ALASKA BOARD OF FISHERIES

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Statewide Pacific Cod October 2013

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ALASKA BOARD OF FISHERIES

OPERATING PROCEDURES
POLICY FOR WRITTEN PUBLIC COMMENT

Any person may comment on the regulation changes, including the potential costs to the private persons of complying with the proposed changes, by submitting written public comments limited to no more than 100 single sided or 50 double sided pages to the Alaska Department of Fish and Game, Boards Support Section, P.O. Box 115526, Juneau, AK 99811-5526, or by fax to (907) 465-6094, so that the comments are received as a public comment (PC) no later than two weeks prior to the meeting during which the topic will be considered. Prior to the public comment deadline or unless otherwise specified for a particular meeting in a published notice, written public comments over 100 single sided or 50 double sided pages in length from any one individual or group relating to proposals at any one meeting will not be accepted.

Written public comments limited to 10 single sided or 5 double sided pages in length from any one individual or group will be accepted after the two-week deadline as a record copy (RC), but will not be inserted in board member workbooks until the beginning of the meeting, and will only be accepted until the Board begins deliberation of proposals.

> **NEW PUBLIC COMMENT STANDARD:** Once deliberation of proposals begin at a board meeting, the board will **ONLY** accept written public comments that are not more than five single-sided pages, or the equivalent double-sided pages, unless specific information is requested by the Board that requires more pages than allowed under this standard.

During the meeting written public comments from any one individual or group may be submitted by hand delivery at any time if 25 copies are provided; but, as a practical matter comments submitted after the board begins deliberations on relevant proposals are likely to receive less consideration than comments submitted earlier.

Adopted: October 10, 2012
Vote: 4-3
Anchorage, Alaska

Karl Johnstone, Chairman
Alaska Board of Fisheries

2012-267-FB
(Replaces Finding 80-78-FB)

ALASKA BOARD OF FISHERIES

OPERATING PROCEDURES
MOTION TO RECONSIDER

1. Only a board member who voted on the prevailing side of the original issue can move to reconsider a vote.

2. A motion to reconsider must be supported by a presentation of new evidence that was not before the board at the time the original vote was taken.

3. A board member who wishes to reconsider any vote must provide written notice to the chairman or notice on the record of his or her intent to move for reconsideration no later than 24 hours after the vote on the issue that reconsideration is requested. Failure to provide timely notice, either in writing or on the record, will preclude any member from moving to reconsider an earlier vote.

4. After receiving timely notice from a board member of his or her desire to reconsider a previous vote, the chair shall set a time and date to hear the motion to reconsider.

Adopted: October 10, 2012
Vote: 5-2
Anchorage, Alaska

Karl Johnstone, Chairman
Alaska Board of Fisheries

2009-264-FB

REVISED JOINT PROTOCOL (December 2009) BETWEEN NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC) ANCHORAGE, ALASKA

and

ALASKA BOARD OF FISHERIES (BOF) JUNEAU, ALASKA

ON

MANAGEMENT OF FISHERIES OFF ALASKA

Recognizing that NPFMC has a legal responsibility for reviewing and recommending to the Secretary of Commerce measures for the conservation and management of the fisheries of the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska, with particular emphasis on the consistency of those measures with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); and

Recognizing that the State of Alaska has a legal responsibility for conservation and management of fisheries within State waters; and further, that the State system centers around BOF policy, regulations, and procedures which provide for extensive public input; is sufficiently structured to ensure annual revisions; is flexible enough to accommodate resource and resource utilization emergencies; and is understood and familiar to the users of North Pacific fisheries resources; and

Recognizing that many of the fish populations in the Gulf of Alaska and the Bering Sea and Aleutian Islands migrate freely between or spend some of the year in both Federal and State waters; and

Recognizing that State and Federal governmental agencies are limited in fiscal resources, and that the optimal use of these monies for North Pacific fisheries management, research, and enforcement occurs through a clear definition of agency roles and division of responsibilities.

Therefore, NPFMC and BOF enter into this Joint Protocol to achieve coordinated, compatible, and sustainable management of fisheries within each organization's jurisdiction in the Gulf of Alaska, the Bering Sea and Aleutians, and the Arctic.

I. Applicable Fisheries

This Joint Protocol applies to all fisheries off Alaska of mutual concern.

II. Duration of the Agreement

This agreement shall be reviewed by both NPFMC and the BOF and revised as necessary.

III. NPFMC and BOF shall undertake the following activities:

A. NPFMC and BOF shall jointly agree upon and implement an annual management cycle that provides for coordinated, compatible, and sustainable fisheries management in State and Federal waters. Management measures shall be consistent with the respective legal requirements of each body.

B. With regard to groundfish and shellfish, the annual management cycle shall have the following elements:

1. The NPFMC and BOF will endeavor to coordinate their proposal schedules to the greatest extent practicable.

2. On an annual basis, the NPFMC will provide the BOF with a summary of management proposals or ongoing management actions of mutual interest, noting any special management or conservation concerns with individual groundfish fisheries. The NPFMC will provide such report to the BOF prior to any final action by the Council. The NPFMC will make available all pertinent information concerning such actions and will identify particular issues that should be considered before taking final action.

3. The BOF at its fall meeting will review groundfish or shellfish proposals which are under BOF consideration. Those proposals identified as being of mutual concern to both the BOF and NPFMC, will be forwarded to the NPFMC for its consideration and potential input prior to final action by the BOF. The BOF will provide any information available concerning the proposals, and will identify particular issues that should be considered before taking final action. After a BOF final decision, the BOF shall provide written explanation of the basis for the regulation. This provision shall not apply to emergency regulations, however, justification should be provided to the NPFMC in a timely manner, not less than ten days after the emergency action.

