



Alaska Department of Fish and Game

Board of Fisheries

PO Box 115526

Juneau, AK 99811-5526

(907) 465-4110

www.adfg.alaska.gov

## ALASKA BOARD OF FISHERIES

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## 5 AAC 28.267. Prince William Sound Pacific Cod Management Plan

(a) The management plan in this section governs the harvest of Pacific cod in the Prince William Sound Area.

(b) Each year the commissioner

(1) shall open and close, by emergency order, a parallel season for mechanical jigging machine and hand troll gear, groundfish pot gear, and longline gear in the Prince William Sound Area to coincide with the initial federal season in the federal Central Gulf of Alaska Area, as follows:

(A) the parallel season for mechanical jigging machine and hand troll gear will coincide with the initial federal season for jig gear;

(B) the parallel season for groundfish pot gear will coincide with the initial federal season for pot gear;

(C) the parallel season for longline gear will coincide with the initial federal season for hook and line gear operated from vessels less than 50 feet in overall length;

(2) may open and close, by emergency order, a parallel season for mechanical jigging machine and hand troll gear, groundfish pot gear, and longline gear in the Prince William Sound Area to coincide with the federal Central Gulf of Alaska Area "B" season, as follows:

(A) the parallel season for mechanical jigging machine and hand troll gear will coincide with the federal "B" season for jig gear;

(B) the parallel season for groundfish pot gear will coincide with the federal "B" season for pot gear;

(C) the parallel season for longline gear will coincide with the federal "B" season for hook and line gear operated from vessels less than 50 feet in overall length.

(c) The commissioner shall open and close, by emergency order, a state-waters season for mechanical jigging machine and hand troll gear, groundfish pot gear, and longline gear in the Prince William Sound Area, as follows:

(1) for mechanical jigging machines and hand troll gear, the state-waters season will open 24 hours following the closure of the initial federal season in the Central Gulf of Alaska Area for jig gear and will close when the guideline harvest level is reached, a parallel season for mechanical jigging machine and hand troll gear is opened under (b)(2) of this section, or December 31, whichever occurs first;

(2) for groundfish pot gear, the state-waters season will open 24 hours following the closure of the initial federal season in the Central Gulf of Alaska Area for groundfish pot gear and will close when 90 percent of the guideline harvest level is reached, a parallel season for groundfish pot gear is opened under (b)(2) of this section, or December 31, whichever occurs first;

(3) for longline gear, the state-waters season will open seven days following the closure of the initial federal season in the Central Gulf of Alaska Area for hook and line gear operated from vessels less than 50 feet in overall length or concurrent with the individual fishing quota halibut season opening date, whichever occurs later, and will close when 85 percent of the guideline harvest level is reached, a parallel season for longline gear is opened under (b)(2) of this section, or December 31, whichever occurs first;

(4) if there is any guideline harvest level remaining on September 1, the commissioner may close, by emergency order, the state-waters season and immediately reopen a state-waters season to all legal gear on September 1 or following a parallel season closure; the state-waters season will close on December 31 or when the guideline harvest level is reached, whichever occurs first; if the season is closed and immediately reopened under this paragraph, a vessel participating in the state-waters season when it was closed will not be required to comply with the landing requirements specified in 5 AAC 28.371 until the season is closed again.

(d) The commissioner may open and close, by emergency order, fishing seasons at times other than those specified in this section if the commissioner determines it is necessary to

## 5 AAC 28.267. Prince William Sound Pacific Cod Management Plan

- (1) adapt to unanticipated openings or closures of the federal season;
  - (2) maintain sustained yield management;
  - (3) provide for orderly fisheries; or
  - (4) allow for a concurrent state-waters season and federal season for Pacific cod based on inseason assessment of effort, harvest rate, or remaining Pacific cod quota.
- (e) During a state-waters season,
- (1) the guideline harvest level for Pacific cod in the Prince William Sound Area is 25 percent of the estimated total allowable harvest of Pacific cod for the federal Eastern Gulf of Alaska Area;
  - (2) Pacific cod may be taken in the waters of the Prince William Sound Area described in 5 AAC 28.205, except those waters of the Eastern Section east of 146° 15.12' W. long.;
  - (3) Pacific cod may be taken only with groundfish pots, mechanical jigging machines, hand troll gear, and longline gear, as follows:
    - (A) except as provided in (g) of this section, no more than 60 groundfish pots may be operated from a vessel registered to fish for Pacific cod;
    - (B) no more than five mechanical jigging machines may be operated from a vessel registered to fish for Pacific cod;
    - (C) in addition to the requirements of 5 AAC 28.020, a vessel must be registered to fish with mechanical jigging machines and hand troll gear (jig gear), pot gear, or longline gear, and may not simultaneously be registered to fish with more than one gear type; a vessel's gear registration may be changed during a state-waters season to a different gear registration if the owner, or the owner's agent, submits a written request for a change in registration by mail, facsimile, or in person, to the department office in Cordova, or other locations specified by the department, for validation, and that registration has been validated by the department.
- (f) The Prince William Sound Area is an exclusive registration area for Pacific cod during a state-waters season.
- (g) If at any time after October 30 the commissioner determines that the guideline harvest level will not be reached by December 31, the commissioner may close, by emergency order, the state-waters season and immediately reopen a state-waters season during which the following shall be implemented to increase the harvest to achieve the guideline harvest level:
- (1) removal of the limits on the number of groundfish pots and mechanical jigging machines that may be operated from a vessel;
  - (2) if needed, designation of the Prince William Sound Area as a nonexclusive registration area for Pacific cod.
- (h) If the state-waters season is closed and immediately reopened under (g) of this section, a vessel participating in the state-waters season when it was closed will not be required to comply with the landing requirements of 5 AAC 28.271 until the season is closed again.
- (i) Notwithstanding the provisions of 5 AAC 28.070, the commissioner may, by emergency order, open a fishing season under this subsection in which the bycatch amounts allowed during a directed fishery are increased. During a fishing season opened under this subsection, in addition to the allowance of bycatch of other species specified in 5 AAC 28.070, the bycatch allowance of Pacific cod may be up to 20 percent of the directed finfish species on board a vessel using groundfish pot gear, mechanical jigging machine and hand troll gear, or longline gear. The landed weight of Pacific cod taken as bycatch may not exceed 20 percent of the directed finfish species on board the vessel. The commissioner may, by emergency order, close and immediately reopen a season in which the bycatch limit for any species is reduced.

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(j) If a state-waters season and a federal season for Pacific cod are opened concurrently for the same gear type or for a different gear type,

(1) a vessel may not participate in a state-waters season and any other Pacific cod season at the same time;

(2) a vessel's registration for the state-waters season in the Prince William Sound Area must be invalidated and all groundfish on board that vessel must be landed before that vessel may participate in any other concurrent Pacific cod season;

(3) registration for a state-waters season may only occur in person or by facsimile from 8:00 a.m. to 5:00 p.m. on a working day at the department office in Cordova, or other locations specified by the department; and

(4) all groundfish on board a vessel must be landed before that vessel may be registered for a Prince William Sound Area state-waters season for Pacific cod.

History Eff. 4/4/97, Register 142; am 11/27/97, Register 144; am 3/30/2000, Register 153; am 7/5/2000, Register 155; am 5/31/2001, Register 158; am 5/11/2003, Register 166; am 3/14/2009, Register 189; am 4/20/2012, Register 202

Authority: AS 16.05.060; AS 16.05.251;

Editor's note: The department's office in Cordova is located at 401 Railroad Avenue, Cordova, Alaska; Telephone: (907) 424-3212; Fax: (907) 424-3235.

