

MEMORANDUM

State of Alaska

Department of Law

TO: Glenn Haight
Executive Director
Alaska Board of Fisheries

FROM: Seth Beausang *SMB*
Assistant Attorney General

DATE: November 23, 2015

FILE NO.: JU2015200514

TEL. NO.: 269-5289

SUBJECT: Department of Law
comments on proposals
for the November 30-
December 1, 2015 Alaska
Peninsula/Bering Sea –
Aleutian Islands/Chignik
Pacific cod meeting

The Department of Law has the following comments on the proposals to be considered by the Board of Fisheries at its November 30-December 1, 2015 meeting on proposals for the Alaska Peninsula/Bering Sea-Aleutian Islands/Chignik Pacific cod fisheries:

Proposal 1: This proposal seeks to add purse seine gear as an additional gear type for Pacific cod in the Chignik Area, subject to several requirements. Concerning the first proposed requirement, the Commercial Fisheries Entry Commission determines what CFEC fishing permits are required to participate in a commercial fishery, and AS 16.43.140 requires a CFEC permit to operate gear in a commercial fishery. Concerning the fourth proposed requirement, the proposal does not specify what information would be included in the “approved ADF&G logbook.” As the board has no administrative, budgeting, or fiscal powers, the board cannot require that the department process or use information in the logbook. Concerning the fifth proposed requirement, although “dip net” is defined in regulation at 5 AAC 39.105(a)(24), the proposal refers to a “salmon dip net” which is not a defined gear type. Concerning the sixth proposed requirement, AS 16.05.251(a)(13) specifies the written determination the board must make to require onboard observers. Concerning the seventh proposed requirement, the equal access clauses to the Alaska Constitution probably do not allow the board to limit entry to this fishery in the manner suggested.

Proposal 9: The Department of Law notes the comments by the National Marine Fisheries Service that opening these waters in the parallel fishery that are currently closed to fishing for Pacific cod with pot gear in order to conserve prey for Steller sea lions, would likely require NMFS to reinitiate formal consultation under the Endangered Species Act on the effects of the Gulf of Alaska Federal and parallel Pacific cod fisheries on the western population of Steller sea lions. A new biological opinion could require NMFS to restrict Federal fisheries, impacting those who may also participate in the State and parallel cod fisheries. The board should avoid taking action that would lead to NMFS to reinitiate formal ESA consultation.

Proposals 10 & 11: The Department of Law notes the comments by NMFS that adoption of a significantly larger GHL could require NMFS to close some directed fishing sectors in the Federal Pacific cod fishery in the Western Gulf of Alaska.

Proposal 15: The Department of Law notes the comments by NMFS that opening portions of the Bogoslof Area to Pacific cod fishing in the State cod fishery may have negative consequences for Steller sea lions.