C. A joint NPFMC-BOF Protocol committee, not to exceed three members from each body, will be formed and will meet as necessary to review available analyses, proposals, and any other matters of mutual concern, and to provide recommendations to the joint NPFMC and BOF. The Council/BOF may determine issues for consideration by the Protocol Committee, or the Executive Directors/Chairs of the Council and BOF may jointly call for a meeting of the Protocol Committee.

D. The NPFMC and BOF will meet jointly in Anchorage as necessary and appropriate to consider proposals, committee recommendations, and any other issues of mutual concern. All interested persons and agencies shall have the opportunity to submit comments to the NPFMC and BOF at these meetings on proposals identified as being of mutual concern, and other matters as appropriate.

E. NPFMC and BOF shall encourage ADF&G and NMFS, in carrying out their responsibilities, to consult actively with each other, with NPFMC and BOF, and other agencies as appropriate, in order to prevent duplication of research, management, and enforcement effort and to make optimum use of the resources available for management of the fisheries.

F. The intent of this protocol is to provide long term cooperative, compatible management systems that maintain the sustainability of the fisheries resources in State and Federal waters.

Approved:

For the North Pacific Fishery Management Council

Council Chairman – Eric A. Olson

12/28/2009
Date

For the Alaska Board Fisheries

Board of Fisheries Chairman – Vince Webster

12/28/2009
Date

ALASKA BOARD OF FISHERIES
A Resolution Regarding Authority of the Board of Fisheries to Allocate Within Fisheries
2007-252-FB

WHEREAS, Alaska Statute 16.05.251(e) provides that the Board of Fisheries may allocate fishery resources among personal use, sport, and commercial fisheries;

WHEREAS, Alaska Statute 16.05.251(e) has, prior to the Alaska Supreme Court's ruling in *Grunert v. State*, 109 P.3d 924, 330-32 (Alaska 2005) always been interpreted by the Board and its legal advisors to allow the Board to allocate fishery resources within a fishery;

WHEREAS, the Alaska Supreme Court, in *Grunert v. State*, 109 P.3d 924, 330-32 (Alaska 2005) and *State v. Grunert*, 139 P.3d 1226, 1235 (Alaska 2006), held that despite the provisions of AS 16.05.251(e) the Board does not have the authority to allocate fishery resources within a fishery;

WHEREAS, the Alaska Supreme Court in *State v. Grunert*, 139 P.3d 1226, 1236-37 (Alaska 2006); greatly limited the Board's ability to define what constitutes a fishery;

WHEREAS, there are numerous existing regulations that could be determined to directly or indirectly allocate within a fishery;

WHEREAS, among other regulations at risk are time honored and traditional regulatory tools such as allocating between subdistricts in a larger fishery; establishment of exclusive and superexclusive registration areas, and establishment of restrictive transfer requirements between subdistricts;

WHEREAS, other authorities of the Board, including the ability to establish quotas, trip limits, and daily, weekly or annual individual harvest limits in sport and commercial fisheries could be subject to attack on the basis that they may have the effect of allocating within fisheries;

WHEREAS, the authority to allocate within fisheries has always been bounded by the Board's statutory purposes, by a statutory requirement to consider allocation criteria, and by constitutional equal protection requirements;

WHEREAS, the authority to allocate within fisheries has been used responsibly by the Board for decades;

WHEREAS, reaffirmation of the Board's authority to allocate within fisheries would not authorize the Board of Fisheries to allocate fishery resources to a cooperative fishery without separate express statutory authorization;

WHEREAS, reaffirmation of the Board's authority to allocate within fisheries would not authorize the Board of Fisheries to allocate to individual fishermen based on catch history without separate express statutory authorization;

WHEREAS, the ability to allocate within a fishery is vital to the Board's ability to fairly and effectively manage and allocate fishery resources and to prevention of undue economic hardship among subsections of a fishery;

NOW THEREFORE BE IT RESOLVED, that the Board of Fisheries respectfully requests that the 25th Alaska Legislature consider and adopt legislation such as that found in HB 188 reaffirming the ability of the Board of Fisheries to allocate within fisheries; and

BE IT FURTHER RESOLVED, that the Board of Fisheries respectfully requests that the 25th Alaska Legislature consider the reaffirmation of the ability of the Board of Fisheries to allocate within fisheries separately from any effort to grant the Board the ability to allocate to commercial fishing cooperatives or to allocate to individual fishermen based on catch history.

Adopted: April 16, 2007

Mel Morris, Chairman
Alaska Board of Fisheries

VOTE: 7/0

ALASKA BOARD OF FISHERIES

#2004 – FB – 228

FINDINGS AND PURPOSE IN REGARD TO A MORATORIUM ON ENTRY OF NEW VESSELS INTO STATE GROUNDFISH FISHERIES IN THE GULF OF ALASKA, AND FURTHER WORK OF THE BOARD'S GOA GROUNDFISH RATIONALIZATION STEERING COMMITTEE

(a) (1) The goal of the state is to protect, maintain, and improve the fishery resources of the state, and manage their use and development in the best interest of the economy and the well-being of the people of the state, consistent with the sustained yield principle; and to promote the conservation and sustained yield management of Alaska's fishery resources and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants and vessels into commercial fisheries in the public interest and without unjust discrimination;

(2) The North Pacific Fishery Management Council (NPFMC) has undertaken an analysis of the Gulf of Alaska (GOA) groundfish fisheries in the United States' exclusive economic zone off Alaska and has begun consideration of action that may result in significant reductions in the number of fishermen and vessels that may participate in those fisheries;

(3) In order to adequately protect Alaska's GOA groundfish resources and to protect participants dependent upon those fisheries from economic distress, management measures must be considered that will mitigate impacts from the pressures that will result from rationalization of the federal-water groundfish fisheries adjacent to the state's groundfish fisheries;

(4) A timely, temporary moratorium on effort in the state-managed groundfish fisheries will control growth during development of a long term plan for the management of GOA groundfish in the state-water fisheries.