ALASKA BOARD OF FISHERIES  
FINDINGS ON COPPER RIVER KING SALMON MANAGEMENT PLAN  
# 2006-249-FB

May 3, 2006

In December 2005 the Board of Fisheries amended and adopted proposal 52 which established one mandatory commercial fishing closure within the inside statistical areas of the Copper River District during each statistical week 20 and 21. The initial proposal requested that only one 12-hour opening be allowed within the inside statistical areas during each of the first three statistical weeks (20, 21, and 22). Several amendments were made to the original proposal during deliberations to reduce impacts on the commercial fishery, provide for Copper River District subsistence users and small boat users who fish within the inside statistical area, and allow the Department some flexibility in management while still providing additional fish for the upriver subsistence users. The Board was uncertain of the exact effects of the proposal as modified, but discussed the expectation of significant increases in early run king salmon escapement and the possibility of increasing sockeye escapement.

Background

At its 1996 Copper River/Prince William Sound meeting, the Board adopted the Copper River King Salmon Management Plan 5 AAC 24.361. This initial version of the plan mandated a 5 percent reduction in king salmon harvest potential across the commercial, personal use, and sport fisheries. This was attempted through potential closures of the inside statistical areas during statistical week 20 and 21 with consideration of the tides and other environmental factors, reducing the personal use bag limit from 5 to 4 king salmon, and prohibiting sport fish guiding on Tuesdays in the Copper River drainage from May 15 to July 31.

In 1999, the plan was amended to allow additional inside closures in the commercial fishery during statistical weeks 20, 21, and 22, remove the personal use component as the Chitina Subdistrict was classified a subsistence fishery during that meeting, and eliminate the guiding restriction, but reduce the seasonal sport bag limit from 5 to 4 king salmon. A spawning escapement range of 28,000 – 55,000 king salmon was established. In addition, when the Board made the Chitina Subdistrict dip net fishery a subsistence fishery the annual bag limit was reduced from 4 to 1 king salmon.

In 2003, the plan was again amended and established a sustainable escapement goal (SEG) of 24,000 king salmon or more which replaced the spawning escapement range.

Since the 2000 season, king salmon escapement goals have been included within the plan. During this period, the escapement goal for king salmon has been met three of the past six years, once under the spawning escapement range of 28,000 – 55,000 king salmon from 2000 – 2002 and twice under the SEG of 24,000 king salmon or more from 2003 – 2005. At the time of the Board adoption of proposal 52, the 2005 escapement data was preliminary, but staff reported that the goal would likely not be met in 2005.

Since 2000, commercial, sport, and personal use harvests of king salmon have generally declined, primarily a result of regulatory actions. At least one inside closure was instituted during each year from 2000 – 2003 and emergency orders restricting the upper Copper River sport fishery occurred in 2000 and 2005. The annual limit in the Chitina Subdistrict has remained at one king salmon since the Board adopted that limit to maintain harvests at historic levels when the fishery became a subsistence fishery; this limit was retained when the fishery once again a personal use fishery in 2003.

Sockeye salmon escapement goals as measured at the Miles Lake sonar have been met all but one year since 1996. The commercial fishery is managed to distribute the escapement throughout the duration of the run, yet due to run strength and environmental factors this is inherently difficult, and in some years while the total escapement goal may have been met, portions of the run may not have met the daily escapement goal. This could result in lower numbers in any portion of the Copper River run.

Public testimony and comments of some panel members during Committee C discussions indicated that those subsistence users fishing above the Gulkana River have seen reduced returns of king and sockeye salmon (primarily king salmon) and that subsistence needs had not been met in recent years. Sport anglers and personal use fishers also stated that king salmon numbers had declined. All upriver users agreed that there was a need to protect the early run component of the upper Copper River stocks and that the commercial fishery had high harvest potential during the first weeks of the season. Commercial fishers were concerned that the Department would lose flexibility in its management tools and that the current management tools were sufficient to manage for king salmon escapement and provide for early stocks. Committee C did not reach consensus on proposal 52.

#### Board Action

The Board brought the proposal to the table and following discussion and questions of staff regarding escapement levels and escapement goals adopted the first amendment which reduced the original proposal request of a mandatory closure during each of the first three statistical weeks to the first two statistical weeks (20 & 21). The amendment was adopted with a vote of 5/1. The Board discussed subsistence opportunity in the Copper River District, as this occurs at the same time as the commercial fishery with small skiffs within the inside statistical area closest to Cordova. A second amendment which defined the inside statistical areas that could be closed and excluded that area closest to Cordova used for subsistence fishing was adopted by a 5/1 vote. The Board then discussed the 12-hour inside opening limit and the management implications for Department staff. Staff responded that the 12-hour limit would provide less flexibility to respond to environmental conditions and run strength. An amendment to change the proposal language to one period within each of statistical weeks 20 and 21 for a inside statistical closure and remove the 12-hour limit was adopted by a vote of 4/2. The Board felt that the amended proposal was a compromise from the original proposal and would provide for additional fish for subsistence opportunity upriver and spawning escapement

and allow for subsistence opportunity in the Copper River District, while providing the Department some flexibility in its management.

Several Board members applied the Board's allocation criteria although there was disagreement among Board members about whether the criteria were applicable since the Board viewed the measure as providing for conservation and allowing users to harvest their existing allocations. The Board did not intend to change existing allocations to user groups, and rejected several proposals asking the Board to increase or restore prior more liberal bag limits and seasons.

The Board discussion of the allocation criteria under 5 AAC 39.205 addressed all seven allocation criteria:

- 1) On the first criteria, history of the fisheries, it was noted that all users have a long history of use of this Copper River resource, and that recent innovations in techniques have increased harvest rates significantly in some user groups.
- 2) On the second criteria, numbers of participants, it was noted that there are approximately 500 commercial users and thousands of upstream users, including residents of the North Star Borough and residents of communities throughout the river drainage. Additionally, residents from all over Alaska sport and subsistence fish on the Copper River.
- 3) On the third criteria, importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption, it was noted that both fisheries were important because some people retain commercially caught fish for personal consumption, but that many people did harvest fish in the personal use and subsistence fishery for consumption.
- 4) On the fourth criteria, availability of alternative fishery resources, it was noted that commercial fishermen displaced by an inside closure could move outside the closure area and still have reasonable opportunity to harvest fish. It was also noted that other stocks of fish were available to the commercial fishery over the season and that while that other stocks of salmon might be available to Interior users they were not of comparable quality and could not be efficiently accessed, such as Chinook in the lower Yukon or sockeye near Chignik.
- 5) On the fifth criteria, importance to the economy of the state, it was noted that commercial fishery was of great economic importance to the state and has long been established as major employer of Alaskans, creating seasonal cash flow to local coastal communities. It was also noted that the tourism industry multiplies the value of fish beyond its value in the commercial fishery. Copper River salmon have high economic value for sport fishing, tourism, commercial, and subsistence uses for the people of Alaska.
- 6) On the sixth criteria, importance to the economy of the region and local area, it was noted that that fishery is very important to Cordova but that the numbers of early run fish involved in proposal would be only a small percentage of the stock available. It was also noted that the fish were important to the tourism based economy of the upstream areas. For communities like Chitina, Copper Center, Glennallen, Delta Junction, North Pole, and Fairbanks, the Copper River Chinook and sockeye are the only source for sport fishing and related tourism industries.

