

ALASKA DEPARTMENT OF FISH AND GAME
STAFF COMMENTS ON JOINT BOARD PROPOSALS
JOINT BOARD OF FISHERIES AND GAME MEETING
ANCHORAGE, ALASKA
MARCH 21-25, 2019



The following staff comments were prepared by the Alaska Department of Fish and Game for use at the Alaska Joint Board of Fisheries and Game meeting, March 21-25, 2019 in Anchorage, Alaska. The comments are designed to assist the public and board. The stated staff comments should be considered preliminary and may be subject to change, if or when new information becomes available.

ABSTRACT

This document contains Alaska Department of Fish and Game staff comments on regulatory proposals for the Joint Board concerning the state's local fish and game advisory committees and the Board of Fisheries and Board of Game process for adopting regulations. These comments were prepared by the department for use at the Alaska Joint Board of Fisheries and Game meeting, March 21-25, 2019 in Anchorage, Alaska. The comments are forwarded to assist the public and the Joint Board. The comments contained herein should be considered preliminary and may change as new information becomes available. Final department positions may be formulated after review of written and oral public testimony presented at the board.

Key words: Joint Board of Fisheries and Game (Joint Board), Alaska Department of Fish and Game (department) staff comments, uniform rules of operation, fish and game advisory committees (ACs), Robert's Rules of Order, qualifications, members, meetings, officers, elections, nomination, functions, subsistence, areas of jurisdiction, petition, proposal, policy, and regulations

This document should be cited as:

ADF&G (Alaska Department of Fish and Game). 2019. Alaska Department of Fish and Game staff comments on Joint Board Proposals, Joint Board of Fisheries and Game meeting, Anchorage, Alaska March 21-25, 2019. Alaska Department of Fish and Game, Juneau.

The Alaska Department of Fish and Game administers all programs and activities free from discrimination based on race, color, national origin, age, sex, religion, marital status, pregnancy, parenthood, or disability. The department administers all programs and activities in compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972.

If you believe you have been discriminated against in any program, activity, or facility, or if you desire further information please write to:

ADF&G, P.O. Box 115526, Juneau, AK 99811-5526; U.S. Fish and Wildlife Service, 4040 N. Fairfax Drive, Suite 300 Webb, Arlington, VA 22203; or O.E.O., U.S. Department of the Interior, Washington DC 20240.

For information on alternative formats for this and other department publications, please contact the department ADA Coordinator at (VOICE) 907-465-6077, (TDD) 1-800-478-3648 or 907-465-3646, or (FAX) 907-465-6078.

Table of Contents

<u>Proposal No. & Subject</u>	<u>Page</u>
Summary of Department Positions	i-ii
<i>Establishment and Membership of Advisory Committees</i>	
<u>Southeast Region</u>	
PROPOSAL 1 Designate seats for the community of Craig and the Port St. Nicholas area on the Craig Advisory Committee	1
<u>Western Region</u>	
PROPOSAL 2 Move the seat designation for the community of Chevak from the Central Bering Sea Advisory Committee to the Coastal Lower Yukon Advisory Committee.....	2
PROPOSAL 3 Add two undesignated seats to the Central Kuskokwim Advisory Committee	4
PROPOSAL 4 Move the Stony/Holitna Advisory Committee from the Western Region to the Interior Region	5
PROPOSAL 5 Designate two seats on the Stony/Holitna Advisory Committee for the community of Georgetown	7
<u>Interior Region</u>	
PROPOSAL 6 Dissolve the Lake Minchumina Advisory Committee.....	8
<u>Southwest Region</u>	
PROPOSAL 7 Reduce the membership for the Lake Iliamna Advisory Committee to ten and add designations for the communities of Pope Vannoy Landing and Port Alsworth.....	9
PROPOSAL 8 Establish seat designations for the Naknek/Kvichak Advisory Committee ..	11
<u>Arctic Region</u>	
PROPOSAL 9 Change the name of the Kotzebue Advisory Committee to Kotzebue Sound Advisory Committee.....	12
PROPOSAL 10 Reduce the number of undesignated seats for advisory committees in the Arctic region	13

Statewide

PROPOSAL 11 Consolidate regulations addressing the creation of advisory committees14
PROPOSAL 12 Require members to reside within the committee’s geographic area16

Areas of Jurisdiction and Emergency Closures

PROPOSAL 13 Change the advisory committees having jurisdiction for the Cook Inlet-
Resurrection Bay area by removing Mt. Yenlo and Denali Advisory
Committees18
PROPOSAL 14 Update the area of jurisdiction for westward area king crab to include the
Kotzebue Fish and Game Advisory Committee19
PROPOSAL 15 Amend the emergency closure process to exclude advisory committees that
have not meet within the last three years20

Function and Uniform Rules of Operation

PROPOSAL 16 Expand the functions of the advisory committees to encourage the
involvement of youth and elders21
PROPOSAL 17 Reorder and clarify the election procedures under the uniform rules of
operation for advisory committees.....22
PROPOSAL 18 Clarify the provision that advisory committees may not refuse membership to
a nominee24
PROPOSAL 19 Simplify the process for removing advisory committee members for having
unjustifiable absences from meetings25
PROPOSAL 20 Amend the removal for cause provisions.....25
PROPOSAL 21 Amend the advisory committee vacancy rules27
PROPOSAL 22 Allow advisory committee members to discuss and vote by email, excluding
actions for antlerless moose reauthorizations or emergency order closures.28
PROPOSAL 23 Provide guidance for advisory committee actions having abstentions29
PROPOSAL 24 Add language to clarify advisory committee meetings are subject to the Open
Meetings Act and modify noncompliant provisions30
PROPOSAL 25 Remove redundant provisions for advisory committee officer regulations and
clarify duties of the secretary33

Administration of Advisory Committees

PROPOSAL 26 Schedule certain requests for advisory committees to be acted upon by each board during regularly scheduled meetings34

PROPOSAL 27 Remove the concept of “active” and “inactive” committees37

PROPOSAL 28 Allow advisory committee representatives to be at the board table during deliberations for those proposals the advisory committee authored.....41

PROPOSAL 29 Allow advisory committee representatives a seat at the board table during deliberations on proposals affecting their region.....43

Process for Adopting Fish and Game Regulations

PROPOSAL 30 Provide a definition for board work sessions and allow submitters of Agenda Changes Requests (ACRs) to provide testimony at work sessions.....47

PROPOSAL 31 Provide a definition for a board hearing of at least three board members with a public comment requirement49

PROPOSAL 32 Repeal the provision for Board of Fisheries members attending advisory committee meetings to be in compliance with the statutory requirement for holding board meetings in specific areas of the state45

PROPOSAL 33 Amend the Joint Board’s procedure for establishing fish and game regulations51

PROPOSAL 34 Amend the Joint Board Petition Policy to correct a contradiction with the subsistence proposal policy.....55

PROPOSAL 35 Repeal and rewrite the Joint Board Petition Policy59

PROPOSAL 36 Allow a petitioner the opportunity to present information about the petition to the boards and establish definitions for unforeseen and unexpected events and situations62

PROPOSAL 37 Repeal the boards' Subsistence Proposal Policy58

PROPOSAL 38 Require the Board of Fisheries to schedule shellfish regulations for any that have been closed by emergency order for 24 consecutive months.....65

Errors, Omissions, and Clarifications

PROPOSAL 39 Update the regulations to correct errors and omissions66

PROPOSAL 40 Amend regulations to align and clarify current practices for advisory committees and the process for adopting fish and game regulations.....67

Summary of Department Positions, Joint Board Meeting Proposals, March 2019

Proposal No.	Dept. Position	Issue
1	N	Designate seats for the community of Craig and the Port St. Nicholas area on the Craig Advisory Committee
2	NA	Move the seat designation for the community of Chevak from the Central Bering Sea Advisory Committee to the Coastal Lower Yukon Advisory Committee
3	N	Add two undesignated seats to the Central Kuskokwim Advisory Committee
4	S	Move the Stony/Holitna Advisory Committee from the Western Region to the Interior Region
5	N	Designate two seats on the Stony/Holitna Advisory Committee for the community of Georgetown
6	NA	Dissolve the Lake Minchumina Advisory Committee
7	N	Reduce the membership for the Lake Iliamna Advisory Committee to ten and add designations for the communities of Pope Vannoy Landing and Port Alsworth
8	N	Establish seat designations for the Naknek/Kvichak Advisory Committee
9	S	Change the name of the Kotzebue Advisory Committee to Kotzebue Sound Advisory Committee
10	S	Reduce the number of undesignated seats for advisory committees in the Arctic region
11	S	Consolidate regulations addressing the creation of advisory committees
12	N	Require members to reside within the committee's geographic area
13	N	Change the advisory committees having jurisdiction for the Cook Inlet-Resurrection Bay area by removing Mt. Yenlo and Denali Advisory Committees
14	S	Update the area of jurisdiction for westward area king crab to include the Kotzebue Fish and Game Advisory Committee
15	S	Amend the emergency closure process to exclude advisory committees that have not met within the last three years
16	S	Expand the functions of the advisory committees to encourage the involvement of youth and elders
17	S	Reorder and clarify the election procedures under the uniform rules of operation for advisory committees
18	S	Clarify the provision that advisory committees may not refuse membership to a nominee
19	S	Simplify the process for removing advisory committee members for having unjustifiable absences from meetings
20	S	Amend the removal for cause provisions
21	S	Amend the advisory committee vacancy rules
22	NA	Allow advisory committee members to discuss and vote by email, excluding actions for antlerless moose reauthorizations or emergency order closures
23	S	Provide guidance for advisory committee actions having abstentions
24	S	Add language to clarify advisory committee meetings are subject to the Open Meetings Act and modify noncompliant provisions
25	S	Remove redundant provisions for advisory committee officer regulations and clarify duties of the secretary

26	N	Schedule certain requests for advisory committees to be acted upon by each board during regularly scheduled meetings
27	S	Remove the concept of “active” and “inactive” committees
28	N	Allow advisory committee representatives to be at the board table during deliberations for those proposals the advisory committee authored
29	O	Allow advisory committee representatives a seat at the board table during deliberations on proposals affecting their region
30	O/N	Provide a definition for board work sessions and allow submitters of Agenda Changes Requests (ACRs) to provide testimony at work sessions
31	O	Provide a definition for a board hearing of at least three board members with a public comment requirement
32	S	Repeal the provision for Board of Fisheries members attending advisory committee meetings to be in compliance with the statutory requirement for holding board meetings in specific areas of the state
33	S/O	Amend the Joint Board’s procedure for establishing fish and game regulations
34	S/N	Amend the Joint Board Petition Policy to correct a contradiction with the subsistence proposal policy
35	O	Repeal and rewrite the Joint Board Petition Policy
36	N	Allow a petitioner the opportunity to present information about the petition to the boards and establish definitions for unforeseen and unexpected events and situations
37	O	Repeal the boards' Subsistence Proposal Policy
38	O	Require the Board of Fisheries to schedule shellfish regulations for any that have been closed by emergency order for 24 consecutive months
39	S	Update the regulations to correct errors and omissions
40	S	Amend regulations to align and clarify current practices for advisory committees and the process for adopting fish and game regulations

N=Neutral; S=Support; O=Oppose; NA=No Action

PROPOSAL 1 – 5 AAC 96.021. Establishment of advisory committees. Designate seats for the community of Craig and the Port St. Nicholas area on the Craig Advisory Committee.

PROPOSED BY: Craig Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? This proposal seeks designated community seats for the community of Craig and Port St. Nicholas area.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.021(a)(1) establishes the Craig Advisory Committee for the Southeast Region with 15 seats. There is no provision that requires members to be from Craig or Port St. Nicholas.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The Craig Advisory Committee membership would be limited to residents from Craig and the Port St. Nicholas area. If there is a vacancy and someone not representing Craig or Port St. Nicholas is nominated for election, that person is eligible to serve under 5 AAC 96.060(e)(3) which prevents a committee from refusing membership to a nominee when membership is less than the number of members authorized by the joint board.

Port St. Nicholas is not an organized community. If approved for community designated seats, Port St. Nicholas would be the first non-organized community designated for “community seats” under 5 AAC 96.021. Determining proof of residency at elections may require proof of a physical address.

BACKGROUND: The Craig Advisory Committee has been active since 1992, except for a gap from approximately 2000 through 2008. Records do not indicate whether the Craig Advisory Committee was active prior to 1992. There are currently 10 members.

Craig is the largest town on Prince of Wales Island (POW), located on the west side in Game Management Unit (GMU) 2 with a population of approximately 1,200 residents. Port St. Nicholas is not in the Alaska Department of Commerce, Community & Economic Development (DCCED) Community Database. A DCCED Local Government Specialist indicates Port St. Nicholas is not within the Craig city limits, but members of the neighborhood have sought assistance to form a community association. This has not come to fruition.

Craig’s closest neighbor, Klawock, is POW’s second-largest town and home to its only paved airport. There is a Klawock Advisory Committee. Other nearby advisory committees include Sumner Strait, Hydaburg, and East Prince of Wales. Apart from the East Prince of Wales Advisory Committee, which held a reactivation meeting in December 2018, all others are inactive although Klawock is indicating interest. On the northern end of POW, the Edna Bay Advisory Committee is currently active.

Advisory committees on POW can cover multiple communities (East Prince of Wales has seats for Thorne Bay, Coffman Cove, Whale Pass, and Kasaan, along with undesignated seats) or just one (Edna Bay has seven seats designated for Edna Bay). There are also communities that are not explicitly covered by any advisory committee (such as Naukati Bay, located on the west side

of the island between Edna Bay and Klawock, and connected by paved road to Coffman Cove on the east side).

There are typically vacant seats on the Craig Advisory Committee at any given time. Currently, any person with knowledge of the area is eligible to fill a vacant seat regardless of residency or areas of resource use, should they be nominated. Given the areas of jurisdiction provisions as they relate to nominations for advisory committee membership, anyone living in Southeast Alaska may nominate anyone for any Southeast Alaska advisory committee.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. The department supports the committee working with the joint board for improvements to become more effective in the fish and game regulatory process.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 2 – 5 AAC 96.021. Establishment of advisory committees. Move the seat designation for the community of Chevak from the Central Bering Sea Advisory Committee to the Coastal Lower Yukon Advisory Committee.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? This proposal would remove the designated Chevak seat from the Central Bering Sea Advisory Committee and add a designated Chevak seat to the Coastal Lower Yukon Advisory Committee.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.021(c)(4) establishes the membership for the Central Bering Sea and the Coastal Lower Yukon Advisory Committees. The Central Bering Sea Advisory Committee has 13 community designated seats and two undesignated seats. The Coastal Lower Yukon Advisory Committee has six community designated seats.

5 AAC 96.021. Establishment of advisory committees.

....

(c) The following committees are identified as representing more than one community, or additionally, as having less than 15 members, and the following seats on the committee are designated for each community:

...

(4) in the Western Alaska Region:

...

- (A) Central Bering Sea
 - Chevak 1 representative
 - Chefornak 1 representative

Goodnews Bay	1 representative
Kipnuk	1 representative
Kongiganak	1 representative
Kwigillingok	1 representative
Mekoryuk	1 representative
Newtok	1 representative
Nightmute	1 representative
Platinum	1 representative
Quinhagak	1 representative
Toksook Bay	1 representative
Tanunak (<i>sic</i>)	1 representative
Undesignated	2 representatives

...

(E) Costal (<i>sic</i>) Lower Yukon (6 members)	
Scammon Bay	1 representative
Alakanuk	1 representative
Kotlik	1 representative
Emmonak	1 representative
Hooper Bay	1 representative
Nunam Iqua	1 representative

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The community of Chevak would join the Coastal Lower Yukon Advisory Committee, adding one designated seat, and secede from the Central Bering Sea Advisory Committee. The Coastal Lower Yukon Advisory Committee membership would increase to seven and the Central Bering Sea Advisory Committee membership would decrease to 14. The number of members needed to achieve quorum would not be affected for either advisory committee. It is not anticipated travel costs would vary greatly with this change.

BACKGROUND: The Central Bering Sea Advisory Committee consists of 15 members representing 13 designated community seats and two undesignated seats. All designated communities reside along the Bering Sea coast, from Platinum, which is the southernmost Central Bering Sea Advisory Committee community, to Chevak, which is approximately 220 air miles north. The closest Central Bering Sea Advisory Committee community to Chevak is Newtok, which is located approximately 52 miles south. Chevak is located 12 miles from Hooper Bay, which serves on the Coastal Lower Yukon Advisory Committee. Chevak is the only Central Bering Sea Advisory Committee community that resides in the Yukon River drainage.

In 2013, the Joint Board divided the Lower Yukon Advisory Committee into two separate advisory committees, the Mid-Lower Yukon Advisory Committee and the Coastal Lower Yukon Advisory Committee. During that meeting, board members discussed whether Chevak should be included in the Coastal Lower Yukon Advisory Committee, but department staff indicated it was beyond the scope of the submitted proposal.

DEPARTMENT COMMENTS: The department submitted this proposal with an intent to solicit recommendations from the two advisory committees and the community of Chevak for the joint board's consideration. Since that time, the Central Bering Sea Advisory Committee met and voted to oppose the proposal, including the representative from Chevak. The department withdraws support of this proposal and recommends the joint board **TAKE NO ACTION**.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 3 – 5 AAC 96.021. Establishment of advisory committees. Add two undesignated seats to the Central Kuskokwim Advisory Committee.

