in order for the Board to be able to consider whether open pounds could be used as alternative gear for existing sac roe seine permittees in Sitka Sound. This is the second time the Board has made this request of CFEC. A year and a half passed before CFEC responded to the Board in October of 2019. The response states "CFEC stands ready to analyze the resulting BOF management plan and propose complementary changes to CFEC regulations". This is essentially the same response they have given the Board before yet; somehow, the Board is prohibited from approving the alternative gear or management plan because CFEC has not removed the area in question from the Northern pound administrative area. We look again at AS16.43.950 which reads: Nothing in [the Limited Entry Act] limits the powers of the Board of Fisheries, including the power to determine legal types of gear and the power to establish size limitations or other uniform restrictions applying to a certain type of gear. And also AS16.43.200 which reads in relevant part: The commission shall make the administrative areas reasonable compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

It still seems that the Board should have the power to hear the proposal for existing seine permittees to utilize open pound roe on kelp as an alternative harvest method. CFEC still says they are ready to review the Boards proposed regulation.

I am sure you are aware there will be no fishery in Sitka again this year. Please, for the benefit of the GO1A permit holders, processors, and the community of Sitka, find a way for the Board to deliberate and make a decision on this proposal. The Sitka sac roe fishery is long overdue for a change. Status quo is not going to work into the future. Find a way to make something positive happen.

Thank you for your time.

Regards,

Darrell and Ryan Kapp

Spawn On Kelp and the Sitka Sound Herring Fishery

Allowing an Open Pound Spawn on Kelp (SOK) fishery in Sitka Sound as an alternative to seining will increase the overall value of the fishery while killing less fish than the existing harvest method.

The biology of spawning herring is a big factor in producing more value from the same biomass.

Currently, herring harvest can begin when roe recovery is sampled at 10% roe weight. Put simply: 100 tons of fish equals 10 tons of eggs. In some Sitka Sound openings roe recovery has been as high as 13%. In an experimental SOK fishery conducted in Sitka Sound in 1998 and 1999, Alaska Department of Fish and Game determined that 100 tons of herring biomass harvested with SOK converts into 27 tons of product. This represents a recovery of 27% which more than doubles the existing fishery recovery.

The reason for this increase in weight is biological. Upon fertilization the herring egg hydrates with water increasing the weight of the egg. SOK eggs are spawned, fertilized eggs that are hydrated while seine caught sac roe are pre spawn eggs and not hydrated. Because of this hydration the weight of an individual egg produced with SOK is more than twice as heavy as an individual sac roe egg.

With SOK the value of the eggs is increased as well. For example: 100 tons of herring at current prices (optimistically figure \$200 per ton) is worth \$20,000. That same 100 tons of herring harvested with SOK equates to 27 tons of product or, for simple math, a little over 50,000lbs. 50,000lbs of product sold at current prices (realistically figure \$5 per pound) is worth \$250,000. In this scenario the SOK product is worth more than 12 times the value of the traditional sac roe product.

While harvesting with SOK increases the value of the fishery product the best part is with Open Pound SOK no herring are killed. An Open Pound SOK fishery means the herring can swim into and out of the kelp as they please. There are no nets used at any time. The fish swim in, spawn, and return to sea making them available to spawn again in the future.

Increasing the value of the resource while causing the resource less harm is a win / win scenario. Incorporating Open Pound SOK as an alternative harvest method for existing seiners would be a benefit both now and well into the future.

February 10, 2020

**Fate Putman, Chairman
Dale Kelley, Commissioner
Commercial Fisheries Entry Commission
8800 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302**

Dear Chairman Putman and Commissioner Kelley

We have been proposing using Open Pound Roe on Kelp as an alternative to sac roe seining in Sitka Sound since publishing "Open Platform Spawn on Kelp" by Philip Mundy PhD, John Gissberg PhD and Samuel Sharr BS. in Dec. 1996. We have met with the Alaska Board of Fisheries (BOF) through the years and had various setbacks during those years with trying to implement our proposal. We completed a trial project in 1998 and 1999, working with the Alaska Dept of Fisheries (ADFG), showing the validity of open pound spawn on kelp in the Sitka sac roe area. ADFG published a study showing ample kelp in Southeast Alaska available for the project.

Our latest setback is an opinion by Seth Beausang, Assistant Attorney for the State of Alaska Department of Law (DOL), (Memorandum March 4, 2016) which states "The board does not have 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" Because of this opinion the BOF cannot act on our proposal due to the Northern Pound administrative area overlapping the Sitka seine area.