7) On the seventh criteria, the importance of each fishery in providing recreational opportunities for residents and nonresidents, it was noted that the upstream fishery is very important in providing recreational opportunities. The Copper River salmon stocks provide opportunities for all communities along the river, including a growing recreational and sport fish guiding industry in the Cordova area

After deliberation the Board adopted proposal 52 as amended by the vote of 5/1.



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Art Nelson, Chairman  
Board of Fisheries

Approved: Carried ( 6 / 0 / 0 / 1 ) (Yes/No/Abstain/Absent)

Date: May 3, 2006

Location: Teleconference



**ALASKA BOARD OF FISHERIES  
FINDINGS ON PRINCE WILLIAM SOUND MANAGEMENT  
AND SALMON ENHANCEMENT ALLOCATION PLAN  
# 2006-248-FB**

May 3, 2006

At its December 1 through 6, 2005 meeting, by a 7/0 vote the Alaska Board of Fisheries adopted a new Prince William Sound Management and Salmon Enhancement Allocation Plan. This plan replaces the plan previously adopted and supported by Finding 97-167-FB, and reflects the Board's realization that the attempts of previous Board's to develop a workable allocation plan, acceptable to all users, in the face of changing market conditions have been unsuccessful. The Board recognizes that it is unlikely that the three user groups involved in Prince William Sound salmon fisheries will ever reach complete consensus on an allocation plan but believes that the Board should attempt to impose a workable allocation plan to maintain the long-term historic balance even if not fully acceptable to any user group rather than leaving in place an allocation plan that has proved completely unworkable and which results in harvest patterns which bear little resemblance to the Board allocations.

The conceptual language of the adopted plan was adopted as substitute language for Proposal 27. The substitute language was recommended by a Board Committee, and is found on pages 29 -31 of RC # 40 (Committee B Report). The final regulatory language reflecting the Board's intent is found at 5 AAC 24.370 (am 3/30/2006, Register 177). As a result of its action on Proposal 27, the Board took no action on a number of other proposals relating to Prince William Sound management and allocation including proposals 18, 19, 20, 21, 22, 26, 27, 28, 29, and 30. Action on proposal 27 also served as a factor in the Board's rejection of other proposals including proposals 33, 34, and 35. These findings are intended to summarize the Board's actions on the Prince William Sound Management and Salmon Enhancement Allocation Plan so that the public and future boards will understand the reason for those actions.

**Background**

The previous Prince William Sound Management and Salmon Enhancement Allocation Plan was adopted in 1997 in an effort to end over seven years of dispute over allocations between the three user groups in Prince William Sound. The history of those disputes is more thoroughly presented in Finding 97-167-FB, which this finding supplements.

After 1997, the plan continued to fail to achieve its allocation objectives. Actual catches were not even coming close to allocations, and the disparities were getting worse. The seine fishery was consistently under its allocation and the ~~drift~~ and set net fishery were consistently exceeding their allocations. The set net fishery had grown far beyond its 1 percent allocation and was continuing to grow. PSWAC was continuing to produce more low value pink and chum salmon in an unsuccessful effort to try to balance out the increased value of Chinook and sockeye.

Modifications to the plan were made in 2003 in an attempt to improve plan performance. One significant change in 2003 including tightening the triggers for use of the Port Chalmers and Ester Subdistrict "piggy bank" areas, with a new trigger of 40 percent replacing the previous

25 percent trigger. Another significant change in 2003 was a change in the basis of calculation of ex-vessel values, with open-ended language regarding "grounds price times poundage" replaced by a requirement for ex-vessel value to be obtained from commercial operator annual reports (COAR).

Recognizing the continuing problems with the Prince William Sound Management and Allocation Plan, in October of 2003, the Alaska Board of Fisheries formed a Prince William Sound Management and Allocation Plan Workgroup to help the Board obtain a better understanding of past and present allocation and cost recovery issues and to explore options to find an equitable balance between user groups. The workgroup formally met at least 6 times between 2004 and the time of the Board's final action on proposal 27. The workgroup met in October and November prior the Board meeting and had another meeting on December 1 after the Board meeting had started. Although the workgroup composition changed somewhat over time, at all times it included two or more representatives each of seine and drift gillnet permit holders, and of Prince William Sound Aquaculture Corporation (SAC); it also included three Board members, at least one set net permit holder, and a Valdez Fisheries Development Association (VFDA) representative. At the time of the December Board meeting the workgroup was chaired by Board member Mel Morris, other Board members on the workgroup were Robert Heyano and Dr Fred Bouse. Workgroup meetings were publicly noticed and open to the public; many interested parties, including Board members, who were not on the working group attended the meetings.

In April of 2004, the Board met as committee of the whole with the workgroup. At this meeting the Board rejected a proposal to change the "piggy bank" triggers to 49 percent and made adjustments to a buffer zone around Esther Island. An effort by the Department to implement a buffer zone near a "piggy bank" area in order to increase the seine percentage in 2004 was unsuccessful because the buffer used did not prevent drift interception before salmon reached the "piggy bank" area.

The chair of the Board's workgroup circulated a draft strawman proposal in October of, 2005. The strawman proposal was discussed at the October, November, and December workgroup meetings. The primary points of the strawman proposal were further refined based on public comment and incorporated into the substitute language eventually adopted by the Board.

Although the workgroup never achieved full consensus as to all details for a new plan conceptual consensus on a number of issues was achieved, narrowing the focus of contested issues.

Workgroup participants did not agree on the fine details of a plan. There was disagreement over whether enhanced fish from VFDA should be included in the plan. There was disagreement over whether buffer zones should be used and if used over where buffer zone boundaries should be. There was disagreement over what the triggers for cost recovery adjustments and use of "piggy bank" areas should be.

The Board accepted staff reports on morning of December 1, 2005 and oral testimony, including testimony on proposal 27, from the afternoon of December 1 through the afternoon of December 2. Seventy three members of the public signed up for public testimony and were given the opportunity to present oral testimony. During public testimony many seine permit

holders indicated that wild stock should not be excluded from the allocation plan, and that if it was excluded, VFDA stocks should also be excluded to partially offset this loss to the seine permit holders. Following staff reports and public testimony, the Board followed its normal procedure, forming committees to work further with the public and develop recommendations on specific groups of proposals.

Committee B, consisting of Board members Heyano, Morris, and Andrews was tasked with making recommendations on Prince William Sound salmon issues including proposal 27. Many of the Board workgroup members served on the public panel in Committee B and four advisory committees also participated. Committee B met with its public panel on the evening of December 2. The Committee B public panel, like the working group, was unable to reach consensus on plan details, however the Board member committee was able to reach consensus for support of substitute language, found at RC 40 pages 29-31. None of the concepts in the substitute language were new, all had been discussed in workgroup meetings. The viewpoints of the various user groups on major issues were summarized in the Committee B report, and public panel participants were given a chance to submit RC's regarding any misstatements of their positions in the report.