(b) The purposes of a moratorium on groundfish fisheries is to:

(1) immediately impose a moratorium on entry of new vessels into the state groundfish fisheries in the Gulf of Alaska to temporarily protect Alaska fisheries, fishermen, and those dependent on them for a livelihood from potential adverse consequences of action the North Pacific Fishery Management Council is expected to take to reduce participation in the Gulf of Alaska groundfish fisheries in the United States exclusive economic zone off Alaska, while avoiding unnecessary restrictions on entry to Alaska's commercial fisheries;

(2) require, during the GOA groundfish moratorium, study of whether permanent limitation on entry into these fisheries is necessary, and if so, whether statutory changes are necessary in order to implement an effective limited access program in the groundfish fisheries; and

(3) provide time to pursue any statutory or regulatory changes found to be necessary to provide for the long-term management of Alaska's groundfish fisheries.

(c) It is the intent of the board to carry forward to the steering committee proposal 257 for further development of a plan of action. The steering committee will report back to the board at its October 2004 work session with recommendations for further action.

The board's GOA Committee (board members Dersham, Art Nelson, and Morris) will consult with the NPFMC while developing a recommended total allowable catch (TAC) split for consideration by the full board. The range for analysis will be by species by area as follows:

1.) An amount equivalent to the total annual catch (for each groundfish species/group) from state waters (inside of 3 nautical miles [e.g., parallel and 25% Pacific cod fishery]) by all vessels will be managed directly by the board as a TAC/GHL equivalent to:
   Option a) Highest amount taken in state waters by area
   Option b) Highest amount taken in state waters by area plus 15%
   Option c) Most recent four-year average harvest from state waters

2.) All catch inside 3 nautical miles by non-federal permitted vessels fishing the parallel fishery plus all catch under the 25% state water cod fishery and the PWS pollock fishery remains under the authority of the board.

3.) Only the catch associated with the 25% state water cod fishery and the PWS pollock fishery remains under the authority of the board.

During development of a specific plan of action recommendation to the full board, the board GOA Committee will continue to consult with the NPFMC to keep the NPFMC appraised and coordinate the board timeline with NPFMC final action.

Adopted:

February 23, 2004
Anchorage, Alaska

Ed Dersham, Chair

Vote: 7 – 0

PROCEDURES FOR BOARD OF FISHERIES MEETING COMMITTEES

#2000-200-FB

INTRODUCTION

The description of the processes in this Memorandum are applicable to Board committees that meet during a regulatory Board meeting. They are not applicable to the Board's standing committees and task forces that conduct business throughout the year on number matters. Examples of standing committees are the Joint Protocol Committee that works with the North Pacific Fishery Management Council and the Legislative Committee that is responsible for all matters before the Alaska State Legislature.

The meeting committees consist of Board members only. Members of the public who participate in the committee process are advisers to the committee, but are not committee members themselves. Advisory committee representatives are ex-officio members of any advisory panel to any committee with which they wish to serve.

DESCRIPTION OF THE COMMITTEE PROCESS

The committee formation process for each regulatory year will commence shortly after proposals for that regulatory year are received and compiled. Appropriate department staff, working with Board members assigned by the Chair, will group and preliminarily assign proposals, grouped by appropriate topic, to committees for each scheduled regulatory meeting during the year. Proposal roadmaps will likewise be developed that mesh with committee proposal groupings. Preliminary staff assignments for committees will also be considered during the initial proposal review.

At its work session each fall, the Board will evaluate and provide further refinement to the draft roadmaps and preliminary committee organization and assignments. Board member responsibilities for and assignments to committees will be determined at the fall work session. The goal is to have all committee structures, including Board member and staff assignments, completed before the respective regulatory meeting occurs. Committee roadmaps with Board member assignments will be distributed to the public after the fall work session. The roadmaps and the committee assignments are subject to change in the face of unforeseen circumstances or changed conditions.

COMMITTEE PROCEDURES DURING REGULATORY MEETINGS

The practices and procedures to which committees will attempt to adhere during Board regulatory meetings are as follows:

1. Early during each regulatory meeting the Board Chair will provide a brief description of how the committee system works and will further direct the public's attention to the location of a posted committee roadmap and committee assignments. The Chair will also announce that a copy of the Board's Policy Statement and this procedural description on the role of committees is available from the Board's Executive Director upon request.

2. Board committees consist solely of Board members appointed by the Board Chair. Advisory committee representatives and public panel participants are not committee members, but rather are advisors to the committee. Department staff as well as other state and federal agencies staff will provide technical assistance to committees.

   A) Public panel participants are generally stakeholders in the fisheries under consideration. They may be CFEC permit holders, crewmen, processors, executive directors of associations, and private citizens.

   B) A Board member will serve as a chairperson for each committee.

   C) The Board Chair will announce the location and time of all committee meetings.

   D) All committee meetings are open to anyone that desires to attend, although participation is limited to the advisory committee representatives, the public panel participants, the technical advisors, the department staff and the committee members.

3. Individuals that desire to serve as public panel participants to any committee should make their availability known to the chair of the respective committee. Willingness to serve can be expressed by personal contact with a committee chair or during presentation of formal oral testimony. Committee chairs are to keep a list of prospective public panel participants

during the course of the meeting.