The BOF requested the Commercial Fisheries Entry Commission (CFEC) to exclude the Sitka area from the Northern Pound area. CFEC had a hearing about the BOF request and the outcome was no action. We were told the hearing was supposed to be about the overlap rational, when the overlap occurred, etc. But the record shows the hearing was about the BOF proposal and the markets of our future production. We contend the BOF should have been the administrator of the proposal not the CFEC. The CFEC did not meet its obligation to set the fisheries areas as the BOF wants.

As time passed, we have had exchanges with the CFEC trying to overcome the DOL opinion which has left the BOF unable to consider our proposal. An e-mail exchange on Feb 28, 2017 to Seth Beausang from Bruce Twomley states that if the BOF were to again request the Sitka area excluded from the Northern Pound area the CFEC may take up the issue again. The BOF issued another request in a second letter to CFEC on March 16, 2018.

Our group has contacted the CFEC, asking when and where the new hearing would take place. We received replies that the hearing would not go forward. The reply to Ryan Kapp, February 1, 2019 from the CFEC shows they are not going to act on the BOF request. The CFEC reply also shows they are under the opinion that if the BOF were to allow GO1A permittees the alternative use of open pounds to harvest Sitka herring it would be adding more users to the limited entry Northern pound area. (DOL 3/4/16) The CFEC e-mail, Feb. 1, 2019 suggests if the BOF were to allow seiners to have an alternative harvest method of open pound they would be "additional users into this limited entry fishery" meaning CFEC may consider the Sitka area herring stocks are now the Northern Pounders stock due to the overlapping areas.

Did the overlap of the Northern Pound area with the Sitka seine area add to the potential of adding more users to the Sitka area herring stock? Indeed, DOL has stated the Northern Pound fishermen can propose to the BOF to allow them into the Sitka herring stock area because it is their area too. At the last BOF hearing cycle for Southeast Alaska finfish the proposal of allowing Northern Pounders into the Sitka overlap area was on the proposal list and, fortunately for Sitka permittees, was denied by the BOF.

The DOL opinion and the CFEC e-mail exchange, saying Northern Pound permittees have access to Sitka herring stocks, exemplifies the original administrative area of the Northern Pound permittees was too expansive. Never would the CFEC add more users into an already Limited Entry GO1A Sitka herring Stock. So, it must be as Bruce Twomley said in the hearing, "And so we had to acknowledge that our current definition of Northern spawn on kelp (area) may not have fully complied with our statute" He was speaking about the overlapping areas.

IF the CFEC fails to exclude Sitka from the Northern Pound area. The BOF, in the upcoming cycle, will likely be overrun with proposals because it's now assumed Northern Pounders have access to Sitka herring stocks. Herring stocks are regulated by spawning areas and Northern pound fisheries have never been on Sitka spawning stocks.

It concerns me the Board will not be able to deliberate our proposal in the 2021 cycle because of the overlapping administrative areas. The BOF has sent you a second letter requesting you to separate the areas but there has been no action put toward this request to date. April 10, 2020 is the deadline for submitting proposals to the BOF. Will the Board staff reject our proposal again because it cannot be acted on by the BOF according to DOL? This denial happened the last Board cycle and resulted in the second letter being sent to CFEC asking for the area overlap to be corrected so the BOF could hear, deliberate, and render decision on the proposal. If Sitka herring stocks are now considered to be Northern pound stocks then what happens to the Seine permit value if Northern pound permittees are allowed on Sitka Stocks? GO1A permits have typically been 10 times the value of Northern pound permits. Limited entry in Sitka happened first, Northern pound limited entry came years later. The overlap, unless corrected by CFEC, now suggests more users on the fully utilized Sitka stock.

CFEC should correct the definition of the Northern pound area into a "smaller administrative area" as Commissioner Carl Rosier suggested as a choice the CFEC could make when the area was adopted. We again request a meeting with CFEC Commissioners to discuss our concerns and plan a way forward. We suggest a meeting with CFEC at the soonest possible time so we may submit the proposal to the BOF prior to the deadline.

Best regards, Darrell Kapp



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Commercial Fisheries Entry Commission

8500 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302
Main: 907.789-6160
Licensing: 907.789-6150
Fax: 907.789-6170

February 19, 2020

Darrell Kapp
338 Bayside Rd.
Bellingham, WA 98225
Via Email: Kapp_D@msn.com

Dear Mr. Kapp:

CFEC is in receipt of your February 10, 2020 letter expressing continued interest in utilizing open pounds as alternative gear for the Sitka sac roe seine fishery.