The Proposal 27 substitute language made a number of minor modifications to the plan and made eight significant changes:

- 1) It modified the plan to apply only to enhanced stocks, excluding VFDA stocks.
- 2) It changed the allocation percentages from 50 percent drift gillnet, 49 percent seine and 1 percent set gillnet to 48 percent drift gillnet, 48 percent seine, and 4 percent set gillnet.
- 3) It changed the way allocation percentages were calculated, basing them on a five year rolling average ex-vessel value using COAR data rather than the previous year's value using COAR data.
- 4) It changed the way allocation percentages were calculated between the drift gillnet and seine fishery's by making them each 50 percent after removal of the set gillnet allocation or harvest.
- 5) It expanded the buffer zone to include the entire Granite Bay subdistrict.
- 6) It established a three percent trigger for adjustment of allocations through cost recovery changes, triggering such adjustments when either the drift gillnet or seine fisheries five year average exvessel value falls below 47 percent.
- 7) It established a five percent trigger for adjustment of allocations through "piggy bank" assignment, triggering such adjustments when either the drift gillnet or seine fisheries five year average ex-vessel value falls below 45 percent.
- 8) It imposed restrictions on set net fishery, limiting weekly open periods to no more than 36 hours starting July 10 during years in which the five year average ex-vessel value of the set net fishery exceeds 5 percent.

None of the concepts in the proposal 27 substitute language should have been a surprise to any participant in the working group or to anyone who had been following the working group progress. Despite the fact that consensus had not been reached, all concepts in the proposal 27 substitute been previously discussed in committee. Board members were aware that the substitute language contained tighter triggers than those supported by drift net permit holders, that some drift net permit holders objected to closure of the Granite Bay Subdistrict as a

buffer area, and that some drift net permit holders objected to the exclusion of VFDA enhanced fish. Board members were aware that some setnet permit holders desired a higher trigger, and desired exclusive access to some fishing areas for the set and drift gillnet permit holders. Board members were also aware that some seine permit holders objected strongly to the exclusion of wild stocks. Following issuance of the Committee B Report with its recommended substitute language, on December 4, at 5:00 p.m., the public had additional opportunity to submit written comments to the Board or to discuss the proposal with individual Board members prior the Board's deliberations on the proposal on December 5. A number of comments relevant to the proposal, including RC's 91, 93, 94, 99, 100 were received and considered by Board members.

#### Board Action

The Board brought proposal 27 to the table, accepted the Committee B substitute language, and then deliberated on proposal 27 on December 5, 2005, from 3:42 p.m. to 4:25 p.m. Board Member Morris went through the background, timeline, and history of the proposal and walked through the substitute language with the Board explaining that the existing plan was not working with the Seine permit holders consistently unable to harvest their allocation and the drift and set net permit holders consistently exceeding their allocations. Board member Morris explained how the new plan would work to achieve the allocations it established, and that the old allocation if reestablished in an enforceable manner would cause significant disruption of more recent harvest patterns. Board member Morris explained that the most recent year would not be included in determinations of average catch value because COAR data would not be available in a timely manner. Board member Morris also explained that the substitute language involved two triggers, if the seine to drift average catch percentages were off by at least 3 percent but less than 5 percent, PSWAC would be given an opportunity to correct the balance through cost recovery modifications; if the percentages were off by five percent or more the user group that was behind on their allocation would be given exclusive access to "piggy bank" areas during the next season. The plan would continue to prohibit in season adjustments by the Department to achieve allocation goals.

The Board discussed the allocation criteria found in 5 AAC 39.205.

- 1) On the first criteria, the history of each fishery, it was noted that the fisheries involved are all commercial salmon fisheries (drift, setnet, and seine) and that all three groups have been actively involved in the fisheries for over 30 years. It was also noted that the current allocation plan had been in effect since 1991 and incorporated historical values for the previous 20 years. It was also noted that revised plan would not change the characteristics of the fishery.
- 2) On the second criteria, the number of resident and nonresident participants, it was noted that in 1980's and early 1990's the fleet makeup was fairly consistent with approximately 220-260 active purse seine permits and 400-500 active drift gillnet permits, and 20-25 active set gillnet permits. It was also noted that the number of active seine permits had declined since the early 1990's to slightly over 100 and that the number of active drift gillnet permits had not substantially changed. There was some discussion indicating that falling chum and pink prices had hurt seine participation while gillnet participation was maintained at historic levels due to more stable sockeye prices.

- 3) The third criteria, importance for providing residents the opportunity to obtain fish for personal and family consumption, was not considered relevant since all three fisheries were commercial fisheries.
- 4) On the fourth criteria, availability of alternative fishery resources, it was noted that there were no alternative resources since all salmon stocks in Prince William Sound are fully utilized.
- 5) On the fifth criteria, importance of each fishery to the economy of the state, it was noted that all three are very important fisheries, vitally important.
- 6) On the sixth criteria, the importance of each fishery to the economy of the region and local area, it was noted that the fisheries were equally valuable and vital since most the salmon are processed and shipped from Prince William Sound.
- 7) The seventh criteria, importance in providing recreation opportunities for residents and nonresidents, was not considered relevant since all three fisheries are commercial fisheries.

It was noted that the plan would not create any additional cost for participants, and that while the plan might be painful for some, it put things closer to where they need to be. The Chair noted that while the plan was still not perfect that it was a good and workable plan.

After deliberating, the Board adopted proposal 27 with the Committee B substitute language by a 7/0 vote.

#### Reaffirmation

Having reviewed the final regulations at 5 AAC 24.370 (am 3/30/2006, Register 177), implementing the conceptual language adopted by the Board, the Board finds that the final regulations reflect the Board's intent in adopting the conceptual language presented as substitute language for proposal 27. The Board also finds that although there are no doubt problems with the new regulations which will be before the Board in the future, the new regulations represent a significant step toward achieving the goals set out in 5 AAC 24.370(a).



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Art Nelson, Chairman  
Board of Fisheries

Approved: Carried ( 6 / 0 / 0 / 1 ) (Yes/No/Abstain/Absent)

Date: May 3, 2006

Location: Teleconference

**ALASKA BOARD OF FISHERIES**  
**SUBSISTENCE SALMON FISHING IN PORTIONS OF THE**  
**PRINCE WILLIAM SOUND MANAGEMENT AREA**  
**2005 -244 -FB**

The Alaska Board of Fisheries recognizes that the Department of Fish and Game has emergency order authority to open subsistence fishing under AS 16.05.060, and desires that the department exercise that authority during periods of extended commercial salmon fishing closures to ensure that reasonable opportunity for subsistence fishing is provided in the following waters of the Prince William Sound Management Area: 1) the Southwestern District described in 5 AAC 24.200(i) and the waters along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip of the island; and 2) the waters north of a line from Porcupine Point to Granite Point and south of a line from Point Lowe to Tongue Point.

Vote: 6-0-1 (Nelson Absent)  
Valdez, Alaska

Date: December 6, 2005

Signed: \_\_\_\_\_

Mel Morris, Vice-Chair

**ALASKA BOARD OF FISHERIES****FINDINGS REGARDING THE PRINCE WILLIAM SOUND  
MANAGEMENT AND SALMON ENHANCEMENT  
ALLOCATION PLAN (5 AAC 24.370)**

At its meeting in Cordova, the Board of Fisheries (board) took staff reports, both oral and written, oral and written testimony from the public and advisory committee reports concerning the allocation of Prince William Sound salmon stocks between three different gear types; seine, drift gillnet and set gillnet. The current allocation plan is found in 5 AAC 24.370, the Prince William Sound Management and Salmon Enhancement Allocation Plan. The board had numerous proposals before it to change this particular regulation.