A) Attendance at the Board meeting during the presentation of staff reports and presentation of oral testimony is generally a prerequisite to serving as a public panel participant to a committee at most meetings. This requirement will be most prevalent at meetings having high levels of attendance.

B) Advisory Committee representatives are ex-officio members of all public panels to all committees and may move between committees as they choose.

4. At the conclusion of public testimony, the chair of the respective committees will develop a preliminary list of public panel participants. The goal of the selection process will be to insure, as far as practicable, that there is appropriate and balanced representation of fishery interests on all committees. Tentative assignments will be reviewed by the Board as a whole and then posted for public review. After public review the Board Chair, in session on the record, will ask the public for concurrence or objections to the panel membership. Reasonable adjustments to membership on public panels will be accommodated.

5. Parliamentary procedures for committee work will follow the "New England Town Meeting" style. Public panel participants, upon being recognized by the committee chair, may provide comments, ask questions of other public panel members, ADF&G staff or the committee members or may otherwise discuss the issues assigned to a committee. Committee chairs will attempt to manage meetings in a manner that encourages exchange of ideas, solutions to complex issues and resolution of misunderstandings. Participants are required to engage in reasonable and courteous dialogue between themselves, Board committee members and with ADF&G staff. Committee meetings are intended to provide opportunities for additional information gathering and sometimes for dispute resolution. Committees are not a forum for emotional debate nor a platform for repeating information already received through public testimony and the written record. Department staff will be assigned to each committee to keep notes of discussions and consensuses reached, if any.

A) Formal votes will not normally be taken by the committees, but proposals or management plans that

receive public panel consensus, either negative or positive, will be noted in the committee report.

B) The committee process, in the absence of consensus will attempt to bring greater clarity to individual proposals and to complex conservation or allocation concerns.

6. Advisory Committee representatives serving on public panels are not constrained to merely presenting the official positions of their Advisory Committee (as is required while providing public testimony). When participating in the committee process, Advisory Committee representatives may express both the official positions of their committee as well as their personal views on issues not acted upon or discussed by their Advisory Committee. They must, however, identify which of the two positions they are stating. The Board recognizes Advisory Committee representatives as knowledgeable fisheries leaders who have a sense of their community's position on issues that come before the Board. Therefore, the Board believes that Advisory Committee representatives must be able to function freely during committee meetings.

7. After a committee has completed its work with its public panel, the committee chair will prepare a report with assistance from other members of the committee and department staff. The format of this report, which becomes part of the public record, is attached to this policy. The primary purpose of a committee report is to inform the full Board of the committee work in synopsis form. The report will additionally serve as a compilation index to Advisory Committee, public and staff written materials (record copies, public comments and staff reports) relative to the proposals assigned to the respective committees. Committee reports will be clear, concise, and in all cases, will attempt to emphasize "new information" that became available during the committee process, i.e., information that had not previously been presented to the full Board in oral or written form.

   A) In order to provide focus, committee reports should include recommendations relative to most proposals.

   B) If a committee has developed a proposal to replace or modify an existing proposal, the substitute proposal should be prepared and attached the to

committee report.

C) Committee reports will not include recommendations for proposals when such recommendations will predetermine the ultimate fate of the proposal. For example, when the full Board consists of six or few voting members (because of absence, abstention or conflict of interest) a committee of three should not provide a negative recommendation on a proposal.

8. Committee reports will be made available to the public in attendance at the meeting prior to the Board beginning deliberations on proposals. The Board Chair will publicly announce when reports are expected to be available for review by members of the public. The public will be encouraged to provide written comments to the Board (submittal of record copies) regarding the content of the committee reports and/or to personally contact Board members to discuss the reports.

A) The Board Chair will provide sufficient time between release of committee reports and deliberations for the preparation of written comments or for verbal communications with individual Board members to occur.

9. Board deliberations will begin after the full Board has had time to review committee reports, after the public in attendance has had an opportunity to respond to the reports, and after the full Board has had an opportunity to review the public's comments made in response to the committee reports. During the course of deliberations, committee chairs will present their committee's report and initially will lead the discussion relative to proposals assigned to their committee.

10. The full Board shall be involved in the debate or discussion of all proposals and will make regulatory decisions based on all information received to the record, including information from committees.

Adopted by the Board in Anchorage on March 23, 2000.

Vote: 6-0-1
(Miller absent)

Dan K. Coffey, Chairman

ALASKA BOARD OF FISHERIES
POLICY STATEMENT
Policy for Formation and Role of Committees at Board Meetings

#2000-199-FB

INTRODUCTION

During the past three (3) years, in response to its workload and in a desire to increase public participation, the Board has employed a committee process during the course of its meetings throughout the state of Alaska. This committee process has changed and developed over these three years in response public and department comments and the experiences of the Board in using the committee process.

It is expected that this process will continue to evolve as the needs of the public, the Board and the Department continue to evolve. As such, the committee process is meant to be dynamic and flexible. However, despite the expected future refinements, now that the committee process has been through a three-year Board cycle, it is appropriate for the Board to consider formal adoption of a Policy Statement on the Board committee process.

The Board recognizes that the public relies on the predictability of the regulatory process. The purpose of adopting this Policy Statement and the attached description of the committee process is to place the committee process in the records of the Board. Thus, the adoption of this Policy Statement will define the purpose, the formation and the role of Board committees. Over time, all participants in the Board process can be knowledgeable and effective participants before the Board of Fisheries.

DISCUSSION

A major strength of the Board committee process lies in its broad-based public participation format. To accommodate greater levels of public involvement, to enable the Board to receive and utilize the volume of information presented to it and to effectively handle the increased number of proposals seeking regulatory changes, the Board has found it desirable to create internal Board committees. The Board has found that these committees allow the Board to complete its work timely and effectively, with full consideration of the content and purpose of the many proposals before it each year.