PROPOSED BY: Lisa Feyereisen.

WHAT WOULD THE PROPOSAL DO? This proposal would add two undesignated seats to the Central Kuskokwim Advisory Committee.

WHAT ARE THE CURRENT REGULATIONS? Under 5 AAC 96.021(c)(4)(C) the Central Kuskokwim Advisory Committee has ten community designated seats.

5 AAC 96.021. Establishment of advisory committees.

....

(c) The following committees are identified as representing more than one community, or additionally, as having less than 15 members, and the following seats on the committee are designated for each community:

...

(4) in the Western Alaska Region:

...

(C) Central Kuskokwim (10 members)	
Crooked Creek	2 representatives
Aniak	2 representatives
Chuathbaluk	2 representatives
Lower Kalskag	2 representatives
Upper Kalskag	2 representatives

5 AAC 96.060(e)(1) states that “to the extent practicable, at least three user groups must be represented on each committee, and membership must include representatives from each town or village located in the area that the committee represents. To ensure full representation of an area, the joint board may assign a seat on the committee to represent a specific user group or specific community.”

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? This proposal increases the Central Kuskokwim Advisory Committee membership from 10 to 12 members by adding two undesignated seats. This would change the quorum requirements from six to seven members. Increasing the number of advisory committee members may increase costs associated with member travel to attend meetings.

BACKGROUND: The Central Kuskokwim Advisory Committee participates in both the fish and game regulatory processes. During the 2007 joint board meeting, the Central Kuskokwim Advisory Committee was divided into two committees, the Central Kuskokwim and the Stony/Holitna. The joint board also restructured the Central Kuskokwim Advisory Committee to include ten designated seats, two from each of the following communities: Crooked Creek, Aniak, Chuathbaluk, Lower Kalskag and Upper Kalskag. This format balanced the advisory committee seats so that each designated community had two representatives regardless of community population. The restructuring also removed the one undesignated seat that had been a part of the advisory committee prior to 2007. The Central Kuskokwim Advisory Committee supported the communities having equal seat designations without any undesignated seats.

Within the Central Kuskokwim Advisory Committee region, some residents reside in areas that do not have designated representation on fish and game advisory committees; however, they are active participants in the local fish and game regulatory process. Having only designated community seats for this advisory committee can make it challenging for individuals or stakeholder representatives outside of these designated communities to have representation on the advisory committee. The proposer of this proposal does not live in any of the designated communities, but is a member of the committee.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. The department supports the committee working with the joint board for improvements to become more effective in the fish and game regulatory process. There would be additional cost to the department associated with travel expenses for additional members to attend committee meetings.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 4 – 5 AAC 96.021. Establishment of advisory committees. Move the Stony/Holitna Advisory Committee from the Western Region to the Interior Region.

PROPOSED BY: Doug Carney.

WHAT WOULD THE PROPOSAL DO? This proposal seeks to change the regulatory placement for the Stony/Holitna Advisory Committee (SHAC) from the Western Region to the Interior Region.

WHAT ARE THE CURRENT REGULATIONS? The SHAC is placed under the Western Alaska Region in 96.021(a)(4) and 96.021(c)(4).

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted the technical effect is minimal. The location for the SHAC in regulation would align with the game management region for the Department of Fish and Game (department) and the Board of Game.

BACKGROUND: All the communities in the committee reside along the waters of the Kuskokwim River. Except for the McGrath Advisory Committee, the other Kuskokwim River advisory committees are in the Western Region. Given salmon harvest patterns of communities along the Kuskokwim River, the SHAC is active in fisheries management.

Game Management Unit (Unit) 19A, where the SHAC is located, is considered the Interior Region by the Board of Game and the department. The advisory committee communities utilize game resources predominantly located in the Interior region. The committee is supported administratively by Interior Region staff, including the boards support section.

There is some overlap in this area with communities and resources located in both Interior and Western regions. While the communities that make up both the Stony-Holitna and Central Kuskokwim Advisory Committees are both located in the same subunit, the SHAC communities are in the eastern portion of Unit 19A while the Central Kuskokwim Advisory Committees communities are close to the western boundary of Unit 19A and are more proximal to the Western Region Units 18 and 21.

At the 2007 joint board meeting, the SHAC was formed by splitting the Central Kuskokwim Advisory Committee into two separate committees. The proposal before the joint board requested a new committee be placed under the Interior Region while the Central Kuskokwim Advisory Committee remain located under the Western Region. The joint board's action in 2007 seemed to support this, so moving the SHAC to the Interior region would correct an error.

Incidentally, previous regulations since repealed provide additional support for this proposal. In the 1980's through the early 1990's, the state fish and game advisory committee system also employed "regional advisory councils" established in regulation. The regional advisory council system was eliminated with the advent of the federal subsistence system, but at the time the Western and Interior regions were divided just as this proposal seeks to accomplish. Under that previous regulation, the management area for the Interior Region was defined as "all lands and waters of Game Management Units 12, 20, 21, 24, 25, and that portion of the Kuskokwim River drainage in Game Management Unit 19 upstream from the George River drainage and the Hoholitna River drainage." The Western Region was defined as "all lands and waters of Game Management Unit 18, and that portion of the Kuskokwim River drainage in Game Management Unit 19 downstream from, and including, the George River drainage and the Hoholitna River drainage, and adjacent marine waters." Placing the Central Kuskokwim Advisory Committee in the Western Region and the newly created SHAC in the Interior Region is consistent with fish and game management areas established by the joint board prior to 2007.

DEPARTMENT COMMENTS: The department **SUPPORTS** this proposal to align the location of the advisory committee in regulation with the department and Board of Game management region. The department supports committee members working with the Joint Board for improvements to become more effective in the fish and game regulatory process.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 5 – 5 AAC 96.021. Establishment of advisory committees. Designate two seats on the Stony/Holitna Advisory Committee for the community of Georgetown.

PROPOSED BY: Georgetown Tribal Council.

WHAT WOULD THE PROPOSAL DO? The proposal seeks to add two additional designated seats to the Stony/Holitna Advisory Committee (SHAC) for the community of Georgetown.

WHAT ARE THE CURRENT REGULATIONS? Under 5 AAC 96.021(c)(4)(D), the SHAC has eight community designated seats.

5 AAC 96.021. Establishment of advisory committees.

....

(c) The following committees are identified as representing more than one community, or additionally, as having less than 15 members, and the following seats on the committee are designated for each community:

...

(4) in the Western Alaska Region:

...

- (D) Stony/Holitna (8 members)
- Sleetmute 2 representatives
- Lime Village 2 representatives
- Stoney (*sic*) River 2 representatives
- Red Devil 2 representatives 8

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, the SHAC membership would increase to ten members, guaranteeing the community of Georgetown representation on the advisory committee with two designated seats. The quorum requirement would increase to six members. This will increase travel costs associated with additional members attending meetings.

BACKGROUND: Georgetown is located on the Kuskokwim River, approximately 16 miles downstream from Red Devil, the downriver boundary for the SHAC, and 18 miles upstream from Crooked Creek, the upriver boundary of the Central Kuskokwim Advisory Committee. Neither SHAC nor Central Kuskokwim Advisory Committee have undesignated seats.

The Alaska Department of Labor does not list Georgetown as having a population either in the 2010 U.S. Census, nor in its 2017 estimate of Alaska community populations. However, an alternate for the Stony Holitna's Red Devil seat has a year-round residence in Georgetown along with two other family members. Per the council, members of the tribe travel to the areas surrounding Georgetown on a seasonal basis.

The Division of Subsistence Technical Paper No. 379 notes that Georgetown tribal members were contacted to participate in a comprehensive survey in 2010. The surveyed households reported harvesting 32% of all subsistence resources by edible weight within the Georgetown area, 61% in other areas of the Kuskokwim River drainage, and 7% in other areas of Alaska.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. There would be additional cost to the department for additional travel expenses for meetings. The department supports committee members working with the joint board for improvements to become more effective in the fish and game regulatory process.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 6 – 5 AAC 96.021. Establishment of advisory committees and 5 AAC 97.005. Areas of jurisdiction for advisory committees. Dissolve the Lake Minchumina Advisory Committee.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal requests the joint board dissolve the Lake Minchumina Advisory Committee.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.021(a)(6) establishes the Lake Minchumina Advisory Committee with 15 seats under the Interior Region. 5 AAC 97.005 lists the advisory committee's area of jurisdiction for Game Management Units 19, 20, and 21, with no designation for finfish and shellfish.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The proposal requests the joint board dissolve the Lake Minchumina Advisory Committee. According to regulation 96.450(e), the joint board can do so if the committee has been inactive for two years and fails to respond to joint board inquiries about the committee's desire to remain in existence. However, a former AC member contacted boards support section in June 2018 expressing a desire by residents to re-activate, and therefore, the joint board would not be able to dissolve the advisory committee under current regulations in 5 AAC 96.450(e).

BACKGROUND: The Lake Minchumina Advisory Committee has not met since 1995. Contact with the residents of the community was recently established and residents expressed interest in beginning to conduct meetings again.

The Alaska Department of Labor estimated the community of Lake Minchumina had a population of 11 in 2017. Due to the remoteness of its location and the distance from Lake Minchumina to the nearest communities, it would logistically be difficult to merge the Lake Minchumina Advisory Committee with the nearest advisory committees, McGrath and Middle Nenana River. Merging the committee with either of these would require overnight travel for residents of Lake Minchumina to participate in meetings which would increase the cost to the state. Per regulation (5 AAC 96.410) the joint board, to the extent feasible, will establish and locate committees so that all citizens have an opportunity to participate in the regulatory process. By dissolving the advisory committee this would place a limitation on this community's ability to participate.

DEPARTMENT COMMENTS: The department submitted this proposal with an intent to solicit recommendations from the community for the joint board's consideration. Since that time, residents of the community indicated interest in conducting advisory committee meetings. The department recommends the joint board **TAKE NO ACTION**. Alternatively, the joint board may consider the merits of reducing the total number of seats which is greater than the community's current population.

COST ANALYSIS: Approval of this proposal could result in an additional direct cost for a private person to participate in the regulatory process since there would no longer be state funds to assist residents of this community who travel to participate in the boards' processes.

PROPOSAL 7 – 5 AAC 96.021. Establishment of advisory committees. Reduce the membership for the Lake Iliamna Advisory Committee to ten and designate seats for the communities of Pope Vannoy Landing and Port Alsworth.

PROPOSED BY: Lake Iliamna Advisory Committee.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.021(c)(3)(C) establishes the membership for the Lake Iliamna Advisory Committee with 15 seats including 9 community designated and 6 undesignated seats.

5 AAC 96.021. Establishment of advisory committees.

....

(c) The following committees are identified as representing more than one community, or additionally, as having less than 15 members, and the following seats on the committee are designated for each community:

...

(3) in the Southwest Alaska Region:

...

(C) Lake Iliamna	
Iliamna	3 representatives
Nondalton	2 representatives

Pedro Bay	1 representative
Kokhanok	1 representative
Igiugig	1 representative
Newhalen	1 representative
Undesignated	6 representatives

WHAT WOULD THE PROPOSAL DO? This proposal would change the makeup of the Lake Iliamna Advisory Committee. It reduces the total number of seats from 15 to 10, designates one seat for the communities of Port Alsworth and Pope Vannoy Landing, and reduces the number of seats for Iliamna, Nondalton, and the number of undesignated seats as follows:

Iliamna	1 representative
Nondalton	1 representative
Pedro Bay	1 representative
Kokhanok	1 representative
Igiugig	1 representative
Newhalen	1 representative
Port Alsworth	1 representative
Pope Vannoy Landing	1 representative
Undesignated	2 representatives

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the Lake Iliamna will have ten members and the quorum requirement will be six. The communities of Port Alsworth and Pope Vannoy will have guaranteed representation on the committee with one designated seat each. The representation for the communities of Iliamna and Nondalton would decrease to one designated seat each and as the sole representatives for these communities, these members would be able to appoint qualified alternates for their communities. The advisory committee would have two undesignated seats to fill by election rather than six. Travel for all members to attend committee meetings will be less expensive and more efficient.

BACKGROUND: This proposal was submitted by the Lake Iliamna Advisory Committee in response to population changes within the committee communities, concerns regarding low participation, difficulty with obtaining quorum, and arranging face to face meetings. In the last ten years membership on the committee ranged between nine and ten members, and traditionally residents from Pope Vannoy and Port Alsworth filled some of the undesignated seats. As mentioned in the proposal, meeting logistics and challenges with the current membership often lead to longer travel time for the meetings.

According to the Department of Labor, 2017 population estimate are as follows:

Community	Population
Port Alsworth	238
Newhalen	230
Kokhanok	173
Nondalton	144
Iliamna	100
Igiugig	57
Pedro Bay	32
Pope Vannoy	4

Currently Port Alsworth and Newhalen have the largest populations while Iliamna and Nondalton have the largest number of designated seats on the committee. Pope Vannoy has an estimated population of four. Since submission of this proposal, the Lake Iliamna Advisory Committee voted to amend the proposal to remove the proposed seat designation for Pope Vannoy and to change the number of undesignated seats to four.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. The department supports the committee members working with the joint board for to create a more inclusive advisory committee and fish and game regulatory process.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 8 - 5 AAC 96.021. Establishment of advisory committees. Establish seat designations for the Naknek/Kvichak Advisory Committee.

PROPOSED BY: Everett Thompson

WHAT WOULD THE PROPOSAL DO? This proposal would change the makeup of the Naknek/Kvichak Advisory Committee by designating one seat each for the communities of Levelock and South Naknek.

WHAT ARE THE CURRENT REGULATIONS? The Naknek/Kvichak Advisory Committee is established under 5 AAC 96.021(a) for the Southwest Region with 15 members, without any specific seat designations

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, membership for the Naknek/Kvichak Advisory Committee would have a designated seat for the communities of Levelock and South Naknek, and 13 undesignated seats. Elections for the Levelock and South Naknek representatives will generally take place in their respective communities. As the sole representatives of their communities these representatives could appoint alternates.

This may increase costs for members to meet. The current committee participatory members include a representative from Levelock, but not South Naknek.

BACKGROUND: Under 5 AAC 96.060(e)(1) membership must include representatives from each town or village located in the area that the committee represents. Levelock currently holds elections for a seat, but is not required to since regulation does not designate representation. Levelock has likely maintained representation on the committee for the last 30 years. There are references in historical minutes to the Levelock representative having an alternate. In February 2012 the advisory committee voted to designate a seat for South Naknek. No mention of Levelock was made at that time. Despite having a designated seat by virtue of a committee vote, no one from South Naknek is currently holding a seat on the committee.

Population estimates for the area according to the Department of Labor 2017 population estimate are as follows:

<u>Community</u>	<u>Population</u>
Naknek	504
King Salmon	309
Levelock	89
South Naknek	74

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. The department supports committee members working with the joint board to create a more inclusive advisory committee and fish and game regulatory process.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 9 - 5 AAC 96.021. Establishment of advisory committees. Change the name of the Kotzebue Advisory Committee to Kotzebue Sound Advisory Committee.

PROPOSED BY: Alex Whiting.

WHAT WOULD THE PROPOSAL DO? The proposal changes the name of the Kotzebue Advisory Committee to Kotzebue Sound Advisory Committee.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.021(a)(5) establishes the Kotzebue Advisory Committee for the Arctic Region with 15 members.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the effect would be minimal because the advisory committee regularly uses this name. The name change indicates to residents living around Kotzebue Sound that the committee represents their interests.

BACKGROUND: The committee regularly refers to itself as the “Kotzebue Sound Advisory Committee” on its meeting recommendations, agendas, and public notices. According to the proposal, this title change is more inclusive of the permanent and seasonal camps around Kotzebue Sound area.

DEPARTMENT COMMENTS: The department **SUPPORTS** the desire of the advisory committee to update its name to better reflect the committee’s interests.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 10 - 5 AAC 96.021. Establishment of advisory committees. Reduce the number of undesignated seats for advisory committees in the Arctic region.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal reduces undesignated seats and total seats for three Arctic Region advisory committees.

WHAT ARE THE CURRENT REGULATIONS?
5 AAC 96.021. Establishment of advisory committees.

....

(c) The following committees are identified as representing more than one community, or additionally, as having less than 15 members, and the following seats on the committee are designated for each community:

...

(5) in the Arctic Alaska Region:

...

(B) Northern Seward Peninsula

Buckland	3 representatives
Deering	2 representatives
Undesignated	10 representatives

...

(D) Lower Kobuk

Noorvik	3 representatives
Kiana	2 representatives
Selawik	3 representatives
Undesignated	7 representatives

(E) Noatak/Kivalina

Noatak	3 representatives
--------	-------------------

Kivalina 2 representatives
 Undesignated 10 representatives

...

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, the effect would be minimal because the reduced number of representatives closely reflects current membership. Having fewer members takes away the option for these advisory committees to expand membership if ever desired in the future.