The history of attempts to establish allocations between the gear types goes back more than seven years and involves this board, the Prince William Sound Aquaculture Corporation (PWSAC), the Regional Planning Team (RPT) and numerous members of the public. Despite the best efforts of all of these people, and because of changes in conditions and PWSAC practices, the allocation plan is currently not working in the manner intended.

For a historical perspective, the board reviewed and discussed how the current situation was created. The existing regulation arose out of an agreement between gear types facilitated by PWSAC, the RPT and the board. In a prior form of the regulation (5 AAC 24.370), the board expressly recognized the allocation policy adopted by PWSAC in May, 1990. This regulation has been in effect since 1991.

After hearing from the public, the board has determined that the allocation plan is generally acceptable to all of the parties involved in terms of its allocation percentages. Admittedly, the set gillnetters would prefer to have their allocation percentage increased from one percent (1%) to two point three percent (2.3%) of ex-vessel value, but since they have a small and singular fishery (Main Bay and Crafton Island subdistricts), their fishery will produce what it produces regardless of the percentage assigned. The two largest fisheries (seine and drift gillnet) still agree that their respective allocations should remain at forty-nine percent (49%) and fifty percent (50%) respectively, although there is evidence that the actual percentages should be forty seven point five percent (47.5%) for seiners, fifty one point five percent (51.5%) for drift gillnetters and one percent (1%) for set gillnetters (See letter from Board Chair Kay Andrew to Commissioner Carl Rosier, page 2, numbered paragraph three, dated February 13, 1994). There has been some public testimony concerning these percentages which vary by one and one-half percent (1.5%) from the percentages set forth in the regulations.

In this regard, it should first be understood that these allocations are not intended to be a specific allocation number for each gear type for each season, but rather a long-term goal or objective of the board which, if not realized over a long term (more than 2 board cycles), could

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result in a change in the allocation provisions of the regulation. Further, it is impossible for this board or the staff to manage the resource within one or two percentage points. Finally, in this board's opinion, it would be more appropriate for the gear types to agree on a range of percentages and agree upon a method for adjustment as has been done in other fisheries (See 5 AAC 33.364-Southeastern Alaska Area Enhanced Salmon Allocation Management Plan).

The problem which was presented to the board is based upon two factors. The first factor is the dramatic reduction in pink salmon prices. The second factor is the current inability of PWSAC to fulfill that portion of its allocation plan which required additional production of fish. Simply stated, the problem arises from the fact that, over the last six (6) years, the average ex-vessel value for the drift gillnet fleet has been approximately seventy-five percent (75%) of the total ex-vessel value of all salmon (wild and enhanced) and the average ex-vessel value for the seine fleet has been approximately twenty-five percent (25%) of the total ex-vessel value.

This disparity is based upon an ex-vessel value based upon a combination of both wild and enhanced stocks. There is no debate as to the accuracy of these numbers. The only question here is to the use of both wild and enhanced stocks in calculating ex-vessel value. There is a significant debate going on between the seiners and the drifters over the inclusion/exclusion of wild stocks in the calculation of the ex-vessel value.

Ex-vessel value of both stocks were used in determining the historic percentages. However, the PWSAC policy statements which were presented to the board, all refer to enhanced stocks until the very end of the PWSAC Allocation Policy on Enhanced Salmon: An Explanation to Clarify Intent of Key Statements: Policy Clarification Statements, page 48, paragraph 6 where wild stocks were referred to as follows:

"6. It is the intent of the authors of the policy that production planning will attempt to achieve a balance of enhanced salmon harvest value. This intent is based on the assumption that established the historic basis for the allocation ratio. That is, wild stocks, averaged over time, were and will be harvested according to the balanced value ratio. Should this premise hold true, then a balance of enhanced salmon harvest value will maintain an economic balance between the gear groups. Only over time can this condition be achieved due to annual harvest value fluctuations. However, should it become apparent that economic balance trends away from the historic balance due to persistent failures of wild stocks, changing fish values, evolving environmental conditions, enacted laws regulations or any other factor(s) which may change the described balance, then production will be planned to rebalance the ratio such that the over-all economic balance in the fishery is maintained. This statement clearly supports the intent of the policy statement that "[t]his balance will be utilized in planning and production as a long term approximate projection goal anticipated to achieve equitable value in **returning salmon...**" (emphasis in the original).

Based on the foregoing language, it appears as if PWSAC was using both enhanced and wild stocks in its allocation determinations even though PWSAC could only allocate as to enhanced stocks. Further, members of the public who also served on the PWSAC board, on the allocation



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committee, who are commercial fishermen, and who are apparently very knowledgeable concerning the PWSAC allocation policy, state that all fish, both wild and enhanced, were to be included in the calculation of ex-vessel value.

However, this is strongly disputed by others, primarily drifters, who contend to the contrary. Some of these individuals are also knowledgeable, having been active in the development of the PWSAC allocation policy. This disagreement as to one of the fundamental precepts of the PWSAC allocation policy needs to be resolved by the board.

Further, of considerable importance to this board, is the fact that a prior board, when it adopted this regulation in 1991, stated its intent as follows:

"...to allocate the natural and enhanced salmon stocks in Prince William Sound in such a manner as to maintain the long-term historic balance between competing commercial users that existed since statehood and prior to any significant production from enhancement programs."

Thus, the prior board decided that allocation decisions would be based on both wild and enhanced stocks.

If both wild and enhanced stocks are used in the calculation of the ex-vessel value, the disparity over the last six years is as noted above. If only enhanced stocks are used in the calculation of the ex-vessel value, the disparity is minimal and no adjustments would be necessary.

Thus, this board first needs to decide which ex-vessel value to use in its allocation determinations. After discussion, the board determined that both wild and enhanced stocks would be used in its allocation decisions. The reasons for this decision include the prior board's determination, the testimony of the public, the written record presented to the board and, most importantly, the fact that the historic catch of all salmon stocks reflects a division between gear types substantially in line with decisions based on both wild and enhanced stocks.

Next, the board discussed the percentages themselves and, for the reasons stated above, determined that the percentages stated in the proposal (drift gillnet 50%, seine 49% and set gillnet 1%) represented an approximate allocation percentage for each gear group. It was stressed by the board in its discussions that it would much rather see a range for the allocation percentages, but that these specific percentages are of sufficient merit to be "recognized" by the board.

The board then discussed the department's determination of the ex-vessel value. Staff was solicited to comment. The staff's comments were to the effect that this provision was appropriate and feasible. Since some ex-vessel measuring tool is required, this is an acceptable method. This method was adopted by the board.

Subsection (d) was then discussed by the board. It was noted that this subsection is substantially identical to the existing regulation with only one change. The only change is found in subparagraph (5)(B) which allows the seine fleet to fish in previously closed waters because of

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a change in the coho fishery. Previously, the Noerenberg Hatchery was producing coho which was harvested by the drift gillnet fleet. Because of a disease situation, the hatchery has ceased production of these coho. The seine fleet was confined to an area to avoid harvesting these coho. With the pending absence of these coho, there is no reason to confine the seine fleet to any particular area. There, the regulation was amended so as to allow the seine fleet to fish in previously closed waters so long as the predominant species is pink salmon.