The Board considers the use of committees as an expansion of its traditional processes; not as a replacement for such long-standing information gathering activities as staff and advisory committee reports, public testimony, written comments or informal contacts between Board members and the public. The Board committees are intended to enhance the process, not become a substitute for existing process.

While the committee process, of necessity, involves less than the full Board, nothing about the committee process is intended to, or has the consequence of, replacing the judgment of the full Board on all proposals before it at any regulatory meeting. The Board has taken steps to insure that its committees do not dictate/direct the outcome of any vote on any proposal. These steps include limiting participation by Board members to less than the number of Board members necessary to determine the outcome of the vote on any proposal. In addition, Board committees avoid predetermining the outcome by organizing the written materials presented to the Board so that they are readily available for review by the full Board, by presenting detailed reports on the committee's work and by fostering and encouraging debate during the deliberative process.

The goals and purposes of the Board committee process include but are not limited to the following:

1. Acquisition of additional detailed information from both the public and staff.

2. Providing a consensus-building forum that assists in the understanding and resolution of complex and controversial conservation, allocation, fishery resource, habitat and management issues.

3. Enhancing the interaction among the Board, the public and department staff which results in broader public understanding of the regulatory decisions of the Board and the Department's management of the fisheries.

4. Promoting efficient use of time by organizing and grouping similar proposals, reducing redundancy and organizing the huge volume of written materials provided before and during meetings by the department and the public.

5. Insuring completion of the Board's work within fiscal and temporal constraints.

The Board now finds as follows:

1. The goals and objectives are appropriate;

2. The statements of fact accurately reflect the beliefs and opinions of the Board as to the matters stated;

3. The committee process has, over a full three-year cycle of the Board, resulted in the goals and objectives having consistently been met.

Based on the findings, the Board of Fisheries resolves as follows:

1. The Policy Statement is hereby adopted as the policy of the Board of Fisheries.

2. The description of the committee process attached to this Policy Statement will be followed, in most circumstances, by the Board during the course of its regulatory meetings, subject always to the exceptional circumstance as determined by the Board.

3. The committee process is intended to be dynamic and flexible to meet the needs of the public, the Board and the Department. Thus, this Policy Statement and the attached description of the committee process are subject to ongoing review and amendment by the Board.

DATED at Anchorage, Alaska this 23rd day of March, 2000.

Vote
(Miller Absent)

Dan K. Coffey, Chairman

ALASKA BOARD OF FISHERIES
POLICY ON WRITTEN FINDINGS FOR ADOPTION OF REGULATIONS
99 - 184 - BOF

Generally, written findings explaining the reasons for the Board of Fisheries' regulatory actions governing Alaska's fisheries are not required by law. The Alaska Supreme Court has specifically held that decisional documents are not required where an agency exercises its rulemaking authority. *Tongass Sport Fishing Association v. State*, 866 P.2d 1314, 1319 (Alaska 1994). "Adoption of a decisional document requirement is unnecessary and would impose significant burdens upon the Board." *Id.* The Board recognizes, however, its responsibility to "clearly voice the grounds" upon which its regulations are based in discussions on the record during meetings so that its regulatory decisions reflect reasoned decision-making. *Id.* The Board also recognizes that there may be times when findings are appropriate to explain regulatory actions that do no result in adoption of a regulation.

Even though written findings are generally not a legal requirement, the Board recognizes that there are certain situations where findings are, in fact, legally required or advisable or where findings would be useful to the public, the Department of Fish and Game, or even the Board itself. The Board will, therefore, issue written findings explaining its reasons for regulatory actions in the following circumstances:

1. The Board will provide written explanations of the reasons for its decisions concerning management of crab fisheries that are governed by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs as required by that plan.

2. The Board will, in its discretion and in consultation with the Department of Law, provide written findings for regulatory decisions regarding issues that are either already the subject of litigation or are controversial enough that litigation is likely.

3. The Board will, in its discretion, provide written findings for regulatory actions where the issues are complex enough that findings may be useful to the public in understanding the regulation, to the department in interpreting and implementing the regulation, or to the Board in reviewing the regulation in the future.

4. The Board will, in its discretion, provide written findings for regulatory actions where its reasons for acting are otherwise likely to be misconstrued by the public, the legislature, or other state or federal agencies.

The chair will assign responsibility for drafting written findings to board committees, individual board members, department staff (with division director approval), or others, as appropriate for the circumstances.

Written findings must be approved by a majority of the full Board membership. Approval may be by a vote on the record at a Board meeting or by individual signatures of Board members upon circulation of a written finding. Only those Board members that participated in the regulatory decision will be eligible to vote on the findings for that regulatory decision. Board members are not required to vote for or against adoption of findings based on their individual vote on the underlying regulatory decision. A Board member who votes in favor of the regulatory decision may vote against adoption of the findings; a Board member who votes in opposition to a regulatory action may, nevertheless, vote for adoption of the written findings.

Written findings adopted by the Board will be numbered according to year and sequence of adoption. The executive director will maintain copies of all Board findings and make them available for review by the Board, department, and the public.

ADOPTED: 10/27, 1999
Fairbanks, Alaska

Dan Coffey, Chairman
Alaska Board of Fisheries

VOTE: 7/0

Alaska Board of Fisheries Findings
State Waters Pacific Cod Management Plans
Adopted October 29 - 31, 1996, at Wasilla

Introduction:

The Alaska Board of Fisheries (board) met at Wasilla (October 29-31, 1996) and approved new management plans for the commercial harvesting of Pacific cod in state waters of the Prince William Sound, Cook Inlet, Kodiak, Chignik, and South Alaska Peninsula Areas. The board's action represented the culmination of a two year public process to advance state involvement in management of groundfish resources in Alaska's territorial waters.