BACKGROUND: The Arctic Region committees for this proposal tend to leave several of the undesignated seats vacant. Currently, the Northern Seward Peninsula Advisory Committee membership has seven seats filled, eight vacant; the Lower Kobuk has six seats filled and nine vacant; and the Noatak/Kivalina has eight seats filled with seven vacant. The population for each community, according to the Department of Labor 2017 population estimate is as follows:

<u>Advisory Committee</u>	<u>Community</u>	<u>Population</u>
Northern Seward Peninsula	Buckland	510
	Deering	154
Lower Kobuk	Noorvik	669
	Kiana	417
	Selawik	861
Noatak/Kivalina	Noatak	580
	Kivalina	417

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal upon approval by the three advisory committee and considering any changes they may offer.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 11 - 5 AAC 96.020. Creation of local fish and game advisory committees. Consolidate regulations addressing the creation of advisory committees.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal consolidates the regulatory provisions related to the creation of advisory committees under one regulatory section.

WHAT ARE THE CURRENT REGULATIONS? Current regulations governing the creation of advisory committees are offered in four locations.

5 AAC 96.020. Creation of local fish and game advisory committees. The joint board may establish an advisory committee that represents fish and game user groups in the area served by the committee as required in 5 AAC 96.060(e)(1). A group of 25 interested people may request the joint board to create a committee. When considering a request to create a committee, the joint

board will consider the factors set out in 5 AAC 96.420. A committee must be approved by the joint board before starting its operations.

5 AAC 96.060. Uniform rules of operation.

...

(e) Membership.

...

(2) The joint board will appoint the original five members of a committee.

...

(6) A committee shall begin its duties when the joint board appoints the first five members.

...

5 AAC 96.410. Distribution of local fish and game advisory committees. The joint board will, to the extent feasible, establish and locate committees to allow an opportunity for all citizens of the state to participate in the regulatory system.

5 AAC 96.420. Review of requests for local fish and game advisory committees. The joint board will review requests to create committees. Factors that it will evaluate include

(1) whether an existing committee could be expanded to include members who represent the interest of the persons making the request;

(2) whether representation of all user groups on existing committees in the area is adequate;

(3) whether residents of the local area are likely to participate actively on the proposed committee;

(4) whether there are likely to be enough qualified people interested in serving on the proposed committee;

(5) whether logistical problems would make it difficult to provide assistance to the proposed committee;

(6) whether the proposed committee would enhance participation in the decision-making process; and

(7) repealed 2/23/2014;

(8) the efficiency of existing committees.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The proposal seeks to consolidate existing regulatory provisions related to the creation of advisory committees under one regulation citation, 5 AAC 96.020. By consolidating these regulations under one section, it streamlines the topics for establishing advisory committees.

BACKGROUND: Current provisions related to the creation of advisory committees exist in four locations throughout the chapter. Provisions directing initial membership and how advisory committees are to be distributed throughout the state are in different sections and not included in the beginning. For the public and advisory committees reviewing this subject, they might anticipate regulations governing the creation of advisory committees exist in one area at the beginning of the chapter. This causes confusion when the regulations are not read in their entirety. The history of regulation development in this matter is unknown, but the department

assumes the various sections were designed independently without considering them in their entirety.

DEPARTMENT COMMENTS: The original proposal did not include section 5 AAC 96.420 regarding factors the joint board will consider when creating advisory committees. The department submitted and **SUPPORTS** the proposal as **AMENDED** to include 5 AAC 96.420. This proposal is a regulatory streamlining measure to consolidate regulations concerning the creation of advisory committees.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 12 - 5 AAC 96.020. Creation of local fish and game advisory committees, 96.040. Qualifications for members, and 96.060. Uniform Rules of Operation. Require members to reside within the committee's geographic area.

PROPOSED BY: Rebecca Skinner.

WHAT WOULD THE PROPOSAL DO? The proposal would require advisory committee members to reside within the geographic area they serve.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.020. Creation of local fish and game advisory committees. The joint board may establish an advisory committee that represents fish and game user groups in the area served by the committee as required in 5 AAC 96.060(e)(1). A group of 25 interested people may request the joint board to create a committee. When considering a request to create a committee, the joint board will consider the factors set out in 5 AAC 96.420. A committee must be approved by the joint board before starting its operations.

5 AAC 96.040. Qualifications for members. To qualify for membership on a committee, a candidate must have knowledge of and experience with the fish and wildlife resources and their uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership.

5 AAC 96.060 Uniform Rules of Operation.

(e) Membership.

(1) ... The members must be representative of fish and game user groups in the area served by the committee. To the extent practicable, at least three user groups must be represented on each committee, and membership must include representatives from each town or village located in the area that the committee represents. ...

...

(3). Each committee member, and each voting-age resident of the area of committee jurisdiction under 5 AAC 97.005 who attends a committee election, may vote on a nomination for membership. ...

...

(h) Nomination. A committee member or resident of the area served by the committee who qualified under this section may submit a nomination for committee membership to the committee orally or in writing A person qualifies as a resident of the area served by the committee if the person is a resident as defined in AS 16.05.940 who maintains an abode in the area served by the committee described in 5 AAC 97.005.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted it would affect advisory committee membership for members who reside outside the geographic area of the committee. Boards support staff and advisory committees would need to review current membership to determine if any members would no longer qualify once the boundaries for the geographic areas for each advisory committee were defined. Before that can happen, the joint board would presumably need to redefine what “area” means, if it does not mean the area of jurisdiction, which in some cases can be quite broad. Any members who do not reside within the geographic areas would likely serve until their term expires unless the joint board prefers otherwise. For future election meetings, advisory committees will need to make sure those who are nominated are residents of the geographic area before voting. This could create some challenges for some committees depending on the definition of the geographic area.

In some instances, this change would reduce the available pool of potential advisory committee members. There are some regions where a significant number of long-standing participants who are willing to serve and are knowledgeable about resources in the area do not reside in the communities outside of the summer months. There may also be a lack of other interested individuals in the communities. The effect of this proposal if adopted may be to reduce the number of interested and qualified candidates for advisory committees.

BACKGROUND: With the exception of community designated seats, current regulations do not stipulate residency requirements for membership, nor is it clear other regulations intend for that to be the case. The regulations provide guidance on what constitutes a qualified member in 5 AAC 96.040 as having “knowledge of and experience with the fish and wildlife resources and their uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership”.

5 AAC 96.060(e)(1) further informs us “members must be representative of fish and game user groups in the area served by the committee”, and “to the extent practicable, ...membership must include representatives from each town or village located in the area that the committee represents.” These regulations do not specify all advisory committee members must reside in the area served.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. If the joint board adopts the proposal, the department requests a clear definition for the geographic area for the committees and how an advisory committee verifies residency at elections.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 13 - 5 AAC 97.005. Areas of jurisdiction for advisory committees. Change the advisory committees having jurisdiction for the Cook Inlet-Resurrection Bay area for finfish by removing Mt. Yenlo and Denali Advisory Committees.

PROPOSED BY: Seward Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal removes the Mt. Yenlo and Denali Advisory Committees from the jurisdiction for the Cook Inlet-Resurrection Bay Area.

WHAT ARE THE CURRENT REGULATIONS? Alaska Statute 16.05.260 authorizes the commissioner to “delegate authority to advisory committees for emergency closures during established seasons. The commissioner is empowered to set aside and make null and void only opening of seasons set by the advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.

5 AAC 97.005 Areas of jurisdiction for advisory committees.

(1) finfish

...

(E) Cook Inlet – Resurrection Bay Area

(i) all waters of Alaska north of the latitude of Cape Douglas and west of the longitude of Cape Fairfield;

(ii) fish and game advisory committees with concurrent jurisdiction are Seward Advisory Committee, Cooper Landing Advisory Committee, Kenai/Soldotna Advisory Committee, Mt Yenlo Advisory Committee, Homer Advisory Committee, Anchorage Advisory Committee, Matanuska Valley Advisory Committee, Central Peninsula Advisory Committee, Seldovia Advisory Committee, Denali Advisory Committee, Tyonek Advisory Committee, and Susitna Valley Advisory Committee.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the Mt. Yenlo and Denali advisory committees would not have jurisdiction for the Cook-Inlet-Resurrection Bay Area for the purpose of implementing emergency closures on taking finfish. The majority of advisory committees having jurisdiction needed to implement an emergency closure would be six instead of seven.

BACKGROUND: The regulation giving authority to advisory committees for closing seasons on taking fish or game requires action by a majority of the advisory committees listed as having jurisdiction. There are two areas for finfish around the Kenai Peninsula established under 5 AAC 97.005 for this purpose: Prince William Sound-Lower Copper River Area and the Cook Inlet-Resurrection Bay Area. The Cook Inlet-Resurrection Bay covers the western and southern waters surrounding the Kenai Peninsula. All of the Kenai Peninsula advisory committees except Whittier have jurisdiction for this area along with the Anchorage, Mat-Valley, Tyonek, Mt. Yenlo, Denali, and Susitna Valley committees. The more northern advisory committees are located near major river systems that flow into Cook Inlet.

The same area for shellfish (Cook Inlet) establishes jurisdiction to fewer advisory committees: Seward, Cooper Landing, Seldovia, Homer, Tyonek, and Central Peninsula.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal, but recommends if the joint board takes action that it thoroughly review the “areas of jurisdiction” framework to determine if it is effective in meeting the intent of statute.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 14 - 5 AAC 97.005. Areas of jurisdiction for advisory committees. Update the area of jurisdiction for westward area king crab to include the Kotzebue Advisory Committee.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal adds the Kotzebue Advisory Committee Advisory Committee to the area of jurisdiction for westward area king crab, Registration Area Q.

WHAT ARE THE CURRENT REGULATIONS?
5 AAC 97.005

...

(2) shellfish

...

(E) westward area king crab

...

(iv) in king crab Registration Area Q described in 5 AAC 34.900, the Kodiak Advisory Committee, Chignik Advisory Committee, Sand Point Advisory Committee, King Cove Advisory Committee, False Pass Advisory Committee, Unalaska Advisory Committee, and Northern Norton Sound Advisory Committee have concurrent jurisdiction;

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If this proposal is adopted the Kotzebue Advisory Committee will be among the advisory committees having jurisdiction for westward area king crab, Registration Area Q, for the purpose of the advisory committees implementing emergency closures. For an emergency closure to be implemented for District Q king crab, the addition of the Kotzebue Advisory Committee would require action by five of eight committees.

BACKGROUND: There is a subsistence king crab fishery in waters of Kotzebue Sound, yet the Kotzebue Advisory Committee is not listed with the advisory committees having jurisdiction for the purpose of emergency closures during established seasons.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal to give the Kotzebue Advisory Committee representation for this area of jurisdiction as it relates to emergency closures initiated by advisory committees.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 15 - 5 AAC 97.010. Advisory committee emergency closures. Amend the emergency closure process to exclude advisory committees that have not met within the last three years.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal amends the ratification process for emergency closures initiated by an advisory committee, to be affirmed by the majority of advisory committees listed in the area of jurisdiction under 5 AAC 97.005 that have met within the last three years.

WHAT ARE THE CURRENT REGULATIONS? Alaska Statute 16.05.260 authorizes the commissioner to “delegate authority to advisory committees for emergency closures during established seasons. The commissioner is empowered to set aside and make null and void only opening of seasons set by the advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.”

5 AAC 97.010 specifies the process for advisory committees to initiate emergency closures, which requires ratification by a majority of the members of a majority of the committees in the affected area of jurisdiction listed under 5 AAC 97.005. The regulation states that emergency closures must be based on sound conservation reasoning and sustained-yield principle, must be necessary for the immediate protection of a stock, species, or population, and may not be initiated for the purpose of achieving primarily social, economic, or other nonbiological goals. Before an emergency closure initiated by a committee becomes effective, the commissioner or his designee will review the closure to ensure compliance with these standards.

5 AAC 97.005 establishes areas of jurisdiction for advisory committees for the purpose of initiating emergency closures for finfish, shellfish and game.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? In the event an advisory committee initiates an emergency closure for a fish, shellfish, or game season, ratification by a majority of advisory committees will be less challenging to achieve for areas of jurisdiction having inactive committees.

BACKGROUND: The initiation of emergency closures is not a common action pursued by advisory committees. Over the past several years, representatives from at least two advisory committees inquired about the process to pursue closure to a fishery. This was during the summer months when it is a challenge to hold advisory committee meetings in order to take action.

The number of advisory committees listed under areas of jurisdiction for finfish, shellfish, and game can range from two (Yakutat-Yakataga area for finfish) to as many as 24 (Southeast and

Yakutat area for shellfish); many areas of jurisdiction have six to seven advisory committees. Among the Southeast Region's 24 advisory committees, eight have met in recent years making it highly improbable for these committees to carry out an emergency closure should a dire conservation concern emerge.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal to provide a reasonable possibility for advisory committees to initiate emergency closures for conservation reasons.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 16 - 5 AAC 96.050. Functions of local fish and game advisory committees. Expand the functions of the advisory committees to encourage involvement of youth and elders.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal expands the functions of advisory committees to include encouragement of youth and elder participation.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.050. Functions of local fish and game advisory committees

A committee may

- (1) develop regulatory proposals for submission to the appropriate board;
- (2) evaluate regulatory proposals submitted to them and make recommendations to the appropriate board;
- (3) provide a local forum for fish and wildlife conservation and use, including any matter related to fish and wildlife habitat;
- (4) repealed;
- (5) repealed
- (6) cooperate and consult with interested persons and organizations, including government agencies, to accomplish (1) - (5) of this section.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, it would enhance recognition and encouragement of youth and elder participation to help carry out advisory committee functions.

BACKGROUND: Many advisory committees have slow turnover in membership, and young residents are not highly involved with advisory committee activities. Some advisory committees make efforts to increase youth involvement, but generally indicate difficulty in attracting younger participants to work with the committees.

Unlike younger Alaskans, elders are participants in advisory committee efforts, but there remains a concern among committees that traditional knowledge is not widely regarded. This concern is noted in rural and urban advisory committees alike. The term "elder" in this context attempts to

acknowledge the important role of experiential knowledge as a valuable contribution from advisory committees.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal to support committees' incorporation of more youth involvement and elder guidance with their activities.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 17 - 5 AAC 96.060. Election procedures. Reorder and clarify the election procedures under the uniform rules of operation for advisory committees.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal reorders and combines provisions related to advisory committee election procedures under the Uniform Rules of Operation. It removes redundant and ambiguous provisions and updates the regulations to recognize current practices.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.060. Uniform rules of operation.

...

(e) Membership.

(1) Each committee must have at least five but not more than 15 members. The joint board may limit the size of a committee to less than 15 members at the time the committee is established or at committee request. The members must be representative of fish and game user groups in the area served by the committee. To the extent practicable, at least three user groups must be represented on each committee, and membership must include representatives from each town or village located in the area that the committee represents. To ensure full representation of an area, the joint board may assign a seat on the committee to represent a specific user group or specific community.

(2) The joint board will appoint the original five members of a committee.

(3) Each committee member, and each voting-age resident of the area of committee jurisdiction under 5 AAC 97.005 who attends a committee election, may vote on a nomination for membership. Nominees receiving the most votes are elected. Except as otherwise provided in this paragraph, a committee need not establish a quorum to elect a new member. The election for a seat specified in 5 AAC 96.021(c) may take place in the community for which the seat is specified. An undesignated seat may be filled at a regularly scheduled committee meeting if a quorum is present. A committee may not refuse membership to a nominee if committee membership is less than the number of members authorized by the joint board.

(4) A committee shall forward election results, and each newly-elected or re-elected member shall forward a new member form, to the appropriate regional office of the board support

section not later than 30 days after the election. A re-elected member continues to carry out that member's duties. A newly-elected member that is filling a

(A) Vacated seat begins serving immediately and has immediate voting and membership privileges;

(B) seat of a member whose term is expiring will be seated at the first committee meeting that is held after the date that the term of the previous member expires.

(5) A newly-elected or re-elected member loses membership status if the member fails to submit a new member form within 30 days after the election, or if the member's confirmation is refused by the joint board.

(6) A committee shall begin its duties when the joint board appoints the first five members.

(7) Each advisory committee may appoint two alternates. However, any member of an advisory committee who is the sole representative from a village or town may also appoint an alternate. Each alternate must meet the qualifications under this chapter. When acting as a member of an advisory committee, an alternate is entitled to the benefits, privileges, and responsibilities of a regular member.

(8) If an advisory committee appoints an alternate from the remaining nominees from an election, the alternate may fill a vacancy on the advisory committee throughout the year, if the election results are maintained for the record.

(f) **Terms of Members.** Each committee shall establish the terms of the committee's members so that not more than one-third of the committee members' terms expire in one calendar year. Terms commence on July 1 and expire on June 30 of the year designated or until a successor has been duly elected at the next committee meeting. The maximum length of a term is three years.

(g) **Vacancy.** A committee shall fill a vacancy through nomination and election under (e) of this section. A committee shall give at least 14 days' public notice of a vacancy. The member elected to fill a vacant seat serves the remainder of the vacant seat's term. A chairman shall declare a vacancy on a committee when any of the following occurs:

- 1) a member's death, resignation, or refusal to accept election;
- 2) a member's absence from three consecutive, regularly advertised meetings without reasonable justification, as determined by a majority vote of the committee; or
- 3) a member's removal by the joint board for cause.