The board then discussed the "piggy bank" concept. This concept was originally developed by the fishermen who fish in this fishery as a method by which disparities in the allocation between gear types could be corrected in the short run. Corrections in the long run were intended to be handled by increased production by PWSAC. This may or may not occur. However, in the short run, there is no corrective action which can be taken based upon increased production. Such corrective action is both biologically and financially impossible. Thus, the only short term corrective actions which can be taken involve re-allocations between the two user groups; seiners and drift gillnetters.

From discussions with staff and the public, as well as the board's review of the written materials provided by staff and by the public, there appears to be two potential "piggy banks" areas within Prince William Sound; the enhanced chum salmon run at Port Chalmers in the new Port Chalmers Subdistrict and the enhanced chum salmon run in the Esther Subdistrict beginning June 1 through July 20. The Port Chalmers area is a traditional seine fishery. The Esther Subdistrict is traditionally (by agreement since 1990) a drift gillnet fishery during this period. Also with regard to these two "piggy banks", the potential harvest in the Port Chalmers Subdistrict is less than the potential harvest in the Esther Subdistrict. There is also a risk of interception of Coghill Lake bound sockeye salmon in the Esther Subdistrict. The board also noted that the seine fleet is more efficient than the drift gillnet fleet in harvesting salmon. Finally, the board took note of the problems at the Main Bay hatchery which will affect the sockeye return which, in turn, will effect the drift gillnet fleet which participates in the Main Bay fishery.

The board also discussed the fact that there is no way in which parity can be precisely maintained over the short run. Parity is a long-term goal. Originally, the allocation divisions were determined on a twenty year plus period. Thus, parity is something which should be achieved over a similar lengthy period. This conclusion, however, does not mean that shorter term parity is not an appropriate goal and that the board should not adopt regulations which tend, in the short run, to bring the gear types into compliance with the allocation percentages.

Based on the foregoing, the board decided to proceed with the "piggy bank" concept to adjust allocation disparities over the shorter term. The regulation adopted took into consideration the interception of Coghill Lake sockeye salmon by allowing the department to confine the more efficient seine fleet to a smaller area than the drift gillnet fleet in the Esther Subdistrict. By granting the drift gillnet fleet both the potential of a larger area, by permitting a dual gear fishery and by permitting the drift gillnet fleet to fish exclusively in the Port Chalmers Subdistrict, the board recognized both the difference in gear efficiency and the "richness" of the two "piggy bank" fisheries.

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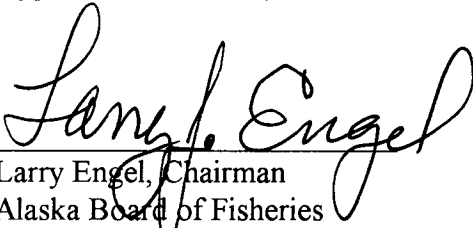
Finally, the board established 1997 as the "base" year. There will be no changes in the 1997 fishery in Prince William Sound. The seine fleet will fish in the new Port Chalmers Subdistrict. The drift gillnet fleet will have the exclusive right to fish in the Esther Subdistrict from June 1 to July 20. Only in 1998 and beyond, will any of the "piggy banks" be used for either gear group. The board expects this matter to be considered again in the next cycle.

In conclusion, the board completely and thoroughly reviewed the fishery and the competing gear types. By reaching its decision it put to rest over seven (7) years of dispute between the various gear groups. Finally, by adopting the new regulation, the board cleared up the previously existing regulatory problems.

At Sitka, Alaska

Date: January 29, 1997

Approved: 6/0/0/1 (Yes/No/Absent/Abstain)

  
Larry Engel, Chairman  
Alaska Board of Fisheries

BATZULNETAS FINDINGS  
ALASKA BOARD OF FISHERIES  
March 1988

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Introduction

The Alaska Board of Fisheries heard one full day of staff reports and public testimony on the Copper River subsistence fisheries and on Proposal #399. This proposal asked the board to establish a subsistence fishery at Batzulnetas, above Slana near the mouth of Tanada Creek. On the following day, the board began deliberations on the proposal, recalling several people who had previously testified to gather additional information. During this period the board convened a committee to allow more informal discussion of possible solutions to the problems presented in the proposal. The committee, which included the proponents of proposal #399, met in open session for over an hour to discuss whether additional fishing opportunities could be authorized with adequate protection for the fish stocks at Batzulnetas.

Ultimately, the board decided that the existing subsistence fishery, which stretches approximately 120 river miles from Slana downstream to Chitina, provided a reasonable opportunity for Copper River subsistence fishermen to satisfy subsistence uses. The board also decided that even though existing regulations provided the type of reasonable opportunity described in AS 16.05.258, it would be feasible to provide additional subsistence fishing area for residents of Dot Lake and Mentasta. This additional opportunity is in excess of the reasonable or necessary opportunity provided downstream of Slana.

Therefore, the board established the Batzulnetas subsistence fishery with the following guidelines:

1. A subsistence salmon fishery will open by emergency order during June, July, and August;
2. During June the fishery will operate two consecutive days per week;
3. During July and August the fishery will operate three and one half consecutive days per week;
4. Chinook salmon cannot be retained;
5. Bag limits will be the same as those for the primary Copper River subsistence fishery see {5 AAC 01.630(f)};
6. Legal gear will include fishwheels and dipnets in an area extending approximately one half mile downstream from the mouth of Tanada Creek, between markers set by ADF&G, and dipnets and spears within Tanada Creek for a stretch of about one mile upstream from the mouth as marked by ADF&G;

7. Harvest reports must be returned to ADF&G by September 30 each year; and

8. The board found that only residents domiciled in Mentasta and Dot Lake had fished in this area in the past, so the fishery is restricted to those residents.

The following findings explain how and why the board decided to create this additional fishing opportunity for Dot Lake and Mentasta residents.

Based upon testimony from ADF&G's Divisions of Subsistence and Commercial Fisheries, the public, and the proponents of of proposal #399, the board reached the following conclusions.

#### Biology of the Copper River Fisheries

1. The Copper River is one of the most biologically complex river systems in Alaska.

2. About 124 known sockeye stocks, as well as various chinook and coho salmon stocks, travel upstream in the summer to spawn in the various Copper River tributaries.

3. The Copper River sockeye stocks are generally mixed as they travel upstream, with 20 or more stocks traveling together in the main river at any given time.

4. Copper River sockeye stocks are harvested in the commercial fishery near the mouth of the Copper River; the subsistence fishwheel and dipnet fishery along approximately 120 miles of the river from Chitina to Slana; and the personal use fishwheel and dipnet fishery at Chitina. A very small number of sockeye salmon are also harvested in a sport fishery.

5. Due to the complex mixture of stocks, Copper River fisheries are managed on the basis of "stock units" during the season. A sonar counter at Miles Lake helps to enumerate salmon escapement to the upper river.

6. Copper River sockeye stocks can be divided into "delta" stocks (lower river) and "upper river" stocks. Aerial counts of escapement from 20 streams are used as an index of upper river escapement and distribution.