The process included strong support from the Governor's office, a re-programming of state funding to support management activities, and extensive interactions with fishermen, processors, industry representatives and community leaders through the board's local Advisory Committee process. The board, through the Alaska Department of Fish and Game (department) staff, also kept the North Pacific Fisheries Management Council (NPFMC) and National Marine Fisheries Service (NMFS) up to date on the development of state groundfish management plans.

Background:

The board was informed of an April 1995 conference, sponsored by the Peninsula Marketing Association and the Alaska Department of Commerce and Economic Development, to discuss development of a state managed groundfish fishery. A report from this conference was supported by the Governor who in turn requested the department to re-program $200,000 in funding for state groundfish management.

At its October 1995 work session, the board accepted a department agenda change request to consider groundfish management plans during the 1996/97 meeting cycle. In the winter of 1995/96, the board issued a call for proposals for statewide groundfish management plans to be deliberated in October 1996. The NPFMC and NMFS were informed of the board's acceptance of the agenda change request and its subsequent call for proposals early on in the process. In response to the published legal notice, 46 proposals were submitted by the public and the department before the April 10, 1996, deadline.

Prior to the October 1996 meeting, Prince William Sound, Cook Inlet, Kodiak, Chignik, and Alaska Peninsula Advisory Committees, and other groups met to formulate recommendations for state waters groundfish fisheries.

Identification of Issues and Concerns:

At its October 1996 meeting, the board heard reports from the department staff, including Bob Clasby, Director of the

Commercial Fisheries Management and Development Division, who explained that the department was fiscally limited in its ability to manage groundfish. The board was informed that insufficient funds were available to conduct independent stock assessment. The department also reported that funding was not available to monitor groundfish fisheries with inherent high bycatch rates, such as trawl or longline gear fisheries. Based on this information, the board found that state water groundfish management plans must operate within the conservation parameters established by federal managers and that allowable gear must have low bycatch rates.

Department staff also provided reviews of the various fisheries, from Prince William Sound westward to the Aleutians. The board also reviewed a letter submitted by NMFS Region Director, Steve Pennoyer, which encouraged a strong partnership between state and federal management. The Pennoyer letter urged the board to consider the need to maintain historic harvest statistics based on federal boundaries when establishing new state management areas. Staffs from NMFS and the NPFMC also made presentations to the board.

The board was advised by the Alaska Department of Law that under the Magnuson-Stevens Act, it should not take actions that would have substantial and adverse impacts on federal management or they could run the risk of preemption.

The board discovered that with the advent of federal IFQ and vessel limitation programs, in the absence of similar state waters effort limitation programs, the department was obligated to either close state waters to all fishers or let all fishers participate in state water fisheries. The board believed these considerations, mandated involvement in management of groundfish fisheries conducted in state waters.

The board heard of the impact of federal IFQs, Community Development Quotas (CDQ), and inshore/offshore allocation programs on state fisheries. The board found that current council management had not addressed the needs of small vessel groundfish fishermen. The board also found that the winter season, specified in the NPFMC management plans, made it difficult for small vessels to fully participate in the fishery.

The board received information on the history of state involvement in the management of groundfish resources. The board learned that the department tailored groundfish, and specifically Pacific cod, management actions in state waters to be consistent with the management actions implemented by federal managers in the adjoining waters of the Exclusive Economic Zone (EEZ). In general, state waters were opened and closed concurrently with the adjacent federal management areas.

The board was informed that the harvest of Pacific cod from state waters has gradually increased in recent years. From 1994-1996, the take in the state water portions of the federal Central and

Western Gulf of Alaska Areas averaged approximately 22.6% of the total harvest. The board discovered that the implementation of federal Individual Fishery Quota (IFQ) and license limitation programs were changing the structure of Alaskan groundfish fisheries and making it difficult for many local fishermen to participate in groundfish harvest.

Given this information, the board decided that it would be appropriate to first develop factors to consider when developing state water groundfish management plans. The board discussed the following factors:

1. Minimize bycatch to the maximum extent practicable.
2. Consider protection of habitat from fishing practices.
3. Slow harvest rates to ensure adequate reporting and analysis for necessary season closures.
4. Utilize such gear restrictions as necessary to create a year round harvest for maximum benefit to local communities, the region and the State.
5. Harvest the resource to maximize quality and value of product.
6. Harvest the resource with consideration of ecosystem interactions.
7. Harvest to be based on the total catch of the stock that is consistent with the principles of sustained yield.
8. Prevent localized depletion of stocks to avoid sport, subsistence and personal use conflicts.
9. Management based upon the best available information presented to the board.
10. Management consistent with conservation and sustained yield of healthy groundfish resources and of other associated fish and shellfish species.
11. State fishery management plans adopted by the Board should not substantially and adversely affect federal fishery management plans adopted by the NPFMC.

At a later meeting, the board adopted a set of guiding principles to consider when developing groundfish management plans.

Board Actions and Deliberations:

Prior to deliberating on the 46 proposals, the board reviewed comprehensive staff reports on Alaska groundfish fisheries. In addition, the board reviewed extensive written public comments and heard oral public comments from 30 individuals and eight advisory committees.

The board found it necessary to limit the scope of the new state management plans to Pacific cod to ensure management obligations were consistent with current department funding.

The board specified that state waters should continue to be open concurrent with the federal season. This represents a continuation of the state's recent management practice of tailoring state water groundfish seasons to coincide with the

seasons in the adjoining EEZ waters. The methods and means regulations for participation in the federally authorized season were not significantly modified. In addition, the board established separate state water Pacific cod fishing seasons to be open following closures of federally authorized seasons.