(h) **Nomination.** A committee member or resident of the area served by the committee who qualifies under this section may submit a nomination for committee membership to the committee orally or in writing, at any regular meeting, regardless of whether a quorum is present. The committee may set a time period during which the committee will accept nominations and shall give adequate public notice of the time before accepting nominations. A committee shall vote on each nomination under (e) of this section either at the next regular meeting after the committee accepts nominations, or at the same meeting at which the committee accepts a nomination. The committee shall decide whether to vote on nominations at the same or at a subsequent meeting and shall provide appropriate notice of this decision. A person qualifies as a resident of the area served by the committee if the person is a resident as defined in AS 16.05.940 who maintains an abode in the area served by a committee described in 5 AAC 97.005.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the regulations pertaining to advisory committee elections would be easier to follow because they would be located together and presented in linear fashion. Several of the proposed changes reflect current practices and consolidate election-related provisions.

BACKGROUND: See issue statement in the proposal.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal with an amendment to paragraph (g)(4) related to quorum requirements for elections. Paragraph (g)(4)(C) specifies elections are held at duly noticed committee meetings while the previous two paragraphs, (A) and (B), do not specify meetings are to be duly noticed. This was unintentional and if the proposal is adopted as is, it may imply that some committee meetings need not be duly noticed. Providing adequate notice is referenced earlier in the proposal under nominations. The department recommends removing the phrase under paragraph (g)(4)(C) for consistency.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 18 - 5 AAC 96.060. Uniform rules of operation. Clarify the provision that advisory committees may not refuse membership to a nominee.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal clarifies that advisory committees may not refuse membership to a nominee only for an undesignated seat when committee membership is less than the number of members authorized by the joint board.

WHAT ARE THE CURRENT REGULATIONS?
5 AAC 96.060. Uniform rules of operation.

....

(3) Each committee member, and each voting-age resident of the area of committee jurisdiction under 5 AAC 97.005 who attends a committee election, may vote on a nomination for membership. Nominees receiving the most votes are elected. Except as otherwise provided in this paragraph, a committee need not establish a quorum to elect a new member. The election for a seat specified in 5 AAC 96.021(c) may take place in the community for which the seat is specified. An undesignated seat may be filled at a regularly scheduled committee meeting if a quorum is present. A committee may not refuse membership to a nominee if committee membership is less than the number of members authorized by the joint board.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the regulation will be clear that advisory committees may not refuse membership to a nominee for a vacant undesignated seat. However, advisory committees would be able to refuse

membership to a nominee for a vacant seat designated for communities if that nominee is not from the designated community.

BACKGROUND: Current regulation does not allow advisory committees to refuse membership to nominees for any seats when membership is less than the number of members authorized by the joint board. This allows advisory committees to fill vacant seats including those that are designated for specific communities when a nominee may not reside in that community.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal to make it clear that advisory committees may not refuse membership to nominees for all vacant seats except those designated for communities. The department recommends amending the proposal to clarify undesignated seats as defined under 5 AAC 96.021(c).

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 19 and PROPOSAL 20 - 5 AAC 96.060. Uniform rules of operation. Simplify the process for removing advisory committee members for having unjustifiable absences from meetings.

PROPOSED BY: Kenai/Soldotna Fish and Game Advisory Committee (Proposal 19) and the Alaska Department of Fish & Game (Proposal 20)

WHAT WOULD THE PROPOSALS DO? The proposals are slightly different, but address the same concern. Proposal 19 requests boards support notify an advisory committee member for unjustifiable absences from three consecutive meetings, and upon failure of the member to respond within a certain time-period it results in the member's automatic removal from the committee, or upon approval by a board chairperson or boards support. Proposal 20 seeks to remove the requirement for the joint board to act, thereby leaving it to the advisory committee chair.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.060. Uniform rules of operation.

...

(g) **Vacancy.** A committee shall fill a vacancy through nomination and election under (e) of this section. A committee shall give at least 14 days' public notice of a vacancy. The member elected to fill a vacant seat serves the remainder of the vacant seat's term. A chairman shall declare a vacancy on a committee when any of the following occurs:

- (1) a member's death, resignation, or refusal to accept election;
- (2) a member's absence from three consecutive, regularly advertised meetings without reasonable justification, as determined by a majority vote of the committee; or
- (3) a member's removal by the joint board for cause.

...

(n) **Removal for Cause.** The joint board may remove any member of a committee for cause upon the written request of the majority of all members serving on the committee setting out the reasons for the requested removal. As used in this subsection, "cause" includes

- (1) unjustifiable absence from three consecutive meetings;
- (2) conviction of a crime or imposition of an administrative disciplinary action for behavior inconsistent with the responsibility of a fish and game advisory committee membership within the preceding five years;
- (3) serious and substantial disregard for or violation of the provisions of this chapter or 5 AAC 97 governing the committee system, including conduct warranting the imposition of disciplinary measures under Robert's Rules of Order; or
- (4) failure, at any time, to meet the qualifications for committee membership.

WHAT WOULD BE THE EFFECT IF THE PROPOSALS WERE ADOPTED?

If Proposal 19 is adopted, the process for removing an AC member having unjustifiable absences from three consecutive meetings would not require action from the joint board nor would advisory committees need to wait until the expiration of that member's term to fill the seat. Instead, boards support would notify the advisory committee member of the absences. Failure for the member to reply within a certain time period would allow an advisory committee to announce the vacancy and elect a new member to fill the seat automatically or upon approval by either the chair of the Alaska Board of Fisheries or the chair of the Alaska Board of Game, or by boards support.

Proposal 20 is slightly different. It rests the ability to remove the member for having three unjustifiable absences solely up to an advisory committee chair.

In either case, advisory committees would have a faster method to replace inactive members, improving their ability to make quorum, and thus providing the area served with a more robust discussion of fish and wildlife topics.

BACKGROUND: The Uniform Rules of Operation for advisory committees includes two provisions dealing with advisory committee members who fail to attend three consecutive meetings without reasonable justification. The vacancy provision in 5 AAC 96.060(g) gives the committee chair the ability to announce a vacancy. The removal for cause provision in 5 AAC 96.060(n) gives authority to the joint board to remove the member. These provisions cause confusion as to whether an advisory committee can declare a vacancy for attendance issues and elect a new member, or if the advisory committee needs to wait for joint board action. Although this does not happen often, advisory committees may choose to wait for the member's term to expire rather than declaring a vacancy. This can lead to difficulty for an advisory committee to make quorum since regulations specify that a quorum is a majority of all members serving. Given the infrequent occurrence of joint board meetings, waiting for joint board action is cumbersome.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** Proposal 20. The simplest regulatory change is to remove the joint board from the decision-making process and

allow advisory committees the ability to manage the formal action. Whether written into regulation or not, boards support will assist a committee chair in communicating with the absent member. Advisory committees are autonomous bodies and in most cases are more attuned to their local issues than boards support. Providing boards support with the authority to remove members at its own discretion may bring about decisions inconsistent with the wishes of the advisory committee.

COST ANALYSIS: Approval of these proposals is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 21 - 5 AAC 96.060. Uniform rules of operation. Amend the advisory committee vacancy rules.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal allows an advisory committee chairperson to declare a vacancy for a member who has not been duly elected but remains in the seat until a successor has been duly elected.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.060. Uniform rules of operation.

...

(f) **Terms of Members.** terms commence on July 1 and expires on June 30 of the year designated or until a successor has been duly elected at the next committee meeting.

(g) **Vacancy.** A committee shall fill a vacancy through nomination and election under (e) of this section. A committee shall give at least 14 days' public notice of a vacancy. The member elected to fill a vacant seat serves the remainder of the vacant seat's term. A chairman shall declare a vacancy on a committee when any of the following occurs:

- (1) a member's death, resignation, or refusal to accept election;
- (2) a member's absence from three consecutive, regularly advertised meetings without reasonable justification, as determined by a majority vote of the committee; or
- (3) a member's removal by the joint board for cause.

...

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, advisory committee chairpersons may declare a vacancy and compel an election for expired committee seats, which could result in preventing willing community members with expired terms from participating on the advisory committee until a community election is held.

BACKGROUND: Occasionally advisory committees having community designated seats retain members after the terms have expired, while waiting for the designated communities to hold elections. In some cases, terms are expired for several years. Current regulations under 5 AAC

96.060(f) *Terms of Members*, allows a member in an expired seat to continue serving until a successor is duly elected at the next committee meeting. If the seat is a community designated seat, the election typically occurs in the community. In deference to communities, a chair may not want to question their choice of representation, but having the ability to declare a vacancy to provoke action by the community may be warranted in many cases.

Having committee members continue to serve after their term expires is not entirely problematic, but having current terms indicates community engagement. Membership terms are posted on the advisory committee websites and can raise questions by the public and agencies about committee status when seats expire. The department encourages communities to hold elections for advisory committee members to assure fish and game regulatory issues remain in the forefront for communities.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal which may assist advisory committees to fill expired, community designated seats.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process. .

PROPOSAL 22 - 5 AAC 96.060. Uniform rules of operation. Allow advisory committee members to discuss and vote by email, excluding actions for antlerless moose reauthorizations or emergency order closures.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal requests advisory committees be allowed to discuss and vote via email provided that all members and the boards support regional coordinator are on the communication and the committee formally records the action at the next regular meeting.

WHAT ARE THE CURRENT REGULATIONS? Advisory committees are governmental bodies as defined in the Open Meetings Act (AS 44.62.310). As such, any meeting of an advisory committee must be noticed in a consistent and reasonably timely manner, and open to the public. The current advisory committee Uniform Rules of Operation states “an act of a committee is by a majority of the members present at a duly held meeting at which a quorum is present”.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If passed, the regulation would allow advisory committee members to meet via email to approve proposal recommendations. It is believed this would violate Alaska’s Open Meetings Act (OMA).

BACKGROUND: Advisory committees are considered “governmental bodies” under the OMA. The OMA requires public notice be given for meetings of the body, whenever more than three members or a majority of the members, whichever is less, gather. In 2014 the Alaska Superior Court ruled in Alaska Wildlife Alliance et. al. v Spraker and Alaska Board of Game, that the use

of email by the Board of Game to determine whether a public petition appeared appropriate for an emergency petition meeting violated the OMA. Subsequent to this ruling, both boards of Game and Fisheries discontinued the practice of calling meetings via email for emergency petitions.

This ruling extends to advisory committees. The most common reason for advisory committees to gather on email is to approve proposal recommendations when time does not allow for a full meeting of the committee. Recent court findings dictate the use of email to conduct committee business is a violation of the OMA.

DEPARTMENT COMMENTS: The department recommends the board **TAKE NO ACTION** on the proposal because it is prohibited under the OMA.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 23 - 5 AAC 96.060. Uniform rules of operation. Provide guidance for advisory committee actions having abstentions.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal clarifies options for recording abstentions during committee voting. The proposal would allow advisory committees to record abstentions as part of the total vote count as “no votes” or record abstentions as neutral to the total vote count thereby allowing yea and nay votes to carry the decision. By clarifying committees have the option to exclude abstentions from the deciding vote count, it removes a current contradiction on quorum requirements elsewhere in regulation.

WHAT ARE THE CURRENT REGULATIONS?
5 AAC 96.060. Uniform rules of operation.

....

(q) Quorum. A majority of all the members serving on a committee constitutes a quorum for the transaction of business. Every action or decision of a majority of the members present at a duly held meeting of a committee, at which a quorum is present, is an act of the committee.

(r) Rules of Meetings. Meetings of a committee will, to the extent practicable, be conducted according to the latest edition of Robert's Rules of Order....

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, advisory committees will have better guidelines for abstention voting. The committees will have the option of recording abstentions as “no” votes or treat them as neutral votes thereby allowing the remaining decisional votes to decide on the recommendation. As this change would allow committees to better reflect their preferred practice, it also prevents the contradiction the quorum requirement specified in regulation (5 AAC 96.060(q)). Advisory committees will need

to provide an explanation with the vote tally so the action is clear. This will enable the department, board and advisory committee members, and the public to better understand the outcome of committee actions when abstentions are used.

BACKGROUND: Advisory committees provide recommendations to the boards on proposals through a vote of the membership. Vote tallies are reported to the boards. There are times when advisory committee members abstain from voting.

The Uniform Rules of Operation do not provide guidance for how to consider abstentions other than directing advisory committees to conduct business in accordance to Roberts Rules of Order to the extent practicable. Under Roberts Rules of Order, abstentions may be treated as “no” votes or not part of the deciding vote count.

The practice of not counting the members who abstain as part of the total deciding count is contrary to the Uniform Rules of Order quorum regulation which says every action or decision of a majority of members present ... at which a quorum is present, is an act of the committee. Even if a committee member abstains, they are still part of the quorum for the meeting.

For example, if an advisory committee has a quorum with eleven members present and takes a vote with a count of 5-4 with two members abstaining, the quorum regulation indicates the decision is based on the majority of members present. Five members voting in the affirmative is not a majority of the members present and should fail.

When abstentions are not counted in the vote tally, an advisory committee may appear to fall short of having the minimum number of members to make quorum under 5 AAC 96.060(q). Some advisory committees record abstentions separate from the vote tally and do not make clear the final action for support or opposition, leaving the potential for boards support to not accurately capture committee intent.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal. Overall however, the department supports any direction the joint board provides advisory committees for recording actions involving abstentions. In doing so, it may consider establishing a single standard for committees. The department asks that one technical amendment be approved. The housekeeping amendment is to strike the word “are” in line three of the proposed wording.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 24 - 5 AAC 96.060. Uniform rules of operation. Add language to clarify advisory committee meetings are subject to the Open Meetings Act and modify noncompliant provisions.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal makes clear advisory committees are governing bodies under Alaska’s Open Meetings Act (OMA), changes the process for calling a committee meeting from a majority of the members to two members or the department, and requires committees appoint a member other than the secretary to approve advisory committee recommendations in instances when the full committee cannot meet prior to submitting recommendations to a board.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.060 Uniform rules of operation.

...

(o) Meetings.

(1) Regular meeting. A committee shall meet at least twice a year to remain active under 5 AAC 96.450. A committee may meet at times appropriate to the process described in 5 AAC 96.610, and at other times to formulate regulatory proposals, review and comment on proposals, and consider matters appropriate to the committee's functions under 5 AAC 96.050. A chairman or a majority of the full committee membership may call a regular meeting.

(2) Special meeting. A chairman or a majority of the full committee membership may call a special meeting at which any person may submit a statement to the committee on any matter relating to the committee's functions under 5 AAC 96.050 or 5 AAC 96.060(g), (h), or (m).

...

(s) Record of Meetings. Preliminary recommendations of each committee meeting shall be recorded in writing and forwarded to the boards support section not later than 30 days after the meeting. Before an advisory committee chair or a designee will be allowed to represent the advisory committee before the joint board, the Board of Fisheries, or the Board of Game, the appropriate board may require that the advisory committee submit to the respective board a set of the committee's written recommendations relevant to the topic of the board meeting.

Article 6. Open Meetings of Governmental Bodies.

Sec. 44.62.310. Government meetings public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

...

(h) In this section,

(1) “governmental body” means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; “governmental body” includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) “meeting” means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) “public entity” means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

...

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, the regulations will make clear advisory committees are subject to the OMA. Reducing the number of members required to call an advisory committee meeting brings regulations into compliance with the OMA and will help in some circumstances such as when advisory committees are dormant and no longer have enough members to call a meeting, or when advisory committee officers are unavailable to call a meeting. Reducing the number of members needed to call a meeting could have the effect of having additional advisory committee meetings that are not called by the chairperson.

The proposal also provides instructions for approving advisory committee recommendations by a single member of the committee if the committee is unable to meet again at a duly noticed meeting, but must forward recommendations to a board prior to a comment deadline.

BACKGROUND: Boards support provides guidance and carries out notice requirements to ensure advisory committees comply with the OMA. Current regulations allow a majority of members to call advisory committee meetings which is in violation of the OMA given the members must be in some form of communication in order to jointly call a meeting.

With regard to approving advisory committee recommendations, past practice for some advisory committees was to poll the members via email or phone when they were unable to meet prior to a board meeting comment deadline. In *Alaska Wildlife Alliance v. Spraker, et al*, the Alaska Superior Court ruled the use of polls by governing bodies is a violation of the OMA. Since the time of that ruling, boards support encourages advisory committees to assign a single member other than the record keeper to provide preliminary approval of minutes until the next advisory committee meeting.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** this proposal to make clear that advisory committees are subject to the OMA, remove noncompliant provisions, and reflect current practice for approving recommendations.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 25 - 5 AAC 96.060. Uniform rules of operation. Remove redundant provisions for advisory committee officer regulations and clarify duties of the secretary.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal removes redundant provisions for officer elections and qualifications, and adds the task of recordkeeping of advisory committee meetings as a duty of the secretary.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.040. Qualifications of members. To qualify for membership on a committee, a candidate must have knowledge of and experience with the fish and wildlife resources and their uses in the area, and have a reputation within the community consistent with the responsibilities of committee membership.

5 AAC 96.060. Uniform rules of operation.

....

(i) Officers. The officers of a committee consist of a chairman, a vice-chairman, and a secretary. The term of office for officers is two years starting July 1 and ending June 30 of the following year, or until the next meeting when new officers can be elected.

(j) Chairman. The chairman is elected by a majority vote of a quorum of the committee and is the presiding officer. A chairman must meet the qualifications set out in 5 AAC 96.040.