Attached you should find our most recent correspondence on this matter to the Board of Fisheries (BOF). As you are aware, your request ultimately involves more than a simple change of administrative area for the Northern Spawn on Kelp (Northern SOK) fleet. Additionally, it should be noted that the administrative area for the Northern SOK fishery was established after a comprehensive research and administrative process, including public comment. A review of that record shows that the administrative area for the Northern SOK fishery was specifically designed to provide ADFG managers with the flexibility to open subdistricts when and where the resource is healthy, and surpluses exist. Over the approximately 20 years since the boundaries of the Northern SOK fishery were drawn, new entrants have purchased permits with the knowledge that all Northern Southeast Inside districts fall within those administrative lines and could potentially be opened for harvest.

Nevertheless, in 2015, at the request of the BOF, CFEC proposed a regulation which would have redrawn the Northern SOK boundary and removed from those permit holders any future harvest opportunity in Sitka Sound. As part of that process, CFEC solicited comments and held a public hearing specific to the question of whether the administrative area should be modified.

Many permit holders made the time to travel to CFEC to comment in person or to comment by telephone; many written comments were also received. With the single exception of the principal proponent, Ryan Kapp, commenters were uniformly and steadfastly against the proposal.

Commenters made many arguments against the proposed area change, and most of them also chose to state during personal testimony their thoughts on the tabled BOF proposal that prompted BOF to request that CFEC modify the area. The hearing participants argued: 1) that it was not fair to remove SOK permit holders from Sitka Sound when they had purchased permits in the fishery with the expectation of fishing in that area as permitted by ADFG managers, 2) they argued that, if anything, the open pound concept is more compatible with fishing methods historically utilized in the SOK fishery than those historically used by sac roe seiners; 3) they argued that, removing one gear group from a potentially lucrative area for the benefit of another gear group would be

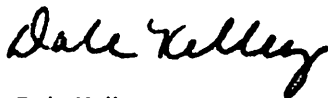
inconsistent with the principles of the Limited Entry Act and set bad precedent for any fisherman who has invested in a limited entry permit; 4) they argued that the ultimate end of the proposal, to introduce open pounds in Sitka Sound, could result in a glut in low grade product on the market which could be detrimental to pounders and sac roe fishermen alike; and, 5) they argued that the alleged market for the open pound product was unproven despite the fact that open pounding is not a new concept and is currently authorized in Alaska, Canada, and California.

We have attached the 2015 proposed regulations and there are links to the hearing record¹ below and in the documents mentioned above. After the hearing was conducted, CFEC decided not to modify the administrative areas², because there was very little public support to do so, and no new and approved management plan and rationale existed to help support the proposed change.

It should be noted that even if the BOF were to develop a management plan that allows pounds as alternative gear for herring seiners in Southeast, CFEC would have to determine whether such a proposal is consistent with the Limited Entry Act. Without adjudging the compelling comments made by fishermen at CFEC's 2015 public hearing, it stands to reason that the burden of persuasion with respect to this issue is very high.

Since there doesn't appear to be any new information, we do not believe that a meeting at this time would be fruitful. It might be best for you to work with the BOF and other interested parties to explore and develop a new concept prior to continuing the discussion.

Best regards,



Dale Kelley
Commissioner



Fate Putman
Chair

cc: Ryan Kapp <kappjr@comcast.net>
Alan Otness <adotness@gmail.com>
Joe Lindholm <redriverfisheries@comcast.net>

Attachments (3)

¹ CFEC Hearing Record, November 6, 2015.

² 20 AAC 05.230(a)(9)

A - Northern Southeast Area - Districts 9 - 16, as described in 5 AAC 33.200.

C - Southern Southeast Area - Districts 1 - 8 and Dixon Entrance District as described in 5 AAC 33.200.

February 26, 2020

Fate Putman, Chairman
Dale Kelley, Commissioner
Commercial Fisheries Entry Commission
8800 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302

Dear Chairman Putman and Commissioner Kelley,

Thank you for your letter of February 19, 2020 and the accompany documents. We are disappointed in your statement, "we do not believe that a meeting at this time would be fruitful."

Looking at the "Chronology" document you sent us, we find the work titled "Open Platform Spawn on Kelp," by Phillip Mundy PhD, John Gissberg PhD, and Samuel Sharr BS, was not included. This was the first document we presented to the Board of Fisheries (BOF) at the Juneau meeting in 1997. Phil was the Chief Fisheries Scientist for the Alaska Department of Fish and Game and John was an Attorney with a PhD in fisheries science, and has served in State of Alaska positions in fisheries science, law and policy.