The board linked guideline harvest levels for the state authorized seasons to a percentage of the total catch of Pacific cod authorized by the NPFMC. The board recognized that the total catch authorized by NPFMC is based on stock assessment surveys and is consistent with principles of sustained yield management. The guideline harvest level for the Prince William Sound Area is set at 25% of the total catch authorized by the NPFMC for the Eastern Gulf of Alaska Area. The state authorized season guideline harvest level is initially set at 15% of the Central and Western Gulf of Alaska catch and apportioned between the Cook Inlet, Kodiak, Chignik, and South Peninsula Areas. Once these fisheries have shown an ability to fully utilize the area's guideline harvest level, the guideline harvest level will be increased to 20%, and similarly, when that level is reached, it will be increased again to a maximum of 25%.

The board recognized that the state authorized season would result in transfer of catch from federal waters to state waters. The board believes the graduated guideline harvest level approach allows for an incremental and gradual shift in the harvest so as to minimize the impact on existing fishing patterns. The board expected the initial 15% guideline harvest level to result in an actual modest increase in the state water take of Pacific cod of approximately 6 - 8 percent over recent year levels. At a 20% state season guideline harvest level, the board anticipated an actual 10 - 12 percent increase in harvest from state waters; at a 25% state season guideline harvest level, the board anticipated a 14 - 16 percent increase in actual harvest from state waters. The board reasoned that the federal season will tend to become shorter, corresponding to less Pacific cod being harvested. The shorter season will lead to a decrease in the proportional share of harvest being taken in state waters during the federal season, because the more efficient trawl and longline gear types generally operate in federal waters.

The board elected to utilize existing salmon management areas in order to provide functional jurisdictional areas for groundfish management plans that are familiar to the local fleets. These areas include; Prince William Sound, Cook Inlet, Kodiak, Chignik and Alaska Peninsula Areas. Public testimony supported utilizing existing salmon management area boundaries. Department comments also supported this approach, because it would be functionally consistent with current staffing and organizational structures. The board, however, recognized the need of federal managers to have the ability to apportion catch from state waters to appropriate federal catch reporting areas. The board received information from the department indicating that, even though different management areas were established, the existing

configuration of state water statistical catch reporting areas would enable catch reporting by federal reporting areas.

The board found it necessary to approve registration and gear limitations to reduce harvest rates and to ensure management consistent with available funding. The board chose to make the Prince William Sound, Cook Inlet, Kodiak, Chignik, and South Alaska Peninsula Areas exclusive registration areas. This action was also selected to provide benefits to local economies that are based largely on small boat fishing.

The board was compelled to further reduce the catch rate by limiting the gear in state managed fisheries to mechanical jigging machines, pots and hand troll gear. These gear types were also selected because of the inherent minimal bycatch and mortality of non target species associated with their use.

The board also limited the number of pots that may be fished to 60 per vessel and the number of mechanical jigging machines to 5 per vessel. To assist in the enforcement of pot limits, the board found it necessary to require each pot to be marked with an identification tag. The board did not limit the units of hand troll gear that may be fished per vessel, because hand troll gear is a very inefficient type of fishing gear.

The board also found it necessary to limit the size of participating vessels in some areas to further reduce catch rates, provide for extended seasons, and provide economic benefits to the regions in which the fishing is conducted. In the Kodiak Area, the board found it necessary to impose a 25,000 pound landing limit, per week, for catcher/processor vessels to reduce Pacific cod catch rates and to improve inseason catch reporting capabilities.

The board recognized that the approved registration and gear requirements may limit the ability of the existing fleets to fully utilize the established guideline harvest levels. To alleviate this potential problem, the board authorized inseason management authority for the department to rescind gear restrictions, vessel size limits, and exclusive registration requirements, in that order, if it became necessary to foster full utilization of established guideline harvest levels.

The board found that since the approved plan operated within the Total Allowable Catch (TAC) and Acceptable Biological Catch (ABC) levels established by the NPFMC, the plan was consistent with the state's, NMFS's and NPFMC's sustained yield mandate. The board's approved management plan contained provisions for a slow paced fishery, allowing the department to ensure catches do not exceed the harvest levels set by the board, as well as keeping the harvest at or below the ABC set by the NPFMC. Further the plan did not place a fiscal burden upon the department to conduct stock assessment programs outside of its fiscal means.

At the meeting in October 1996, members of the board repeatedly asked representatives from NMFS whether or not the proposed state groundfish plan would substantially and adversely affect the federal management plan. The board, in response to those direct and pointed inquiries, was consistently and repeatedly informed that the state's proposed groundfish plan would not substantially and adversely affect federal inseason management. These responses led the board to conclude that the state proposed plan would conform to the federal management plan.

At Sitka, Alaska

Date: January 29, 1996

Approved: (7/0/0/0) (Yes/No/Absent/Abstain)

Larry Engel, Chair
Alaska Board of Fisheries

91-129-FB

(Previously Finding #91-3-FB)

ALASKA BOARD OF FISHERIES

ALLOCATION CRITERIA

The Alaska Supreme Court recently issued a decision, Peninsula Marketing Association vs. State (Opinion No. 3754; dated September 20, 1991), regarding the application of the allocation criteria found in AS 16.05.251(e). The Court interpreted the statute to require the criteria to be considered when allocating between commercial fisheries as well as among the three user groups, commercial, personal use, and sport.