(k) Vice-chairman. The vice-chairman is elected by a majority vote of a quorum of the committee and shall assist the chairman and assume chairman's duties when the chairman is absent.

(l) Secretary. The secretary is elected by a majority vote of a quorum of the committee and may be, but need not be, a member of the committee. The secretary shall carry out the usual duties associated with the office. If the secretary is not a committee member, the secretary has no vote on committee business other than nominations for committee membership.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, there would be no effect on the current process for electing officers nor on the qualification requirements for chairpersons. The changes offered in this proposal streamline

regulations and clarify a standard practice of committee officers. It clarifies members elected to serve as secretary are required to maintain the record of advisory committee meetings.

BACKGROUND: Advisory committee officers are elected by a majority vote of a quorum of the advisory committee and the officers have the same membership qualification requirements as all other members. Advisory committees have the option of selecting a non-member to serve as secretary in which case that person would not have to meet the qualification requirements.

The advisory committee secretary (recordkeeper) is responsible for recording the minutes of the advisory committee meetings and submitting them to boards support section. This has proven a challenging task for some advisory committees despite the critical importance of this function. Reporting committee recommendations is their critical function in statute and should be held in high regard by the committees.

Many committees rely on boards support staff to perform this function, but that is neither practical nor responsible. Boards support staff attendance at advisory committee meetings is inconsistent. Developing a dependence on this service is incompatible with performing this important function. Further, boards support is positioned as a neutral facilitator of Alaska's fish and game process. Relying on boards support to interpret and document committee discussions, particularly when the committee is at odds with the department, other advisory committees, or the board, at best puts boards support staff in a tenuous position; at worst puts staff as a potential party to litigation.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 26 - 5 AAC 96.XXX. New regulation. Schedule certain requests for advisory committees to be acted upon by each board during regularly scheduled meetings.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal allows the boards to address requests related to the creation, status, or dissolution of advisory committees at their regular meetings instead of at a joint board meeting. Public notice will be provided of each boards' consideration of the request. Following the action by each board, boards support will publicly notice the combined action.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.410. Distribution of local fish and game advisory committees. The joint board will, to the extent feasible, establish and locate committees to allow an opportunity for all citizens of the state to participate in the regulatory systems.

5 AAC 96.420. Review of requests for local fish and game advisory committees. The joint board will review requests to create committees. Factors that it will evaluate include

- (1) whether an existing committee could be expanded to include members who represent the interest of the persons making the request;
- (2) whether representation of all user groups on existing committees in the area is adequate;
- (3) whether residents of the local area are likely to participate actively on the proposed committee;
- (4) whether there are likely to be enough qualified people interested in serving on the proposed committee;
- (5) whether logistical problems would make it difficult to provide assistance to the proposed committee;
- (6) whether the proposed committee would enhance participation in the decision-making process; and
- (7) repealed 2/23/2014;
- (8) the efficiency of existing committees.

5 AAC 96.450. Committee status and change of status

(a) A committee is active if the committee forwards recommendations from at least two meetings per year to the appropriate regional office of the boards support section.

(b) The joint board may place a committee on an inactive list by committee request or joint board action. The committee may reactivate by holding a meeting and informing the joint board of the committee's active status through committee recommendations.

(c) Committees may merge if each affected committee votes to request merger, and if the joint board determines that the merger should occur, after considering the factors set out in 5 AAC 96.420.

(d) The joint board may merge an inactive committee with an active committee if the joint board gives the committees notice of the proposed merger, if the inactive committee does not express an intention to reactivate or if the committee does not do so within a reasonable time after notice, and if the joint board determines that the merger should occur, after considering the factors in 5 AAC 96.420. (e) The joint board may dissolve a committee if the committee has been inactive for two years and fails to respond to joint board inquiries about the committee's desire to remain in existence. The joint board may dissolve a committee for failure to act in accordance with the provisions of this chapter and 5 AAC 97.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted and if legal, the boards would be able to schedule and act upon certain advisory committee requests at their regularly scheduled meetings rather than at joint board meetings. This would allow more timely handling of these requests. The effect may be an increase in advisory committee requests if the boards regularly act rather than waiting several years for joint board meetings to be scheduled. This may also result in an imbalance in the regulatory process, depending on the timing of the meetings. This may also result in the need for additional meetings, depending on the urgency of the action, if the second board reverses the first board's action and the first board has no other meetings scheduled for the cycle. This would increase costs to the department. The proposal specifically requests "in accordance with 5 AAC 96.410 – 96.450", which relates to creating advisory committees and advisory committee status.

BACKGROUND: The joint board tends to meet every five years to consider regulatory changes under its authority. The joint board does not have a regular schedule, although the topic is expected to be discussed at the March 2019 meeting. Boards support occasionally receives requests from the public for changes to advisory committee membership or to create new advisory committees, but rarely receives requests for merging or dissolving committees. When requests are received, they are shared with board members and held on file until a joint board meeting is scheduled.

Given that the joint board is not on a regular schedule, both boards independently engage in administrative matters related to the joint board out of necessity. In the 2017/2018 meeting cycle the boards directed their joint board committee to meet and determine if a joint board meeting was necessary. Each board then independently voted if it agreed there should be a joint board meeting. This year both boards are vetted a joint board agenda change request that sought to add a regulatory subject not on the Call for Proposals. These recent actions were not regulatory.

Fundamental to the decision-making of any board are the deliberations that occur among the board prior to voting. Board members are expected to keep an open mind on subjects through deliberations and until the question is called. If each board was to take regulatory action independent of the other, the first board would not have the benefit of new public input and board discussion from the second meeting. Essentially one board would operate with significantly less information than the other, which would lead to an imbalance in the process.

A scenario that might come from separate but linked decision-making is if the first board scheduled to act does not pass the proposal, which effectively kills the proposal. It is unclear if the second board would be required to take up the proposal, nor what would happen if the second board adopted the proposal. Proposal advocates may successfully argue the first board did not receive all the information garnered by the second board and therefore needs to take up the proposal again. There would need to be a third meeting scheduled to review the proposal that was failed by the first board but adopted by the second board. The third meeting would require bringing to the first board all the written comments, audio recordings of applicable public testimony, and board discussion from the second meeting.

DEPARTMENT COMMENTS: The department appreciates this problem-solving effort to streamline decision making when joint board meetings are far and few between and is **NEUTRAL** on this proposal. The department supports a process that enables advisory committees to become more effective in the fish and game regulatory process. There may be scenarios that arise where merging committees or creating a new advisory committee without having to wait for a joint board meeting is beneficial.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 27 - 5 AAC 96.450. Committee status and change of status. Remove the concept of “active” and “inactive” committees.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal eliminates labeling advisory committee status as “active” and “inactive”. It eliminates the joint board process for placing advisory committees on an “inactive list” and for committees to inform the joint board when they have re-activated. It also clarifies that dormant advisory committees will be notified by boards support section, instead of the joint board, before any action is taken to dissolve or merge the dormant committee.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.450. Committee status and change of status

- (a) A committee is active if the committee forwards recommendations from at least two meetings per year to the appropriate regional office of the Boards Support Section.
- (b) The joint board may place a committee on an inactive list by committee request or joint board action. The committee may reactive by holding a meeting and informing the joint board of the committee’s active status through committee recommendations.
- (c) Committees may merge if each affected committee votes to request merger, and if the joint board determines that the merger should occur, after considering the factors set out in 5 AAC 96.420.
- (d) The joint board may merge an inactive committee with an active committee if the joint board gives the committees notice of the proposed merger, if the inactive committee does not express an intention to reactivate or if the committee does not do so within a reasonable time after notice, and if the joint board determines that the merger should occur, after considering the factors in 5 AAC 96.420.
- (e) The joint board may dissolve a committee if the committee has been inactive for two years and fails to respond to joint board inquiries about the committee's desire to remain in existence. The joint board may dissolve a committee for failure to act in accordance with the provisions of this chapter and 5 AAC 97.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, it would eliminate the requirement for the joint board to formally place an advisory committee on an “inactive list”. This does not happen currently, and if it did, it is unclear if there would be any effect.

The proposal also amends the dissolution process to reflect boards support’s administrative role for dissolving or merging dormant advisory committees through the joint board proposal process. This would create clarity for boards support to perform administrative work, while retaining the joint board as the final arbiter for dissolving advisory committees.

BACKGROUND: There are 84 advisory committees. Table 27.1 provides a detailed list of the advisory committees and the number of meetings each held in the five years between 2013/2014

and 2017/2018. During this time, each year between 43 and 48 advisory committees did not meet the regulatory definition of active, meaning they did not meet two times in a year. Between 19 and 25 advisory committees did not meet in a given year. (Table 27.2)

Advisory committees may meet just once in a year, or not at all, given budget constraints or workload considerations. The department treats them as active, although the current regulatory definition determines they are not. Other advisory committees do not meet over a period of time for various reasons, but have a history of participation when subject matters of interest arise. There is no need to concern the joint board with their status.

There are a number of advisory committees that have not met in years and are not at all active in the board process. Several do not reply to inquiries from boards support and in some cases contact information from past members is no longer current. Changing the nomenclature from “active” and “inactive” to “dormant” without defining what is a dormant committee provides the flexibility needed for boards support to recommend action based on a variety of factors as opposed to a single standard (how many times a committee met), which is often irrelevant.

Ultimately there is merit in keeping non-responsive dormant advisory committees in regulation in case there is interest from these communities or regions in the future to become involved with the regulatory process. Table 27.3 provides a list of advisory committees that have not met in the last five years. After many years of inactivity, the East Prince of Wales Island and Ketchikan advisory committees met in the 2018/2019 season. Not counting these two advisory committees, there are ten remaining committees that have not met in recent history. All but Lake Minchumina are Southeast Region advisory committees.

Table 27.1 Advisory Committee Meetings from 2013/2014 through 2017/2018 (includes teleconferenced meetings).

Advisory Committee	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Southeast Region					
Angoon	0	0	0	0	0
Craig	1	2	1	1	4
East Prince of Wales Island	0	0	0	0	0
Edna Bay	1	1	3	1	1
Elfin Cove	0	0	0	0	0
Hydaburg	0	0	0	0	0
Hyder	0	0	0	0	0
Icy Straits	0	3	0	0	0
Juneau-Douglas	2	2	2	3	5
Kake	3	0	1	0	0
Ketchikan	0	0	0	0	0
Klawock	0	0	0	0	0
Klukwan	0	0	0	0	0
Pelican	0	1	0	0	0
Petersburg	2	4	3	2	3
Port Alexander	0	0	0	0	4

Advisory Committee	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Saxman	0	0	0	0	0
Sitka	1	3	2	2	9
Sumner Strait	0	0	0	0	0
Tenakee Springs	0	0	0	0	0
Upper Lynn Canal	5	4	7	7	5
Wrangell	3	4	2	2	3
Yakutat	2	1	0	2	2
Western Region					
Bethel	2	2	3	2	5
Central Bering Sea	3	2	1	1	1
Central Kuskokwim	2	1	2	3	2
Coastal Lower Yukon	1	1	1	1	2
Lower Kuskokwim	2	1	1	1	1
Mid-Lower Yukon	2	2	1	2	2
Stony/Holitna	1	1	1	1	1
Coastal Lower Yukon	0	0	1	0	0
Mid Lower Yukon	0	0	2	0	0
Southcentral Region					
Anchorage	12	9	7	12	8
Central Peninsula	9	2	5	6	3
Cooper Landing	3	2	3	2	2
Copper Basin	2	3	1	3	2
Copper River/PWS	4	4	1	2	3
Denali	1	2	2	4	4
Homer	7	6	7	8	8
Kenai/Soldotna	14	8	8	11	9
Mat Valley	9	9	12	15	14
Mt Yenlo	1	0	1	0	3
Paxson	2	2	0	1	1
Seldovia	6	1	1	1	1
Seward	5	3	3	3	2
Susitna Valley	1	3	0	0	1
Tok Cutoff/Nabesna Road	0	0	0	2	2
Tyonek	0	3	2	5	2
Valdez	0	2	0	0	3
Whittier	2	2	2	2	2
Southwest Region					
Chignik	2	2	4	1	5
False Pass	1	2	1	0	0
King Cove	1	1	1	2	2

Advisory Committee	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Kodiak	1	1	3	2	1
Lower Bristol Bay	1	2	3	1	3
Lake Iliamna	1	1	2	1	1
Naknek/Kvichak	2	1	2	2	3
Nelson Lagoon	0	0	2	0	1
Nushagak	3	2	2	2	2
Sand Point	1	0	1	0	2
Togiak	1	2	2	2	2
Unalaska	2	1	5	4	3
Arctic Region					
Kotzebue	2	1	2	1	2
Lower Kobuk	2	1	1	1	0
Noatak/Kivalina	3	2	3	4	1
Northern Norton Sound	3	1	3	1	2
Northern Seward Peninsula	3	2	1	2	0
North Slope	2	2	2	2	0
St. Lawrence Is.	1	0	0	0	0
Southern Norton Sound	2	1	2	1	1
Upper Kobuk	4	1	1	1	0
Interior Region					
Central	2	0	1	2	1
Delta	7	7	7	7	7
Eagle	1	1	3	0	0
Fairbanks	7	7	7	7	7
Grayling Anvik Shageluk, Holy Cross (GASH)	1	3	3	1	0
Koyukuk	1	1	2	1	0
Lake Minchumina	0	0	0	0	0
McGrath	1	0	0	1	1
Middle Nenana River	5	3	4	4	2
Middle Yukon River	2	1	2	1	1
Minto/Nenana	1	1	1	1	1
Ruby	1	0	1	0	0
Tanana, Rampart, Manly	1	1	1	1	1
Upper Tanana/40 Mile	3	5	4	5	4
Yukon Flats	1	1	1	1	1

Table 27.2. Advisory Committee Meeting Activity

Year	No meetings	1 meeting	2+ meetings
2013/2014	19	24	41
2014/2015	22	24	38
2015/2016	22	22	40
2016/2017	25	23	36
2017/2018	25	18	41

Table 27.3 Advisory Committees with no Meetings from 2013/2014 – 2017/2018

Advisory Committee
Angoon
East of Prince of Wales*
Elfin Cove
Hydaburg
Hyder
Ketchikan*
Klawock
Klukwan
Saxman
Sumner Strait
Tenakee Springs
Lake Minchumina

* Reactivated starting in the 2018/2019 meeting cycle

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal. The department also encourages the joint board reflect on the merits of maintaining dormant, non-responsive advisory committees on the books.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 28 - 5 AAC 96.640. Regular meetings or 5 AAC 96.641. New regulation. Allow advisory committee representatives to be at the board table during deliberations for those proposals the advisory committee authored.

PROPOSED BY: Sue Entsminger.

WHAT WOULD THE PROPOSAL DO? The proposal would allow an advisory committee representative to sit at the board table during deliberations on those proposals submitted by the advisory committee.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.050. Functions of local fish and game advisory committees specifies that advisory committees may evaluate regulatory proposals and make recommendations to the appropriate board. The authority for this provision is based on Alaska Statute 16.05.260, which specifies that recommendations from advisory committees shall

be forwarded to the appropriate board for its consideration. The boards have the authority to call advisory committee representatives to the table for consultation during deliberations when needed, and to reconsider action on a proposal when an error is made.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, advisory committee representatives will sit at the board table during deliberations on those proposals the committee authors. This would allow advisory committee representatives to clarify intent or point out any misinterpretations during deliberations as opposed to other times during the board process. Board meetings would need to be extended to accommodate lengthier discussion. There would also be a greater need to allow advisory committee representatives the ability to participate via teleconference.

It is possible advisory committee authorship of proposals will increase to allow them to become more involved in board deliberations. As more advisory committees engage in “proposal inflation”, other committees with traditionally different views may also build up their number of proposal submissions to allow themselves a voice at the board table to refute other committees. When a board takes no action on an advisory committee proposal because of action taken on a previous advisory committee proposal in which both proposals are in opposing view of each other, the committee not allowed a chance to speak may have a reasonable challenge to the process. They will also question the board derive roadmap which put another committee’s proposal before their own.

An advisory committee member is not held to the same standards as a board member with regard to the Alaska Executive Branch Ethics Act (Ethics Act in AS 39.52) which requires board members recuse themselves from deliberations should they have a conflict with a proposal. Issues of equity and fairness will grow if advisory committee members with a conflict of interest sits at the table and discusses a proposal while a board member with a conflict is required to leave.

BACKGROUND: The boards set their own policies for public and advisory committee testimony and deliberation proceedings. The Board of Game (BOG) generally provides advisory committee representatives with 15 minutes for testimony and gives the option for testifying either during the public testimony portion of the meeting or immediately prior to board deliberations on proposals affecting the committee’s area. The Board of Fisheries (BOF) generally affords advisory committee representatives ten minutes during oral public testimony. The BOF committee process allows committee representatives further opportunity for dialogue with the board members. The Board of Game has held informal town hall style meetings to hear from affected stakeholders in a more relaxed format.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal. The department supports the boards establishing procedures to best accommodate their needs for deliberation, and for giving advisory committees greater input and guidance, particularly before large, impactful decisions are made. We also support enabling the advisory committees to be

more effective in the fish and game regulatory process. However, it is uncertain that the inefficiencies and potential legal challenges this method may bring will lead to significantly greater improvements to existing processes. There would be additional cost to the department if board meetings extend to accommodate extra time for deliberations.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 29 - 5 AAC 96.XXX. New Section. Allow advisory committee representatives a seat at the board table during deliberations on proposals affecting their region.