At that meeting the Board liked the concept we presented but when drafting the rules, we stopped them because the rules they were talking about were not sufficient to conduct a successful fishery. They tabled the rules to be taken up at the Sitka meeting the next month.

At the Sitka meeting we did not have a large presence because a lot of our proponents were fishing. The opponents were also given the month between meetings to organize and object to the proposal. In drafting the rules, the BOF made the pound size so restrictive that when Dan Coffey told me the ideas, I said to Dan that even I would not leave seining herring for pounding and I have all the equipment. Dan walked away miffed because the plan wasn't working and the proposal was voted down. Looking back, it was a mistake to not accept the plan because it could have been modified in later years and we would not be having to request a meeting with you.

We are concerned the overlapping area of Go1A and L21A was not implemented properly. You state, "A review of that record shows that the administrative area for Northern SOK fishery was specifically designed to provide managers with the flexibility to open subdistricts when and where the resource is healthy and surpluses exist." Yes, the design of the action was to allow the Northern SOK access to subdistricts, But the Subdistricts of 13-A and 13-B was already designated a Limited entry fishery GO1A on the Sitka herring stocks. This subdistricts 13-A and 13-B should have been withdrawn from the large area provided by CFEC. The CFEC should never have added more users to an already Limited Entry herring stock that was designated limited in 1977 and in 1992 had an optimum study. Eighteen years later the CFEC adds more users to the Sitka herring stock without any study or thought that creating more limited entry permits would put even greater pressure on the existing fishery management system.

You also say "That it was not fair to remove SOK permit holders from Sitka Sound when they had purchased permits in the fishery with the expectation of fishing in that area as permitted by ADFG managers". The idea that folks invested in Northern ROK permits for future access to Sitka surplus is

not believable. If that were truly the case there would've been Board proposals asking for access many cycles ago. The action by Seth Beausang, Assistant Attorney for the State of Alaska Department of Law (DOL), (Memorandum 2015 and Memorandum March 4, 2016) stating Northern pounders have access to Sitka stocks encouraged the thought, Northern pounders have access to Sitka stocks. This suggests CFEC did not act in the best manner when they failed to exclude the Sitka districts 13-A and 13-B from the L21A overlapped area when establishing L21A limited entry.

The Statewide Management for Pacific Herring information states; "Most herring fisheries in Alaska are regulated by management units or regulatory stocks (i.e., geographically distinct spawning aggregations defined by regulation). Those aggregations may occupy areas as small as several miles of beach or as large as all of Prince William Sound. Herring sac roe and spawn-on-kelp fisheries are always prosecuted on individual regulatory stocks."

The Alaska Board of Fisheries has asked the CFEC twice to separate the Sitka herring subdistricts from the large Northern pound area. The fact that the BOF made a second request to remove the subdistrict 13-A and 13-B from the overlapping L21A area should be more than sufficient to suggest to CFEC that the Board wants this action taken. You are not complying with that request because you say you have not received any new information that would compel you to have another hearing. We would like you to reconsider that position.

Best Regards
Darrell Kapp



cc: Ryan Kapp kappjr@comcast.net
Alan Otness adotness@gmail.com
Joe Lindholm redriverfisheries@comcast.net
Charles Treinen cwtreinen@aol.com
Reed Morisky reed.morisky@alaska.gov>
John Barry pillarbay@gmail.com

Attachments (3)



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302
Main: 907 789-6160
Licensing: 907 789-6150
Fax: 907 789-6170

February 27, 2020
CERTIFIED RETURN RECEIPT
7018 3090 0001 1079 4280

Darrell Kapp
338 Bayside Rd.
Bellingham, WA 98225
Via Email: Kapp_D@msn.com

Dear Mr. Kapp:

The Commercial Fisheries Entry Commission (CFEC) received your February 10 and 26, 2020 requests to remove subdistricts 13-A and 13-B from the administrative area for the Northern Southeast Spawn on Kelp Pound Fishery (L21A).

CFEC has reviewed the request and appreciates your feedback and concerns. Nevertheless, at this time your request is denied for the reasons described in the attached correspondence, dated February 19, 2020.

By Direction of the

Commercial Fisheries Entry Commission

Handwritten signature of Fate Putman.

Fate Putman
Chair

Handwritten signature of Dale Kelley.

Dale Kelley
Commissioner

Attachments (1)