Consistent with the decision of the Court, the board finds that it will utilize the following specific allocation criteria when allocating between fisheries. Note that these criteria are essentially the same as the allocative criteria specified in AS 16.05.251(e), which the board has historically used as set out in 5AAC 39.205, 5AAC 77.007, and 5AAC 75.017.

1) the history of each personal use, sport, and commercial fishery;

2) the characteristics and number of participants in the fisheries;

3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;

4) the availability of alternative fisheries resources;

5) the importance of each fishery to the economy of the state;

6) the importance of each fishery to the economy of the region and local area in which the fishery is located;

7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

Note that all seven (7) criteria do not necessarily apply in all allocation situations, and any particular criterion will be applied only where the board determines it is applicable.

Adopted: November 23, 1991

Vote: (Yes/No/Abstain/Absent) (5/0/0/2) [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn

Michael B. Martin

Mike Martin
Chair
Alaska Board of Fisheries

91-129-FB

(Finding #91-3-FB)

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Adopted: November 23, 1991

Vote: (Yes/No/Abstain/Absent) (5/0/0/2) [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn

Michael R. Martin

Mike Martin, Chairman
Alaska Board of Fisheries

91-128-FB

(Previously Finding #: 91-2-FB)

ALASKA BOARD OF FISHERIES
STANDING RULES

As a guide, the Alaska Board of Fisheries follows the most current version of Robert's Rules of Order in the conduct of the meetings [Note that the Alaska Statutes do not require the board to use any specific parliamentary procedure]. The board has by traditional agreement varied from the written Robert's Rules of Order. Below is a partial list of these variations (known as "Standing Rules") that the board follows:

- Take No Action. Has the effect of killing a proposal or issue upon adjournment. There are two reasons for taking no action: 1) It is found that the proposal is beyond the board's authority; or 2) due to board action on a previous proposal(s).

- Tabling has the effect of postponing indefinitely (Robert's Rules of Order). One of the primary reasons the board tables a proposal/issue is to gather more information during that meeting since a tabled proposal/issue dies when that meeting session adjourns.

- One amendment at a time. As a practice, the board discourages an amendment to an amendment. This is a proper motion by Robert's Rules of Order, however the board tries to avoid the practice because of the complexities of issues.

- Do not change or reverse the intent of a proposal/issue. For example, if a proposal's intent is to restrict a particular fishery and the board wishes to close or expand the fishery, the board will not amend the original proposal. The board will defeat, table or take no action on that proposal and then develop a board generated proposal to accomplish the action they feel is needed.

- "Ruling of the Chair" or "Chair's Ruling". When the chair makes a ruling, the board members have two options; 1) accept the ruling and move on; or 2) appeal/challenge the chair's ruling. By Robert's Rules of Order, the process is as follows (When a chair's decision is appealed/challenged):

By Robert's Rules of Order, the process is as follows (when a chair's decision is appeal/challenged):

1) The chair makes a ruling;

2) A member appeals (challenges) the chairs ruling (i.e. "I appeal the decision of the chair") and it is seconded (Note: All board members present can or could appeal/challenge the ruling);

3) Any board member can debate the ruling and appeal/challenge (Note: By Robert's Rules the chair and the person appealing/challenging the ruling are the only two who are to debate the issue);

4) The question before the board is: "Shall the decision of the chair be sustained?

5) After the result of the vote is announced, business resumes.

- The public depends on or expects the board members to keep an open mind on the issues before the board. To accomplish this the board will listen to and ask questions: 1) staff reports, advisory committee and regional council reports, and 2) during deliberations on the issues, listen to fellow board members points and issues. It is not conducive to soliciting public involvement if the board members express that they already have an opinion and it is up to the public or staff to "change their mind."

- Note another "Standing Rule" contained in Board of Fisheries Finding Number: 80-78-FB. This finding is regarding the Reconsideration Policy of the board.

Adopted: November 23, 1991

Vote: (Yes/No/Absent/Abstain) 5/0/2/0/ [Absent: Robin Samuelson, Tom Elias]

Location: Anchorage International Airport Inn

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Mike Martin, Chairman
Alaska Board of Fisheries

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#88-120-FB
(Replacing #79-52-FB)

ALASKA BOARD OF FISHERIES

DELEGATION OF AUTHORITY TO CORRECT TECHNICAL ERRORS BEFORE FILING REGULATIONS

The Board of Fisheries ("board") makes the following findings:

1. The board at its regular meetings, considers numerous proposals for regulatory change.

2. The board adopts, amends, or repeals a large number of the proposed changes.

3. The volume and complexity of the regulatory changes makes it impossible for the board to foresee and correct all ambiguities, inconsistencies, or other technical errors of omission or commission in the regulations adopted by the board.

4. Technical deficiencies in the regulations may preclude successful prosecution of regulatory violations, or prevent the intent of the board from being fully implemented, or other consequences not desired by the board.

5. It is impractical, unnecessary, and contrary to the public interest to convene the board to make technical corrections in the regulations.

6. The Commissioner and staff of the Department of Fish and Game and the personnel of the Departments of Law and Public Safety are most likely to notice technical deficiencies in the regulations as a result of daily administration of the regulations of the board.

THEREFORE THE BOARD RESOLVES that under AS 16.05.270 it hereby delegates to the Commissioner of the Alaska Department of Fish and Game the authority to correct any ambiguities, inconsistencies, or other technical errors of omission or commission in regulations adopted by the board prior to the filing of those regulations by the Lieutenant Governor as required under AS 44.62.080. The corrections must not be contrary to the intent of the board.

This resolution replaces #79-52-FB.

This delegation shall remain in effect until revoked by the board.

Dated: March 13th 1988

Gary Slaven, Chairman
Alaska Board of Fisheries

At: Anchorage, Alaska

Vote: Consensus