PROPOSED BY: Frank and Sue Entsminger.

WHAT WOULD THE PROPOSAL DO? The proposal would allow advisory committee representatives to sit at the board table during deliberations of proposal affecting their region for the purpose of answering questions and adding explanation about the committee action.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.050. Functions of local fish and game advisory committees specifies that advisory committees may evaluate regulatory proposals and make recommendations to the boards. This provision is based on Alaska Statute 16.05.260, which specifies that recommendations from advisory committees shall be forwarded to the appropriate board for its consideration. The boards have the authority to call advisory committee representatives to the table for consultation during deliberations when needed, and to reconsider action on a proposal when an error is made.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? Advisory committee representatives would sit at the board table during deliberations on proposals affecting their regions. The boards would determine for each proposal the advisory committee(s) that should participate in the deliberation. For many proposals, or for statewide meetings, this would involve several advisory committees. Advisory committee participation at board meetings and associated travel costs would likely increase. Board meetings would need to be extended to accommodate lengthier discussion.

Aside from technical hurdles like seating and availability of microphones, it is difficult to imagine how deliberations may fare for very difficult subject matters involving multiple advisory committees. In an attempt to gauge how much more participation might come from the passage of this proposal, Table 29.1 offers advisory committee input from recent BOF and BOG meetings along with support and opposition positions based on the Index of Comments for each meeting. The pattern of advisory committee consensus versus disagreement varies based on the meeting. There are many proposals before each board where multiple committees would be sitting at the table to advise the board during deliberations.

Table 29.1 Advisory Committee Recommendations on Proposals from Select Board Meetings

	Meeting			
	2017 Upper Cook Inlet Finfish - Fisheries	2018 Southeast Finfish - Fisheries	2017 Statewide Regulations - Game	2017 Interior - Game
Number of:				
Advisory Committees	8	8	30	28
Proposals	173	155	69	114
AC Recommendations	676	370	534	443
Average # of AC Recommendations per Proposal	3.9	2.4	7.7	3.9
Number of Proposals with				
AC Consensus	42	96	27	65
AC Disagreement	131	57	42	49
No AC recommendation	0	2	0	2

BACKGROUND: The boards set their own policies for public and advisory committee testimony and deliberation proceedings. The Board of Game (BOG) generally provides committee representatives with 15 minutes for testimony and gives the option for testifying either during the public testimony portion of the meeting or immediately prior to board deliberations on proposals affecting the advisory committee’s area. The Board of Fisheries (BOF) generally affords advisory committee representatives ten minutes during oral public testimony. The BOF committee process allows advisory committee representatives additional opportunity for dialogue with the board members. The Board of Game has held informal town hall style meetings to hear from affected stakeholders in a more relaxed format.

There is not a scenario where a proposal does not affect an advisory committee region. There are certain board meetings where advisory committee attendance is 15 or more, often with advisory committees having contrary recommendations.

DEPARTMENT COMMENTS: The department **OPPOSES** this proposal. While some proposal topics affect only a local area and would be of interest only to one advisory committee, many proposals address regionwide or statewide topics and are of interest to many advisory committees. The department is concerned the process for determining which advisory committees should participate in deliberations would make for a very time-consuming and cumbersome meeting. There would be additional cost to the department resulting from more lengthy meetings.

COST ANALYSIS: Approval of this proposal may result in an additional direct cost for a private person to participate in the regulatory process, depending on how much longer meetings go on for.

PROPOSAL 32 - 5 AAC 96.600. Meetings. Repeal the provision for Board of Fisheries members attending advisory committee meetings to be in compliance with the statutory requirement for holding board meetings in specific areas of the state.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal repeals the regulation that equates attendance by a Board of Fisheries (BOF) member at an advisory committee meeting to a board hearing.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.600. Meetings

(a) Each board will hold at least one regular meeting a year. Other meetings, including special meetings on specific issues, will be held as the boards consider necessary.

(b) The attendance of a Board of Fisheries member at a committee meeting constitutes a board hearing in accordance with AS 16.05.300(b). For the purposes of AS 16.05.300(b), "year" means the 12-month period beginning July 1 and ending June 30.

...

5 AAC 96.910. Definitions

...

(3) "committee" means a local fish and game advisory committee;

...

Alaska Statute 16.05.300. Board meetings.

(a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas:

- (1) Upper Yukon — Kuskokwim — Arctic
- (2) Western Alaska (including Kodiak)
- (3) Southcentral
- (4) Prince William Sound (including Yakutat)
- (5) Southeast

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? There would be minimal effect if the proposal is adopted. The BOF does not rely on this regulation to measure attendance at advisory committee meetings for the purpose of complying with AS 16.05.300(b).

BACKGROUND: 5 AAC 96.600(b) directs that attendance of a BOF member at an advisory committee meeting constitutes a "hearing" in accordance with AS 16.05.300(b).

AS 16.05.300(b) is a statute last amended in 1975 when the Board of Game and Fisheries broke into two separate boards. A review of the legislative action on this statute at the time indicates the legislature was concerned about the BOF meeting in each region each year.

Much has changed since 1975. The most notable change perhaps was a significant increase in public interest in the BOF regulatory process. The number of proposals throughout the 1980s was upwards of 800 in a year. The board found this situation untenable, instituting a two-year cycle in the early 1980s, and by 1991 its current 3-year cycle whereby all regions and species in the state are reviewed by the board over a three-year period.

The two- and three-year cycle did more than lessen the workload of the board. Prior to the advent of multi--years cycle, stakeholders were on guard every year. The same proposals came up every year, each requiring the same level of public and department commitment, which came at a great cost to all.

If the BOF were compelled to receiving proposals for all regions and all species each year, the intense demand on the public and department would return. The total number of BOF proposals from the last three-year cycle (2015/2016 - 2017/2018) was 747. If faced with handling this number of proposals each year, board meeting days would increase from 25-35 to 75-100.

The BOF currently satisfies AS 16.05.300(b) through its work session and receipt of ACRs which allow subject matters from regulatory areas all over the state to receive consideration. This statute is not interpreted to mean the board must literally meet in the five regions listed. If required to meet in the Arctic/Yukon/Kuskokwim, Prince Williams Sound, Southcentral, Western Alaska, and Southeast regions each year, costs would increase significantly. If the board maintained its three-year cycle system, the board would be forced to meet in a region two out of three years with nothing on its agenda. Given budget concerns in the state and the board's consistent and predictable regulatory process which the public has come to rely on, a change of this nature appears overly burdensome and expensive.

The decades-old law regarding BOF meeting location also does not take into account advances in communication technology. In 1975, Alaska residents mainly communicated in person or via telephone (other forms, such as citizens band or short-wave radio, were also used). Today, board meetings are streamed live over the Internet for listeners who can also stay up-to-speed on materials submitted to the boards by reviewing the meeting website. Both boards avail a fax number for the listeners to use if they want to submit information to the board if they are unable to attend a meeting in-person.

It is possible 5 AAC 96.600(b), amended in 1993, was an attempt by the boards to accommodate this statutory requirement although it is unclear how long the practice was upheld. It is not a current practice.

DEPARTMENT COMMENTS: The department **SUPPORTS** this proposal and also proposed this regulation be repealed under Proposal 40. The department also recommends the joint board consider the merits of communicating with the Alaska Legislature regarding AS 16.05.300(b). This 40-year old law is no longer is applicable given the changing nature of board workload and technology.

COST ANALYSIS: Approval of this proposal would not result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 30 - 5 AAC 96.910. Definitions. Provide a definition for board work sessions and allow submitters of agenda change requests to provide testimony at work sessions.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal requests a definition for board work sessions as something other than a “meeting”, or a “hearing”, and includes allowing oral testimony of up to ten minutes by the submitters of agenda change requests (ACRs).

WHAT ARE THE CURRENT REGULATIONS? The Open Meetings Act (AS 44.62.310) defines meeting as “a gathering of members of a governmental body when:

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;”

The current regulations do not provide further definition for board meetings. 5 AAC 96.600 states that each board will hold at least one regulatory meeting a year. Other meetings, including special meetings on specific issues, will be held as the boards consider necessary.

AS 16.05.300 authorizes the boards to hold at least one meeting per year and as many others as they consider necessary, AS 16.05.300(b) requires the Board of Fisheries to hold at least one meeting or hearing a year in five general areas of the state, and AS 16.05.310 describes that a special meeting may be called at any time by the request of two members or the commissioner of the Department of Fish and Game.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? It is unclear the joint board could pass a regulation that is consistent with the OMA, yet somehow declare a board work session is not a meeting. A work session is a full meeting of the board which meets the definition of a meeting in the OMA.

If the proposal passes and is consistent with the definition of a meeting in the OMA, it might alter the current interpretation of AS 16.05.300(b) which is satisfied by conducting the ACR process through the Board of Fisheries (BOF) work session. A revised interpretation might mean the BOF must physically meet every year in five regions of the state, 1) Upper Yukon, Kuskokwim, and Arctic, 2) Western Alaska (including Kodiak), 3) Southcentral, 4) Prince William Sound (including Yakutat), and 5) Southeast. This would significantly increase costs to the department and public. Given the BOF’s process of handling regulatory proposals in a 3-year cycle, this might require the BOF arrive in regions of the state in most years with little or nothing to do.

The proposal also requires that boards allow the submitters of ACRs to provide oral testimony for up to ten minutes. This would occur during BOF annual work sessions, and the Board of Game (BOG) ACR teleconferences. These meetings would need to be lengthened since the boards receive several ACRs each year. Allowing testimony on ACRs may increase ACR submissions by those who see it as an opportunity to provide testimony to the boards. Along with increased meeting costs, it is likely that more advisory committees will submit ACRs and seek travel accommodations to attend work sessions. Additionally, it is uncertain if there are legal requirements that all members of the public in attendance have an opportunity to speak, rather than just the ACR author.

BACKGROUND: BOF work sessions are annual meetings intended for the purpose of conducting administrative business, receiving reports, and taking action on ACRs. BOF work sessions occur in mid-October, usually at least 45 days prior to the first regulatory meeting. ACRs are due to the BOF 60 days prior to its annual work session. The average number of ACRs submitted to the BOF over the past five years is 18.

BOG annual work sessions occur the day prior to the first regulatory meeting and are intended to address administrative business and receive reports. ACRs are not considered during these meetings. Instead, action on ACRs by the BOG occurs during teleconferenced meetings following the ACR deadline of November 1. The average number of ACRs submitted to the BOG over the past five years is 10.

Generally, neither board takes testimony during its work session but both solicit written comments. The department does not fund advisory committee participation at BOF work sessions since oral testimony does not occur and regulatory matters are not handled.

Work sessions are non-regulatory, consistent with the proposer's request. The BOF and BOG's processes for reviewing ACRs are defined in 5 AAC 39.999 and 5 AAC 92.005, respectively. Each of these regulations provide strict criteria for the board to consider when determining if an ACR should become a regulatory proposal.

The proposal seeks to define the work session as something other than a "hearing" or a "meeting." Aside from the conflict this has with the OMA's definition of a meeting, if a work session was defined as something other than a meeting or a hearing, then it could not be applicable to AS 16.05.300(b) which expressly says "meeting or hearing." If a work session is not a meeting or a hearing then the BOF might be required to physically meet in five regions of the state every year. Staff comments under Proposal 32 outlines the adverse impacts from this interpretation.

DEPARTMENT COMMENTS: If this proposal is legal the department is **OPPOSED** to the aspects of this proposal that create a definition of a work session as something other than a meeting or hearing, and **NEUTRAL** on how to handle public testimony at work sessions. There would be additional cost to the department if work sessions were extended to accommodate public testimony and if advisory committees were paid to attend.

COST ANALYSIS: Approval of this proposal would result in an additional direct cost for a private person to participate in the regulatory process. If the BOF were compelled to physically meet in each region each year, that would significantly increase the public's costs for travel. If the BOF reverted to its pre-1990s system of receiving all regions and species proposals each year, costs to the public would be significantly increased due to increased travel as well as material preparation.

PROPOSAL 31 - 5 AAC 96.910. Definitions. Provide a definition for board hearing of at least three board members with a public comment requirement.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal requests a definition for "board hearing" as publicly noticed proceedings of at least three members during which the public has the right to be heard.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.600. Meetings

(a) Each board will hold at least one regular meeting a year. Other meetings, including special meetings on specific issues, will be held as the boards consider necessary.

(b) The attendance of a Board of Fisheries member at a committee meeting constitutes a board hearing in accordance with AS 16.05.300(b). For the purposes of AS 16.05.300(b), "year" means the 12-month period beginning July 1 and ending June 30.

Alaska Statute 16.05.300 authorizes the boards to hold at least one meeting per year and as many others as it considers necessary, and Alaska Statute 16.05.310 describes that a special meeting may be called at any time by the request of two members or the commissioner of the Department of Fish and Game.

The Open Meetings Act (AS 44.62.310) defines meeting as "a gathering of members of a governmental body when:

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;"

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If the proposal is adopted, board hearing will be redefined in regulation to be meetings involving at least three board members at which the public has the right to be heard. This would essentially define all

regulatory and committee meetings as hearings. Currently a hearing is defined in 5 AAC 96.600(b) as the attendance of a Board of Fisheries member at an advisory committee meeting.

If the intent of the proposal is to define meetings at which regulatory proposals are considered, oral testimony is already allowed so the effect of the proposal would be minimal because it reflects current practice. If the intent of the proposal is for the definition to apply to all non-regulatory board meetings and to allow oral testimony in addition to written comment, board meetings would likely be longer, and one-day meetings that normally occur by teleconference may need to be face to face in order to accommodate the testimony.

It is unclear what precisely the effect of this proposal is on the regulatory process. At its most basic definition, a meeting is an assembly or conference of persons for a specific purpose. A “hearing” alludes to a more legal type of proceeding, such as “an instance or a session in which testimony and arguments are presented, especially before an official, as a judge in a lawsuit”. It is likely the proposal attempts to redefine board meetings to be labeled board hearings, and then draw an association with AS 16.05.300(b). See staff comments for Proposal 32.

BACKGROUND: Board meetings comply with the Open Meetings Act (OMA) whenever more than three board members, or a committee of the board, gather to consider matters they are empowered to act upon. The boards generally take written testimony at all meetings (work sessions, ACR meetings, board committees, and regulatory meetings) and opens oral testimony for meetings at which regulatory proposals are considered. Neither written nor oral testimony is expected to be taken for emergency petition meetings.

A board “hearing”, as it pertains to the Board of Fisheries, is already defined in 5 AAC 96.600. *Meetings*. This indicates a “hearing” when a Board of Fisheries member attends a committee meeting. This definition references AS 16.05.300(b), which requires the Board of Fisheries to hold a meeting or hearing in a number of general areas related to regions.

The proposal indicates having a definition for a “hearing” would help clarify and aid in complying with the OMA. The word “hearing” is found nowhere in the OMA in AS 44.62.310-319.

DEPARTMENT COMMENTS: The department is **OPPOSED** to this proposal. If the joint board establishes a definition for board hearing, it should include provisions to differentiate regulatory and non-regulatory meetings. If the definition includes non-regulatory meetings and requires public testimony, there would be additional cost to the department to extend the meetings to accommodate public testimony.

COST ANALYSIS: Approval of this proposal would result in an additional direct cost for a private person to participate in the regulatory process, if additional or longer travel was needed to participate.

PROPOSAL 33 - 5 AAC 96.610. Procedure for developing fish and game regulations.
Amend the Joint Board's procedure for establishing fish and game regulations.

PROPOSED BY: Tammie Wilson.

WHAT WOULD THE PROPOSAL DO? The proposal requires board generated proposals be submitted by the announced deadline for inclusion in the proposal books, limits the boards' ability to develop regulatory alternatives and amend proposals at meetings, and adds "promptly" to the process by which boards support notifies advisory committees of the board actions taken.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.610. Procedure for developing fish and game regulations.

(a) For the purpose of developing fish and game regulations, each board will observe the procedures set out in this section. The deadlines for each phase will be set by the appropriate board for each meeting and will be announced to committees and the public.

(b) Phase 1. Each board will solicit regulatory proposals or comments to facilitate that board's deliberations. The boards may limit those sections or portions of the existing regulations that will be open for change. The boards will provide forms to be used in preparing proposals. Notices soliciting proposals will be distributed statewide. In order to be considered, a proposal must be received by the boards before the designated deadline unless provided otherwise by a board.

(c) Phase 2. After the deadline for receiving proposals, the boards support section shall compile all proposals received on time, including proposals from department staff and other government agencies, distribute them to the public through department offices, and send them to the committees.

(d) Phase 3. Committees may review the proposals at a public meeting and may request technical and scientific support data and prepared testimony from the department.

(e) Phase 4. Each board will give legal notice of timely received proposals. In accordance with the Administrative Procedure Act (AS 44.62), each board will hold a public hearing and will act on proposals or develop alternatives on the subject matter legally noticed. The final decision on all proposals remains the responsibility of a board.

