

MEMORANDUM

STATE OF ALASKA

Department of Law

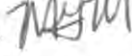
To: Monica Wellard
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Alaska Board of Fisheries

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Subject: **Comments on Specific
Proposals for 2013 Board of
Fisheries Meeting on Finfish
Regulations for the Arctic-
Yukon-Kuskowim Areas**

The Department of Law has the following comments on certain of the proposals to be considered by the Board of Fisheries at its January 15-20, 2013 meeting on regulations for finfish fisheries in the Arctic-Yukon-Kuskokwim Management Areas.

Proposal 107: This would add a new regulation requiring that subsistence harvests of 10 or more king salmon in the Kuskokwim Area in June be dried or cold-smoked. The Department comments that it believes the intent is to provide a means by which subsistence king salmon fishing households can still harvest king salmon during times of conservation concern in June, which is the only feasible time in which to process fish by drying on racks or cold-smoking. This would be the first time the Board has regulated the processing or preserving of subsistence harvests. If the Board desires to adopt this regulation, we recommend that it consider whether the regulation would affect reasonable opportunity for subsistence uses of king salmon, and we recommend that the Board explain its fishery conservation, development, and/or utilization purposes for regulating the processing of subsistence-caught king salmon after it is harvested.

Proposal 109: This would add a new regulation to allow noncommercial sales of subsistence caught finfish in the Kuskokwim Area as "customary trade," with an annual limit of \$500. Alaska law includes customary trade within the definition of "subsistence" at AS 16.05.940(33), and defines "customary trade" at AS 16.05.940(8) as "the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish and game resources." Current regulations allow customary trade only for Southeast herring roe on kelp (5 AAC 01.717) and Norton Sound – Port Clarence finfish (5 AAC 01.188). We interpret AS 16.05.258 and the statutory definitions as authorizing

but not requiring the Board to adopt regulations providing for limited customary trade if the Board finds that customary trade is a customary and traditional use of a finfish resource for which a customary and traditional use determination has been made.

Compare 1991 Alaska Op. Atty. Gen. (Inf.) 227, 1991 WL 542011 (Board of Game can authorize subsistence harvest for a certain purpose, such as in 5 AAC 92.053 authorizing the taking of up to three moose per year for the Nuchalawoyya Potlatch).

Proposal 115: This would amend 5 AAC 01.188 (customary trade of subsistence-taken finfish in the Norton Sound – Port Clarence Area) to increase the annual household limit on customary trade of subsistence-taken finfish from \$200 to \$500. The Board should consider whether such levels are customary and traditional and whether such a level would still be “noncommercial” in nature as required by AS 16.05.940(7), (8), and (33). We interpret AS 16.05.258 and the statutory definitions of “subsistence” and “customary trade” as authorizing but not requiring the Board to adopt regulations providing for limited customary trade if the Board finds that customary trade is a customary and traditional use of a finfish resource for which a customary and traditional use determination has been made. For additional background, see comments on proposal 109.

Proposal 128: This proposes a new regulation allowing any holder of a Commercial Fisheries Entry Commission limited entry or interim use permit to use set gillnets to harvest up to two tons of pink salmon for use as bait in the commercial fishery for which the permit is held, with additional amounts authorized by permit from the department. This appears to be patterned on existing regulations allowing permit holders to fish for herring and groundfish for use as bait.¹ However, this would be the first time salmon fishing for bait would be authorized. The statutory authority for such fisheries is unclear. If the Board determines this proposal may have merit, we suggest that it defer action until the 2013-14 meeting cycle to allow a full review of the authority for such bait fishery regulations.

Proposal 240: This proposal would amend 5 AAC 05.330 (gear) and 5 AAC 05.362 (Yukon River Summer Chum Salmon Management Plan) to authorize the Department, when the Commissioner finds it necessary for the conservation of king salmon, to close commercial gillnet fishing in Yukon River Districts 1-3 and immediately reopen a fishing season during which dip nets and beach seines may be used and all king salmon caught must immediately be returned to the water alive. It appears that the intent is to limit participation in a new dip net and beach seine fishery to existing CFEC gillnet

¹ See 5 AAC 27.170 (Southeastern Alaska Area herring); 5 AAC 27.270 (Yakutat Area herring); 5 AAC 27.971 (Bering Sea – Kotzebue Area herring); 5 AAC 28.190 (Eastern Gulf of Alaska Area groundfish); 5 AAC 28.670 (Bering Sea – Aleutian Islands Area groundfish); and 5 AAC 30.460 (Yakutat area bottomfish). Most of these were adopted in 1989 and the others were adopted in 1995.

permit holders. The Board may not have authority to completely implement these measures on its own. If the Board chooses to adopt this regulation, we recommend that it notify the Commercial Fisheries Entry Commission to allow CFEC, as necessary, to adjust its regulations or permits to allow only gillnet permit holders to participate with dip nets and beach seine gear.