7. The Copper River is accessible at several points along the area open for subsistence fishing. Some access is at public sites, some access crosses private lands. Subsistence fishing opportunities are open to all rural Copper Basin residents in communities or areas that have been found to have customary and traditional uses of Copper River stocks. These include: residents of Game Management units 11, 13(A), 13(B), 13(C), and 13(D) in the Jaksina River drainage to its confluence with

the Nabesna River, and the communities of Tetlin, Northway, Dot Lake, Tanacross, and Tok. {5 AAC 01.630(e)}

8. The reported subsistence-personal use harvest has increased from about 13,000 in 1965 to 65,700 in 1987. The fishwheel catch, which is the primary gear used by local subsistence fishermen, increased from approximately 5,800 in 1965 to 22,300 in 1987. Higher fishwheel catches during the early 1980's reflect significant non-local participation in fishwheel use which has since declined.

9. Several salmon stocks pass by the mouth of Tanada Creek, including (1) sockeye that spawn in Tanada Lake and the lake outlet, (2) a small chinook stock that spawns in Tanada Creek (in 1979 5 chinook were counted at a weir 8 or 10 miles above the mouth of the creek -- more may spawn downstream from the weir site), and (3) sockeye that spawn in Copper Lake (a small population from about 10 to 1000 sockeye as indicated by aerial surveys).

10. There are some biological risks in harvesting salmon at Tanada Creek. Unless the fishery is carefully monitored or otherwise controlled, a harvest could weaken or destroy escapement when the harvest is targeted on only the stocks at this site. There are also risks to the Copper Lake sockeye and chinook stocks. Without a weir or other monitoring device, escapement cannot be determined until after the fishing season is over and aerial surveys of spawning areas are made.

11. A relatively small fishery with intermittent openings poses less risk to the resource than a fishery open 7 days a week.

#### Subsistence Uses at Batzulnetas

1. Athabaskan tribes have resided in and fished for salmon in the Copper River Basin for in excess of 1000 years.

2. The Upper Ahtna Indians spoke a distinct dialect and their dialect area, which roughly corresponded with traditional fishing areas, generally extended from Slana upstream to the headwaters of the Copper River.

3. At the time Lt. Allen first ventured into the Copper River Basin in the 1880's there were fishing camps at various sites along the Copper River, including a camp called Batzulnetas {roasted salmon place}.

4. Batzulnetas was one of the primary fishing sites for the Upper Ahtna people and was a village site until abandoned in the 1940's. It was still used to some extent as a summer fish camp after the 1940's. There were several other Upper Ahtna fishing sites, including Slana, Suslota Creek, Twin Lakes, and Mentasta Lake.

5. When Batzulnetas was abandoned in the 1940's, most of the residents moved to Dot Lake and Mentasta Village and have participated in the subsistence fishery at Chistochina, Chitina, and other sites such as Gulkana.
6. In 1964, the subsistence fishery on the copper River was no longer upstream from Slana due to conservation concerns about harvesting stocks in small terminal streams.
7. Some residents of Dot Lake and Mentasta continued to fish at other sites downstream from Slana, but some preferred to fish in less crowded areas or on their own land where they could have a fish camp allowing them to dry their fish and pass along fishing skills to the next generation.
8. There are three native allotments at Batzulnetas site. Doris Charles' site allotment is patented. Katie John and Gene Henry have each applied for patents. The entire Batzulnetas area is within the boundaries of Wrangell-St. Elias National Park.
9. In the summer of 1987, the Alaska Board of Fisheries and the Department of Fish and Game allowed an interim fishery at Batzulnetas for residents of Mentasta and Dot Lake in connection with settlement negotiations in John v. Alaska (U.S. District Court). That fishery allowed up to 500 sockeye be taken by dipnets in a portion of Tanada Creek, and up to 500 sockeye to be taken by fishwheel in the Copper River, within one half mile of the mouth of Tanada Creek. Periods of three and one half days were opened by emergency order in July and later extended into August. By the end of the fishery, only 22 sockeye had been taken. The proponents of proposal #399 indicated that the low take may have been due to where the wheel was placed (they were free to choose the spot), water conditions or run timing.
10. In general it appeared that the opportunity to fish at the old village site of Batzulnetas is more important to the proponents of proposal #399 than the actual number of fish taken at this site.
11. Only the communities of Dot Lake and Mentasta have an historical, customary and traditional use of Batzulnetas area. Mentasta and Dot Lake were the communities where most former Batzulnetas residents moved. Most of the residents of Dot Lake are related to Doris Charles. Most of the residents of Mentasta are related to Katie and Fred John.

#### Reasonable Opportunity

1. In most years there should be a small harvestable surplus of Tanada Creek stocks. The surplus at Tanada Creek is small because only the Tanada Creek and Tanada Lake or Copper Lake stocks are available there.

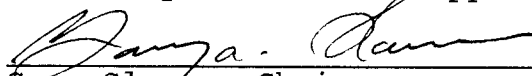
2. Providing a reasonable subsistence opportunity to harvest a stock of fish does not guarantee a specific number of fish, nor a right to fish at every possible location.

3. Rural residents in the Copper basin have a reasonable opportunity harvest Tanada Creek stocks as part of the mix of Copper River stocks at subsistence fishing sites that are within the general historical area of Copper River subsistence fishing.

4. Batzulnetas is not easily accessible. Most of the time it can only be reached on foot or with 3 or 4 wheelers (ATV's) along a 2 or 2.5 mile trail. Other sites along the Copper River at Slana, Chistochina, etc., are accessible by 2 wheel vehicle directly from the Glenn Highway. Fish can be processed at or near many existing fishing sites.

5. Although a reasonable subsistence fishing opportunity exists, some sockeye may be taken at Batzulnetas without jeopardizing sustained yield, if the harvest is carefully structured, managed, and monitored by ADF&G, using its emergency order authority if necessary to protect escapement.

6. A fishery at Batzulnetas as described in the introduction to these findings will minimize risks to Copper Lake sockeye and Tanada Creek chinook stocks, while allowing Mentasta and Dot Lake residents an opportunity to fish at a preferred site thus providing an extra and limited fishing opportunity consistent with sustained yield which is excess to reasonable necessary subsistence opportunity.



Gary Slaven, Chairman  
Alaska Board of Fisheries

Adopted: \_\_\_\_\_



## **5 AAC 38.140. Southeastern Alaska Sea Cucumber Management Plan**

(a) A permit described under 5 AAC 38.062 is not required for the taking of sea cucumbers in Registration Area A.

(b) Sea cucumbers may be taken from October 1 through March 31 during the weekly fishing period established by emergency order. The weekly fishing period will occur on Mondays from 8:00 a.m. until 3:00 p.m. and on Tuesdays from 8:00 a.m. until 12:00 noon, except that

(1) during the week of Thanksgiving, the weekly fishing period will occur on Sunday from 8:00 a.m. until 3:00 p.m. and on Monday from 8:00 a.m. until 12:00 noon;

(2) beginning in November, the commissioner may, by emergency order, extend or shorten a weekly fishing period in an area in order to obtain the guideline harvest level in that area.

(c) Sea cucumbers may be taken in areas within Registration Area A as specified by an emergency order issued by the commissioner before each fishing season. An area may not be opened unless the department has conducted a biomass assessment in that area within the preceding two years. An area shall be closed by emergency order if the guideline harvest level is reached before the closing date of the season. An area opened by emergency order under this subsection may not be opened again until at least two subsequent fishing seasons have passed.

(d) Except as specified in (l) of this section, a CFEC permit holder may not land or possess more than 2,000 pounds of eviscerated sea cucumbers during any weekly fishing period established under (b) of this section, except that the commissioner may, by emergency order, establish a weekly fishing period during which the weekly harvest limit specified in this subsection does not apply in an area in which the guideline harvest level has not been reached.

