



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

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

May 13, 2015

Tom Kluberton, Chairman
Alaska Board of Fisheries
P.O Box 115526
Juneau, AK 99811-5526

Re: Board of Fisheries Action on Southeast and Yakutat Finfish
Meeting Proposal 126

Dear Chairman Kluberton:

I am sorry for the time that this response to your March 3, 2015 letter has taken. CFEC and I have had much more than the usual interruptions during the intervening period.

You called our attention to Board Proposal 126, which appears to be intended to authorize open pounding as an alternative means of harvesting roe herring in the Sitka Sound roe herring seine fishery.

An issue arising from the proposal is that CFEC's current definition of the administrative area for the Northern Southeast herring spawn-on-kelp pound fishery includes the area in which the Sitka Sound roe herring purse seine fishery is conducted.

Your letter suggested the following approach:

The Board was advised by the Department of Law that the Board likely does not have authority to allow new entrants to limited entry herring pound fisheries without approval by the Commercial Fisheries Entry Commission (CFEC).

* * *

A majority of the Board voted to again consider Proposal 126 next year if CFEC were to re-define the current administrative area for the [Northern] Southeast herring pound limited entry fishery to exclude Sitka Sound, where it appears no herring pound operations are currently authorized or have occurred there. The Board could then consider authorization of open gear as an alternative for sac roe seine permit holders. The CFEC could then ratify that alternative gear of seine permits.

I dithered over this a little bit, because I am accustomed to the Board first making a methods and means decision conditioned on subsequent independent regulatory action by the commission. However, there is at least a *prima facie* case for CFEC making a regulatory proposal that would modify its current definition of the administrative area for the Northern Southeast herring spawn-on-kelp pound fishery to exclude the area within Board's definition of the Sitka Sound roe herring purse seine fishery. Because our administrative area definition includes another limited fishery subject to Board regulation, there is an argument that we have not fully met our statutory duties under the Limited Entry Act AS 16.43.200, which reads in relevant parts as follow:

The commission shall establish administrative areas suitable for regulating and controlling entry into the commercial fisheries. The commission shall make the administrative area reasonably compatible with the geographic areas for which specific commercial fishing regulations are adopted by the Board of Fisheries.

* * *

The commission may modify or change the boundaries of administrative areas when necessary and consistent with the purposes of [the Limited Entry Act].

We will develop and publish a regulatory proposal for public comment. Of course, we will have to reserve judgment, until we have heard all the public testimony, as to whether the proposal is or is not consistent with the purposes of the Limited Entry Act. I can think of

competing analyses, and I am not sure about where this proposal will end up. But we can ensure that all sides are heard and fairly considered.

By Direction of the
COMMERCIAL FISHERIES ENTRY COMMISSION

A handwritten signature in blue ink, appearing to be 'Benjamin Brown', written over the printed name.

Benjamin Brown, Commissioner
Bruce Twomley, Chairman

cc: The Honorable Sam Cotten
Commissioner, ADF&G