

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

DATE: March 24, 2022

FILE NO.: 2020200465

FROM: Aaron Peterson
Senior Assistant Attorney General

TEL. NO.: 907-269-5232

SUBJECT: Department of Law comments on proposals for the March 26, 2022 - April 2, 2022 Board of Fisheries meeting.

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its March 26-April 2 Board of Fisheries meeting for Cook Inlet, Kodiak, Westward, and Arctic shellfish, shellfish general provisions, Prince William Sound shrimp, and supplemental issues:

Proposals 235 and 236: Pursuant to AS 16.05.940(11)¹ the board may establish the acceptable types of evidence to prove “domicile” for resident fishing purposes, but changing the actual requirements to achieve residency are outside the authority of the board. This proposal appears to ask the board to align the definition of “domicile” with the requirements to qualify for a permanent fund dividend, which would go a great deal beyond defining the “evidence acceptable to the boards of fisheries” to prove domicile.

The board should consider that any requirements necessary to prove residency for fishing purposes would apply to all those seeking a resident fishing license, including year-round Alaska residents.

Illegal claims of residency for hunting and fishing purposes should be reported to the Alaska Wildlife Troopers.

¹ AS 16.05.940(11) “domicile” means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game

Proposal 262: This proposal would reduce the subsistence bag limit for clam in the Cook Inlet Area. For proposals affecting subsistence fisheries the Board should consider whether adoption of the proposed regulation would provide a reasonable opportunity for subsistence uses. “Reasonable opportunity” means an “opportunity as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.” The Board can base its determination of whether the regulations provide a reasonable opportunity for subsistence uses on amounts of a fish stock that have been established as reasonably necessary for subsistence uses, information pertaining to subsistence harvest data, bag limits, seasons, access, gear necessary to achieve the harvest, and other factors.

This proposal seeks to reduce subsistence bag limits. If the harvestable amount is insufficient to allow subsistence uses and other consumptive uses, the Board must adopt regulations to reduce or eliminate other uses in order to provide a reasonable opportunity for subsistence uses. If the harvestable portion of the fish stock is not sufficient to provide a reasonable opportunity for all subsistence uses, the Board must eliminate nonsubsistence consumptive uses and distinguish among the subsistence users based on the Tier II criteria. AS 16.05.258(b)(4)(B)(i), (iii). However, the Board may not consider the criteria in clause (ii), proximity of domicile to the fish stock, because it was ruled unconstitutional in *State v. Kenaitze Indian Tribe*, 894 P.2d 632 (Alaska 1995) (“The Tier II proximity of the domicile factor violates sections 3, 15, and 17 of article VIII of the Alaska Constitution, because it bars Alaska residents from participating in certain subsistence activities based on where they live.”)