(e) During an open sea cucumber fishing period, only a licensed CFEC sea cucumber permit holder may operate dive gear from a vessel that is licensed and registered to fish for sea cucumbers and no more than two licensed CFEC sea cucumber permit holders may conduct fishing operations from, or land commercially harvested sea cucumbers from, a vessel that is licensed and registered to commercially fish for sea cucumbers. From 24 hours before, during, and for 24 hours after a fishing period, or when commercially harvested sea cucumbers are on board the vessel, no more than three licensed CFEC sea cucumber permit holders may be transported, housed, quartered, or domiciled on board a vessel that is licensed and registered to commercially fish for sea cucumbers.

(f) In order to provide a refuge for sea cucumbers below 18 meters depth, saturation diving or the use of mixed gases is prohibited, except that the use of enhanced air nitrox having concentrations of oxygen that do not exceed 40 percent and having a remainder of nitrogen is permitted. Sea cucumbers may only be harvested by picking them by hand and placing them in bags. All other means of harvesting sea cucumbers are prohibited.

(g) Sea cucumbers may be harvested by divers using the following:

(1) scuba gear;

(2) a tethered, umbilical, surface-supplied system; or

(3) a snorkel.

(h) The department shall establish a guideline harvest level for each area open to the harvest of sea cucumbers. The guideline harvest level shall be based on population estimates from the department's biomass assessment, and shall be calculated as a product: Guideline Harvest Level = 3 x CF x GF x M x P, where:

CF = 0.4      scaling factor relating maximum sustainable fishing mortality to unexploited population size;

GF = 0.6      correction factor to allow for errors in assumptions upon which the surplus production model is based;

M = 0.32      estimated instantaneous mortality rate for sea cucumbers;

P =              most recent biomass estimate, taken as the lower bound of the one-sided 90 percent confidence interval.

The guideline harvest level includes a factor of three to account for a two-year closure under (c) of this section. If the commissioner receives new information about sea cucumber productivity or if the commissioner determines that modifying the guideline harvest level will contribute to conservation, law enforcement, waste reduction, or promote development of the fishery, the commissioner may modify the guideline harvest level.

(i) Repealed 9/28/97.

(j) Repealed 7/18/2003.

(k) The following waters are closed to commercial sea cucumber fishing:

(1) District 1:

(A) subdistrict 101-27, in waters of Nichols Passage north of a line from the southernmost tip of Dall Head, located on the southernmost tip of Gravina Island, to the easternmost tip of Cedar Point, located on the western shore of Annette Island, and south of a line from the southernmost tip of Gravina Point, located on the southeast shore of Gravina Island, to the northernmost tip of Walden Point, located on the northwesternmost tip of Annette Island;

(B) repealed 7/29/2009;

(2) District 2: those waters north and west of a line from Grindall Point at 55° 27.10' N. lat., 132° 09.34' W. long., south to 55° 26.47' N. lat., 132° 10.03' W. long., northwest to 55° 27.48' N. lat., 132° 12.46' W. long., northwest to 55° 31.48' N. lat., 132° 21.96' W. long., west to 55° 31.49' N. lat., 132° 33.28' W. long., south to 55° 28.94' N. lat., 132° 35.99' W. long., and south to 55° 27.22' N. lat., 132° 40.02' W. long. at the southern entrance to Harris Bay;

(3) District 3:

(A) the waters of Section 3-A that are north and east of a line from Halibut Nose to a point on Sukkwan Island at 55° 09.27' N. lat., 132° 53.77' W. long., north of a line from the southernmost tip of Sukkwan Island to a point on Prince of Wales Island at 54° 59.53' N. lat., 132° 36.73' W. long., and west of a line from a point on Prince of Wales Island at 55° 08.95' N. lat., 132° 38.47' W. long., located in Hetta Inlet approximately 1.1 nautical miles northeast of Eek Pt., to a point at 55° 03.25' N. lat., 132° 38.80' W. long., located approximately 0.6 nautical miles west of Lime Point, to a point on Prince of Wales Island at 54° 59.53' N. lat., 132° 36.73' W. long.;

(B) the waters of Section 3-B that are

(i) east of a line from a point on Prince of Wales Island located at 55° 34.56' N. lat., 133° 13.65' W. long. to Fern Reef buoy, to Point Eugenia and north of a line from the northernmost tip of Point Miliflores to Point Miraballes and including those waters of Port St. Nicholas; and

(ii) the waters of Port Caldera, Prince of Wales shoreline, and contiguous waters east of 133° 13.63' W. long. and west of 133° 07.00' W. long.;

(4) District 5: the waters of Shipley Bay east of a line from 56° 05' N. lat., 133° 39.50' W. long., to 56° 07.17' N. lat., 133° 38.58' W. long., and the waters of Seclusion Harbor, Three Mile Arm, and Rocky Pass north of 56° 32' N. lat. (north end of Monte Carlo Island) and south of the latitude of the Summit at 56° 40.57' N. lat.;

(5) District 6: the waters of Section 6-B of Whale Pass and Coffman Cove, including all waters along the shore of Prince of Wales Island, and the shores of the adjacent islands west of a line from Luck Point to a point at 56° 10.30' N. lat., 133° 02.25' W. long.;

(6) District 9: the waters of Rowan Bay and Bay of Pillars east of a line from Point Ellis to Point Sullivan;

(7) District 10: all waters west of a line extending from the Admiralty Island shoreline at 57° 26' N. lat., 133° 54.20' W. long. to Point Gambier to the northernmost tip of Gambier Island at 57° 27.75' N. lat., 133° 51.48' W. long.;

(8) District 11: the waters of Section 11-C along the western shore of Stephens Passage south of the latitude of Midway Island;

(9) repealed 5/26/2006;

(10) District 12: the waters of District 12 in Chatham Strait along the shore of Admiralty Island south of the latitude of Danger Point Light at 57° 30.93' N. lat. and north of the latitude of Distant Point at 57° 24.04' N. lat., including all waters of Kootznahoo Inlet and Hood Bay;

(11) District 13:

(A) the waters of Section 13-A along the Chichagof Island shore south of 57° N. lat., and north of 57° 37.17' N. lat., excluding Klag Bay, Lake Anna, and Sister Lake;

(B) the waters of Section 13-B in Whale Bay east of a line from North Cape to Point Lauder and a portion of Sitka Sound in Subdistrict 113-40 and 113-41 east of a line from the northern entrance to Deep Inlet at 56° 59.62' N. lat., 135° 18.67' W. long., to the westernmost tip of Long Island to Bieli Rock to Dog Point;

(12) District 14: the waters of Section 14-B in Port Frederick west and south of a line from Crist Point to Point Sophia;

(13) District 15: the waters of Section 15-C along the western shore of Lynn Canal south of the latitude of Point Sherman;

(14) District 16: the waters of Torch Bay north of the latitude of the southernmost point of Venisa Point.

(l) A CFEC permit holder who is an agent for a licensed processor and on board a vessel that is registered to operate as a tender vessel may commercially harvest sea cucumbers and transport sea cucumbers that have been harvested by other CFEC permit holders. The tender vessel may have on board more than the 2,000-pound limit specified in (d) of this section, if completed fish tickets, as required under 5 AAC 39.130, for the excess poundage are on board the vessel.