(f) Phase 5. After completion of procedures required by the Administrative Procedure Act (AS 44.62), a board will notify each committee of the actions taken on each committee's respective recommendations and proposals and the reasons for those actions.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted the proposal will significantly change the boards' process for adopting regulations. The proposal intent is to limit a board's ability to amend proposals and develop regulatory alternatives during meetings by only allowing board generated proposals to be deliberated on if submitted under the board's Call for Proposals, and by limiting the use of amendments to not contradict the original intent of a proposal. This would most likely lead to a decrease in the number of adopted proposals each cycle, and an increase in proposal submissions, tabled proposals, board generated proposals, agenda change requests (ACRs), and emergency petitions.

An increase in emergency petitions would result in the need for additional board meetings to consider the petitions. An increase in tabled proposals, board generated proposals and ACRs will shift those proposals to the following meetings or following years, adding a significant number of out-of-cycle subjects to the regular cycle as well as additional time to consider them. More out-of-cycle subjects will require the public and advisory committees to engage at additional cost. Limiting amendments so as not to contradict the intent of the proposal would cause the boards to spend time discussing whether an amendment contradicts the proposal and the boards may prefer to disallow amendments altogether.

Requiring board generated proposals be submitted by the annual deadline would keep the boards from utilizing board generated proposals as a tool to make necessary regulatory adjustments within meeting cycles.

It is unclear whether passage of this proposal will cause the boards to lose the ability to amend conceptual proposals with substitute language written in regulatory style. It will certainly require boards to review substitute language closely to make sure there are no deviations and/or additions to the original intent. If this proposal impacts the use of substitute language, it will increase the likelihood final published regulations will not meet board intent.

Finally, it appears in some cases this proposal thwarts the public process it intends to support. It requires all proposals considered by a board be entered at the call for proposal stage to allow the public and advisory committees full opportunity to comment. Yet when it comes to final deliberations, the board has no ability to incorporate those comments other than to vote yes or no. Comments offer context and often help the boards amend regulatory language. Critical technical and non-allocative information could be offered to a board that would make a proposal palatable, but if unable to incorporate that feedback a portion of public comment will be ignored. If this proposal is adopted, the question before advisory committees and the public would simply be “Do you support the proposal as written?” No other feedback would appear relevant.

BACKGROUND: At tension in this proposal are three issues. The first is how the boards amend proposals and to what degree. The second is the subject of board generated proposals and what they are. The third issue is a concern that the fish and game regulatory process be led by the public. These concerns come from many segments of Alaska’s fish and game community and deserve the board’s fair review and assessment of their regulatory processes.

Types of amendments: Both boards routinely amend proposals at board meetings. In most cases the boards attempt to keep amendments in-line with the proposer’s intent while improving on the proposal through incorporating ideas learned through the public comment process as well as from data presented by the department. Amendments can be small or significant, but are allowable so long as the change is consistent with the topics on the legal notice of proposed changes to the regulations.

Many amendments take a proposal that is largely conceptual in design and put it into regulatory language for clarity and precision when voting on and writing the final regulation. This practice benefits the regulatory process by capturing board intent in regulatory language, so as to reduce confusion once the meeting ends. While called “substitute language” in board vernacular, this

practice is technically an amendment and done frequently. Not only does it help clearly express board intent, but it also saves on misinterpretations of final regulations that are written after a board meeting. In the past, board intent was not met, requiring additional action by the board to clarify intent.

Board generated proposals: Boards also generate new proposals at the request of interested parties, whether it is the department or a stakeholder. The subject matter of board generated proposals is not found in on-time proposals for the current cycle. If a board generated proposal involves a regulatory subject matter that is not part of the current cycle it must submit the proposal through the 30-day legal notice required by the Administrative Procedures Act (APA). If the subject matter is within the legal notice for a meeting, the board has the ability to act on the proposal at the time. Board generated proposals can be small matters that correct a technical issue, or very big issues that draw considerable public attention. Both boards have drawn considerable criticism from making significant amendments at meetings through their use of board generated proposals.

For the public there are times when the lines are blurred between what is an amendment versus a board generated proposal. For example, a board will take an issue that is captured by a diverse and contrary set of proposals. As a means of convenience and formality, the board will use one of the proposals as the vehicle for solving the regulatory issue. The result is an amalgamation of several solutions to the issue which the original proposal may only be one small part of or not part at all. From the board's perspective this multi-faceted solution is an amendment, crafted by advisory committee and public comment, department data, and stakeholders at the meeting. In this scenario, the board is really dealing with an issue, more than a single proposal. Dueling proposals suggest a multi-faceted issue, which mean solutions are not etched in one proposal over another. To prohibit the boards from "problem solving" at board meetings with advisory committees and the public in attendance constitutes a lost opportunity.

For other members of the public, typically those perceiving themselves to be on the "losing" end of the decision, they will assert the final regulatory solution goes way beyond the "vehicle proposal" in front of the board (or any one particular proposal, for that matter) and is therefore a board generated proposal. If that is the case, the final result is still legal so long as the action is consistent with the legal notice. However, the boards and representatives from the Department of Law carefully monitor this practice and are the safeguards for the public.

Criticism of board generated proposals led to the 2013 development of criteria adopted by the joint board as a finding (<http://www.adfg.alaska.gov /static /regulations /regprocess/PDFs /jbf findings/ 1334jb.pdf>) which stipulates both the BOF and the BOG must consider the following when deliberating the development and scheduling of a board-generated proposal:

1. Is it in the public's best interest (e.g., access to recourse, consistent intent, public process)?
2. Is there urgency in considering the issue (e.g., potential for fish and wildlife objectives not being met or sustainability in question)?
3. Are the current processes insufficient to bring the subject to the board's attention (e.g., reconsideration policy, normal cycle proposal submittal, ACRs, petitions)?

4. Will there be reasonable and adequate opportunity for public comment (e.g., how far do affected users have to travel to participate, amount of time for affected users to respond)?

Regarding amendments and board generated proposals, one must acknowledge in either process there are simple, small issues that are not controversial and should be allowed to prevail at a meeting. Similarly, there are large controversial amendments and board generated proposals where it would be ideal to allow more time for the public and advisory committees to review and comment. The challenge is to recognize these two examples and balance the public's expectation for an immediate solution versus delaying it to allow for more review.

A publicly driven process: The third issue is the desire for proposal development to be a publicly driven process and that the public has an opportunity to create, review, and comment on proposals. The governance goal for this to be a public process is evidenced by the state's support for 84 local advisory committees, board processes that go above and beyond the minimum requirements of the APA, and a management system led by boards that are composed of non-state employees. With Alaskans and other stakeholders as the ultimate decision makers, this system is inherently public.

This proposal wants the boards to be perfunctory in how they judge proposals by requiring either an up or down vote solely on the merits of the proposal. This approach is problematic for a few reasons. Significant money goes into running the board process, not just for the state as it funds the boards and advisory committees, but also for the general public. As is the case at every board meeting, the board, department, advisory committees and public come together to discuss issues brought up in proposals and see if there can be a solution. At every meeting most of the adopted final solutions were not wholly contained in the initial proposal, but were adopted after thorough discussion and review.

Board members are appointed and confirmed based on their good judgment, knowledge, and ability in the fields of fish and wildlife. To vet carefully selected Alaskans through the rigorous public legislative confirmation process without allowing them to exercise judgment and "problem solve" at highly public meetings appears a lost opportunity. If boards have no latitude to work with stakeholders and the department to arrive at mediated solutions, very few proposals would get passed.

Relationship between the boards and departments. The proposal cites there is a "commingling" of functions between the boards and department, and suggests this relationship thwarts the public process. Each of the departments that work in the board process, the departments of Fish and Game, Law, and Public Safety, essentially serve as staff to the boards. Board members develop working relationships with staff members both in preparation for meetings and at the meetings. Ultimately, the boards are separate agencies from the departments, and exercise the authority to set fish and game management policy for the state. Department staff are managing resources and conducting enforcement based on board direction, which is reviewed by Department of Law for full statutory compliance. Department staff expertise is formed from significant interaction with the public, and insights gained from those interactions are given to board members. Board decisions take this expertise into account, as well as the expertise of other stakeholders.

Slowing down the regulatory system for greater public review of board generated proposals will not change the extent to which the expertise of the three departments informs board actions. The ultimate check and balance to the system is the board appointment and confirmation process. The Governor of Alaska vets and appoints board members who are then rigorously and publicly vetted and confirmed by the full Legislature, who have the authority to ask questions of the candidate's intentions toward working with the departments. Board of Game and Fisheries appointments are among the most controversial of all Alaska's boards and commissions. Some board members have not been confirmed through this process based on their answers as well as stakeholder input, and that is where the concern of acceptance of department recommendations is handled.

As to the process for providing notification to advisory committees of board actions, board actions are posted online during or immediately following the board meetings for public viewing and boards support staff notify the advisory committees when they are available.

DEPARTMENT COMMENTS: The department **SUPPORTS** the proposal's intent to instill greater transparency into the board process, increase the public's ability to participate, and for the public to have greater opportunity to review and comment on significant board action, but **OPPOSES** limiting the board's ability to find solutions to complicated issues through amendments or board generated proposals while at meetings. If adopted, the department has concern for how the boards would address time sensitive resource issues that arise during meeting cycles. The boards would need to utilize the emergency regulation process and other methods for these types of situations which would require more meetings outside the regular schedule at an additional cost to the department.

COST ANALYSIS: Approval of this proposal will result in an additional direct cost for a private person to participate in the regulatory process if meeting length is extended, or additional proposal materials are required to cover every aspect of a complex issue.

PROPOSAL 34 - 5 AAC 96.625. Joint board petition policy. Amend the joint board petition policy to correct a contradiction with the subsistence proposal policy.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal modifies the joint board petition policy (petition policy) to remove the reference that petitions dealing with subsistence hunting or fishing be evaluated under the criteria of the subsistence proposal policy (subsistence proposal policy). This would change the standard by which subsistence-related petitions are judged. Under the subsistence proposal policy (5 AAC 96.615), an out-of-cycle subsistence proposal will be accepted if it addresses a fish or game population for which there is not yet a customary and traditional use finding, or if the matter deserves expedited consideration by the board. If this is accepted, subsistence-related petitions received untimely would revert to the petition policy criteria at 5 AAC 96.625(f) that holds that petitions be denied unless it justifies a finding of emergency, which are "rarely found to exist". Emergency petitions are defined as "an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen,

unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitions because the resource would be unavailable in the future”.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.610. Procedure for developing fish and game regulations

(a) For the purpose of developing fish and game regulations, each board will observe the procedures set out in this section. The deadlines for each phase will be set by the appropriate board for each meeting and will be announced to committees and the public.

...

5 AAC 96.615. Subsistence proposal policy

(a) It is the policy of the Boards of Fisheries and Game to consider subsistence proposals for topics that are not covered by the notice soliciting proposals under 5 AAC 96.610(a). To be considered by a board, a subsistence proposal must be timely submitted under 5 AAC 96.610(a), and

(1) the proposal must address a fish or game population that has not previously been considered by the board for identification as a population customarily and traditionally used for subsistence under AS 16.05.258; or

(2) the circumstances of the proposal otherwise must require expedited consideration by the board, such as where the proposal is the result of a court decision or is the subject of federal administrative action that might impact state game management authority.

(b) A board may delegate authority to a review committee, consisting of members of the board, to review all subsistence proposals for any meeting to determine whether the conditions in (a) of this section apply. (c) A board may decline to act on a subsistence proposal for any reason, including the following:

(1) the board has previously considered the same issue and there is no substantial new evidence warranting reconsideration; or

(2) board action on the proposal would affect other subsistence users who have not had a reasonable opportunity to address the board on the matter.

5 AAC 96.625. Joint board petition policy

...

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) - (d) of this section. ***Except for petitions dealing with subsistence hunting or subsistence fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), [emphasis added]*** it is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency. In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable

resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, the joint board petition policy would be less confusing because it would no longer reference the provision for petitions submitted under the subsistence proposal policy. However, it may also make it more challenging for the boards to consider subsistence proposals that do not rise to the level of “emergency” as defined in the joint board policy.

BACKGROUND: The portion of the petition policy this proposal seeks to change is confusing. It can be interpreted to mean one of three things. The specific language at issue is -

5 AAC 96.625(f) ... Except for petitions dealing with subsistence hunting or subsistence fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), it is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem in the petition justifies a finding of emergency.

The first thing it might refer to is that the only proposals the BOF or BOG accepts out-of-cycle are subsistence proposals that meet the criteria in 5 AAC 96.615. However, the passage uses the term “petition” whereas in sections (b) and (c) of that same petition policy regulation it uses “proposals” furthermore, in section (e) the petition policy reverts back to “petitions” as things that are “detrimental to the public process”. Also, 5 AAC 96.615 is the “Subsistence Proposal Policy,” not the subsistence petition policy, so a reasonable person could interpret the petition policy at (f) to be referring exclusively to petitions received, and not to proposals received during the on-time call for proposals.

The second way the passage could be interpreted is to mean that subsistence-related petitions must meet the criteria in 5 AAC 96.615(a)(1) **and** (2), bypassing the on-time provision cited in 5 AAC 96.615(a). The petition policy is really just referring to the criteria in (1) and (2), but it does not say that and one may think there needs to be an on-time proposal.

The third interpretation of the passage could be that it means subsistence-related petitions can only be submitted during the on-time call for proposal process, which is nonsensical.

Section 5 AAC 96.615 was adopted to help the boards address a backlog of customary and traditional and amounts necessary for subsistence determinations, and allows *timely submitted* subsistence proposals to be heard even if they are not in cycle.

Finally, a subsistence petition submitted as an “emergency” will not be a permanent regulation unless expressly made so. Under the Administrative Procedure Act, the duration of emergency regulations adopted in response to an emergency petition (5 AAC 96.625(f)) is limited to 120 days. To make an emergency regulation permanent, there must be published notice and an opportunity for the public to provide comments to the board before a final regulation is adopted. Regulations resulting from timely proposals or ACRs accepted by the board will be permanent.

However, a customary and traditional finding or an amount necessary for subsistence determination is by definition permanent.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal's intent to reduce confusion related to subsistence petitions received under 5 AAC 96.625(f), and is **NEUTRAL** regarding the criteria employed to review these subsistence petitions. If the joint board prefers to have subsistence-related petitions continued to be reviewed under the two criteria in 5 AAC 96.615, it may reduce confusion by amending the petition policy in 5 AAC 96.625(f) to specifically identify the two criteria.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 37 – 5 AAC 96.615. Subsistence proposal policy. Repeal the boards' subsistence proposal policy.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal repeals the subsistence proposal policy (subsistence proposal policy) in 5 AAC 96.615.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.615. Subsistence proposal policy.

(a) It is the policy of the Boards of Fisheries and Game to consider subsistence proposals for topics that are not covered by the notice soliciting proposals under 5 AAC 96.610(a). To be considered by a board, a subsistence proposal must be timely submitted under 5 AAC 96.610(a), and

(1) the proposal must address a fish or game population that has not previously been considered by the board for identification as a population customarily and traditionally used for subsistence under AS 16.05.258; or

(2) the circumstances of the proposal otherwise must require expedited consideration by the board, such as where the proposal is the result of a court decision or is the subject of federal administrative action that might impact state game management authority.

(b) A board may delegate authority to a review committee, consisting of members of the board, to review all subsistence proposals for any meeting to determine whether the conditions in (a) of this section apply.

(c) A board may decline to act on a subsistence proposal for any reason, including the following:

(1) the board has previously considered the same issue and there is no substantial new evidence warranting reconsideration; or

(2) board action on the proposal would affect other subsistence users who have not had a reasonable opportunity to address the board on the matter.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, out of cycle requests concerning subsistence hunting and fishing would need to be submitted as agenda

change requests (ACR) or emergency petitions. In-cycle requests concerning subsistence hunting and fishing could be submitted only as emergency petitions. Complying with the ACR criteria or emergency petition criteria would make it more challenging to address subsistence issues, which currently have an option to be considered because the circumstances of the proposal require expedited consideration. Also, the joint board petition policy at 5 AAC 96.625(f) sends subsistence-related petitions to this regulation. The joint board would need to address this in the petition policy if the proposal is adopted.

BACKGROUND: Through AS 16.05.258. *Subsistence use and allocation of fish and game*, subsection (b) provides the boards with instruction on how to establish subsistence uses above other uses. The subsistence proposal policy carries forward this subsistence priority by prioritizing subsistence requests in the regulatory process. The subsistence proposal policy allows the boards to schedule subsistence-related requests provided the request meets certain criteria. Otherwise, these types of requests must be submitted as ACRs or petitions not meeting the call, which require more narrow criteria be met. The boards infrequently receive and schedule subsistence-related proposals under the policy.

DEPARTMENT COMMENTS: The department **OPPOSES** this proposal because it is inconsistent with state law and would limit the boards' ability to address requests for subsistence priority uses of fish and game resources.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 35 - 5 AAC 96.625. Joint board petition policy. Repeal and rewrite the joint board petition policy.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal repeals the joint board petition policy (petition policy) and renames it as the Joint Board Emergency Petition Policy, and replaces it with portions of the existing policy pertaining to petitions, emergency findings, and emergency regulations.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.625. Joint board petition policy

(a) Under AS 44.62.220, an interested person may petition an agency, including the Boards of Fisheries and Game, for the adoption, amendment, or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and must reference the agency's authority to take the requested action. Within 30 days after receiving a petition, a board will deny the petition in writing, or schedule the matter for public hearing under AS 44.62.190 - 44.62.210 which require that an agency or board publish legal notice describing the proposed change and solicit comment for 30 days before taking action. AS 44.62.230 also provides that if the petition is for an emergency regulation, and the agency finds that an emergency exists, the agency may submit the

regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

(b) Fish and game regulations are adopted by the Alaska Board of Fisheries and the Alaska Board of Game. At least twice annually, the boards solicit regulation changes. Several hundred proposed changes are usually submitted to each board annually. The Department of Fish and Game compiles the proposals and mails them to all fish and game advisory committees and to other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices and on the boards support section's website. When the proposal books are available, the advisory committees hold public meetings in the communities and regions they represent, to gather local comment on the proposed changes. Finally, the boards convene public meetings, which have lasted as long as six weeks, taking department staff reports, public comment, and advisory committee reports before voting in public session on the proposed changes.

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) - (d) of this section. Except for petitions dealing with subsistence hunting or subsistence fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), it is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency. In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

Alaska Statute 44.62.220. Right to petition

Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in AS 44.62.180 - 44.62.290. The petition must state clearly and concisely

- (1) the substance or nature of the regulation, amendment, or repeal requested;
- (2) the reasons for the request;
- (3) reference to the authority of the agency to take the action requested.

Alaska Statute 44.62.230. Procedure on petitions

Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180-44.62.290, a state agency shall, within 30 days, deny the petition in writing or

schedule the matter for public hearing under AS 44.62.190-44.62.215. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.040(c) and 44.62.190-44.62.215 do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

Alaska Statute 44.62.250. Emergency regulations

A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c), 44.62.060, and 44.62.190-44.62.215 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after filing by the lieutenant governor the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, the policy would be concise and more focused on the process for addressing emergency petitions. However, it would eliminate from regulation an explanation for why the boards deny public petitions that are not submitted within the board's normal regulatory processes. Agencies may deny petitions under the Administrative Procedures Act (APA) in Alaska Statute 44.62.

BACKGROUND: While the policy is somewhat confusing and not written in typical regulatory language, it manages several important functions, including answering questions related to the APA.

The Alaska Legislature defined the minimal steps for state agencies to take when enacting regulations through Alaska Statute 44.62, which is also known as the APA. Among many other things, the APA provides the means, under AS 44.62.220. *Right to petition*, for a person to submit a petition at any time to an agency for regulatory change. For the purposes of this discussion there are two kinds of petitions: a "regular" petition, and an "emergency" petition.

For regular petitions, the APA informs agencies they have 30 days to notify the person whether the petition will be scheduled for a hearing or denied. **The APA does not prescribe the standards by which an agency will deny a petition.** Emergency petitions are different in that the agency makes a finding of emergency first, enacts the emergency regulation (good for 120 days unless there are efforts to make it permanent) and then goes through a post facto public notice process. The important part of this discussion as it relates to the joint board petition policy are the standards by which an agency will deny a petition that is not found to be an emergency.

In the 1980s, the Board of Fisheries alone received upwards of 800 proposals annually. Changing from a process that allowed for every fish and game regulation to be reviewed each year to one that allowed for review on a two- and then three-year cycle meant denying hundreds of proposals each year. Further, given this predictable and consistent procedure for reviewing regulatory

proposals, the boards will not accept non-emergency petitions received untimely. This denial requires an explanation in order to satisfy the APA.

Sections (b) through (e) of the petition policy provides an explanation for why public proposals submitted outside of the proposal process are denied. Given the large number of requests that both boards receive annually (proposals, petitions, ACRs, and so forth) and the incredible amount of public energy that must go into responding to these requests each year, the petition policy currently explains that all petitions occurring outside of these processes will be denied unless they are found to be an emergency, which is in compliance with the APA.

The proposal recommends the petition policy be pared down to pertain exclusively to emergencies. The proposer cites the regulation as confusing and that is certainly understandable. As written, sections (a)-(e) are essentially explanations; they are not regulatory in any way. While streamlining this regulation is understandable, it would eliminate instructions for how the boards address the APA's right to petition provision. The long, seemingly out-of-place preamble in 5 AAC 96.625(a)-(e) provides the public, legislature, and courts with a description of the board process and how APA's petition process is handled. To restrict 5 AAC 96.625 solely to emergencies would leave the door open to regular petitions that then must be addressed in some fashion.

The proposal also speaks to confusion surrounding agenda change requests (ACRs), a fair observation. The ACR process is important and even though it is not legally required to add it to the petition policy, the omission creates confusion. If the purpose of the petition policy is to explain how the APA's right to petition requirement is handled in the board process, it is appropriate to add the ACR process to the explanation.

DEPARTMENT COMMENTS: The department **OPPOSES** the proposal because the lengthy discussion that would be omitted is important for legal clarity. If the joint board prefers to clarify the petition policy by adding the ACR process, the department will assist with providing draft options to clarify the policy.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 36 - 5 AAC 96.625. Joint board petition policy and 96.910. Definitions. Allow a petitioner the opportunity to present information about the petition to the boards and establish definitions for unforeseen and unexpected events and situations.

PROPOSED BY: Paul Shadura.

WHAT WOULD THE PROPOSAL DO? The proposal clarifies the joint board petition policy (petition policy) to require both boards give interested persons or their authorized representative who submitted a petition the opportunity to present information in writing. It also requests definitions for unforeseen and unexpected events and situations used to determine a finding of emergency.

WHAT ARE THE CURRENT REGULATIONS?

5 AAC 96.625. Joint board petition policy

(a) Under AS 44.62.220, an interested person may petition an agency, including the Boards of Fisheries and Game, for the adoption, amendment, or repeal of a regulation. The petition must clearly and concisely state the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and must reference the agency's authority to take the requested action. Within 30 days after receiving a petition, a board will deny the petition in writing, or schedule the matter for public hearing under AS 44.62.190 - 44.62.210 which require that an agency or board publish legal notice describing the proposed change and solicit comment for 30 days before taking action. AS 44.62.230 also provides that if the petition is for an emergency regulation, and the agency finds that an emergency exists, the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

(b) Fish and game regulations are adopted by the Alaska Board of Fisheries and the Alaska Board of Game. At least twice annually, the boards solicit regulation changes. Several hundred proposed changes are usually submitted to each board annually. The Department of Fish and Game compiles the proposals and mails them to all fish and game advisory committees and to other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices and on the boards support section's website. When the proposal books are available, the advisory committees hold public meetings in the communities and regions they represent, to gather local comment on the proposed changes. Finally, the boards convene public meetings, which have lasted as long as six weeks, taking department staff reports, public comment, and advisory committee reports before voting in public session on the proposed changes.

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions can detrimentally circumvent this process and that an adequate and more reasonable opportunity for public participation is provided by regularly scheduled meetings.

(f) The Boards of Fisheries and Game recognize that in rare instances circumstances may require regulatory changes outside the process described in (b) - (d) of this section. Except for petitions dealing with subsistence hunting or subsistence fishing, which will be evaluated on a case-by-case basis under the criteria in 5 AAC 96.615(a), it is the policy of the boards that a petition will be denied and not scheduled for hearing unless the problem outlined in the petition justifies a finding of emergency. In accordance with state policy expressed in AS 44.62.270, emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource situation where a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If this proposal is adopted, there would be little change to current board regulatory processes. As written, the proposal addresses requirements of the Administrative Procedures Act (APA) in Alaska Statute 44.62, which are minimal compared to the boards' current processes. The current board processes already support the type of public exchange described in this proposal.

However, the proposal issue statement appears to reference public input for emergency petitions. If so, this proposal would require the boards to allow written public comment when reviewing emergency petitions. This will slow the process of making a finding of emergency for petitions, which could harm a fish or game resource if the emergency is related to a conservation concern.

In regard to adding greater specificity to the emergency petition criteria, if the joint board defines unforeseen and unexpected events and situations, the public will have more guidance for understanding what might qualify as an emergency. However, narrowing the definition further may lead to an unforeseen and unexpected situation where a fish and game resource is threatened or a biologically allowable resource harvest would be unavailable to the public now or in the future and the boards would be unable to act in a timely manner.

BACKGROUND: The petition policy in 5 AAC 96.625 is used by the boards to address how it complies with the APA through the boards' regulatory processes. In particular, the petition policy provides advice on its treatment of AS 44.62.220. *Right to petition* requirements and AS 44.62.250. *Emergency regulations*. The preamble in 5 AAC 96.625(a) describes requirements under state law for allowing the public to request changes to regulations and the process for adopting emergency regulations. It is not intended to describe the boards' processes. The policy then continues by describing the boards' proposal processes in subsections (b)-(e). The final subsection (f) then declares that all petitions received outside of the boards' processes, as envisioned under AS 44.62.220, will be automatically denied unless they are found to be an emergency. Only emergency petitions will prevail under certain criteria.

The boards are able to deny all petitions that do not fall within the prescribed public proposal process because the proposal process is comprehensive, consistent, and broader than the public input requirement in the APA. Subsections (b)-(e) explain this thorough process and the lengths to which the boards provide the public an opportunity to shape fish and game regulations, which includes giving each interested person or the person's authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing.

The emergency petition process provided in 5 AAC 96.625(f) does not afford the public the same level of engagement for one simple reason – the situation is an emergency and it can be assumed time is of the essence. While not every emergency petition is a time sensitive matter, there are enough so that requiring public input could delay the BOF and BOG's ability to act, which could seriously impair the health of a resource. That said, when an emergency petition is not time sensitive, the boards have on occasion sought public comment.

The proposal asks the boards to create a clear and concise definition for their emergency petition criteria. The APA prescribes emergency petitions must demonstrate the regulation "is necessary for the immediate preservation of the public peace, health, safety or general welfare." While this

standard is a difficult test for agencies to meet as intended by the statute, it remains broad to allow boards to interpret a situation and make an informed, defensible decision. The boards' emergency petition criteria require the boards to find an unforeseen or unexpected event that threatens a resource or an unforeseen or unexpected situation where a delay in action may lead to permanent loss of the resource into the future. To further define the criteria may be inadvertently limiting when a true emergency is upon us.

DEPARTMENT COMMENTS: The department is **NEUTRAL** on this proposal and supports clarification to the policy if the joint board finds it necessary.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

.....

PROPOSAL 38 - 5 AAC 96.6XX. Adoption of fish and game regulations. Require the Board of Fisheries to schedule shellfish regulations for any shellfish season that has been closed by emergency order for 24 consecutive months.

PROPOSED BY: Homer Fish and Game Advisory Committee.

WHAT WOULD THE PROPOSAL DO? The proposal directs the Board of Fisheries (BOF) to adopt a schedule for addressing shellfish regulations that have been closed by emergency order for two consecutive years.

WHAT ARE THE CURRENT REGULATIONS? 5 AAC 96.610 defines the boards' procedures for developing fish and game regulations. Subsection (b) offers current language for how a board sets its call for proposal.

5 AAC 96.610. Procedure for developing fish and game regulations

...

(b) Phase 1. Each board will solicit regulatory proposals or comments to facilitate that board's deliberations. The boards may limit those sections or portions of the existing regulations that will be open for change. The boards will provide forms to be used in preparing proposals. Notices soliciting proposals will be distributed statewide. In order to be considered, a proposal must be received by the boards before the designated deadline unless provided otherwise by a board.

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The joint board created 5 AAC 96.610 which prescribes the boards' processes for developing regulations. Subsection (b) would require an amendment specifically for the BOF which require that any shellfish fishery in the state be that has been closed for two consecutive years must be part of the board's next call.

If adopted it is uncertain that any new management measures would occur. This regulation would apply statewide and could impact crab fisheries that have been closed for years, but for which there is not similar public interest in calling for fishery closures as seen in the Cook Inlet razor clam fishery. In order to comply with this new provision, the department would track shellfish fishery closures statewide.

BACKGROUND: Each board is free to define its call for proposals each year. There is nothing stopping the BOF from adding out-of-cycle fisheries to an upcoming call. The specific situation that brings this proposal forward is the collapse of razor clams on the eastside of Cook Inlet and subsequent regulatory action thereafter. At the March 2015 BOF shellfish meeting the board chose not to pass a suite of public and advisory committee proposals to lower the bag and possession limit or close the fishery for razor clams in eastern Cook Inlet.

The Homer Advisory Committee submitted this proposal to the Board of Fisheries for the 2017/2018 cycle, but it was not accepted as a proposal given the regulations in question are under the joint board's authority.

DEPARTMENT COMMENTS: The department **OPPOSES** this proposal because it will create confusion in the public, could already be done should the Board of Fisheries choose, and will create additional workload for the department and public.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 39 - 5 AAC Part 6 - Fish and Game Advisory Committees; Chapter 96 - Local fish and game advisory committees and regional councils; 5 AAC 96.021. Establishment of advisory committees; 5 AAC 96.050. Functions of local fish and game advisory committees; 5 AAC 96.640. Regular meetings; and 5 AAC 97.005. Areas of jurisdiction for advisory committees. Update the regulations to correct errors and omissions.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? The proposal requests a number of technical corrections to the advisory committee regulations.

WHAT ARE THE CURRENT REGULATIONS? The regulations to be corrected in this proposal:

- Chapter 96 Local fish and game advisory committees (title change)**
- 5 AAC 96.021. Establishment of advisory committees.**
- 5 AAC 96.050. Functions of local fish and game advisory committees.**
- 5 AAC 96.650. Regular meetings.**
- 5 AAC 97.005. Areas of Jurisdiction.**

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? The proposal offers a number of housekeeping-like changes that would have no effect.

BACKGROUND: In reviewing the joint board regulations, boards support noted a number of errors and omissions and recommends the joint board use this opportunity to correct them.

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal with an amendment to change the area of jurisdiction for GMU 21, which lists the “Lower Yukon Committee” instead of the Coastal Lower Yukon and the Mid-Lower Yukon Committees. The Joint Board divided the Lower Yukon AC at the 2013 meeting, so it no longer exists.

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.

PROPOSAL 40 - 5 AAC 96.060. Uniform rules of operation; 5 AAC 96.460. Attendance at meetings; 5 AAC 96.600. Meetings; and 5 AAC 96.610 Procedure for developing fish and game regulations. Amend regulations to align and clarify current practices for advisory committees and the process for adopting fish and game regulations.

PROPOSED BY: Alaska Department of Fish and Game.

WHAT WOULD THE PROPOSAL DO? If adopted, this proposal would update regulations to codify certain administrative requirements and reflect actual administrative practices. Specifically, this proposal would put into regulation archive requirements, clarify the department’s role in reimbursing advisory committee travel, repeal language defining a board hearing as a board member attending an advisory committee meeting, update the procedure for setting fish and game regulations, and clarify aspects of the joint board petition policy.

WHAT ARE THE CURRENT REGULATIONS? The regulations to be modified in this proposal:

- 5 AAC 96.060. Uniform rules of operation**
- 5 AAC 96.460. Attendance at meetings**
- 5 AAC 96.600. Meetings**
- 5 AAC 96.610 Procedure for developing fish and game regulations.**

WHAT WOULD BE THE EFFECT IF THE PROPOSAL IS ADOPTED? If adopted, the regulations will be updated to reflect current practices.

BACKGROUND: In reviewing the joint board regulations, boards support section noted areas in regulation where current practices could be stated more accurately.

Currently, there are rigorous archive retention schedules for board and advisory committee activity. Advisory committee material is challenging to maintain, particularly if boards support staff is unable to attend meetings and carefully track all proceedings. The first portion of this

proposal seeks to add archiving requirements to the advisory committee rules of operation to cement this important step in the committees' workflow.

5 AAC 96.460 indicates the boards will request the department reimburse advisory committee members for travel. This is updated to reflect what is a department function. Boards support is appropriated funds from the Legislature for this activity and funds advisory committee travel without any direction. There are times when the department must withhold travel from certain individuals who have abused travel privileges and this regulatory change places that responsibility solely on the department.

5 AAC 96.600(b) contains confusing language regarding Board of Fisheries member attendance at advisory committee meetings. The regulation defines board member presence at a committee meeting as a "board hearing" to satisfy requirements in AS 16.05.300(b). The Board of Fisheries does not interpret AS 16.05.300(b) to mean the board must physically meet or hold a hearing in each of the geographical areas described and therefore this regulation has no effect.

There are several areas in boards' procedures for creating regulations in 5 AAC 96.610 that could use strengthening to reflect current practices. It is standard practice that only proposals that meet the call are included in the regulation proposal book. This proposal provides authority to publish just those proposals sought in the call. The department is attempting to direct more board, staff, and public information material to the Internet in an effort to reduce costs. By adding reference to the website this proposal codifies this effort. However, it should be noted the Administrative Procedures Act ("APA" - AS 44.62) still requires that a hardcopy mailing list be maintained for sending out legal notices. Finally, the regulatory process does not address the critical step of receiving advisory committee and public comments. This is one of the most important steps in both boards' processes and important to recognize.

The final proposed change updates the joint board petition policy. The current version indicates the boards will seek proposals twice a year. This practice has changed to once a year. It also clarified in subsection (e) that petitions received through the standard APA process as described in subsection (a) can detrimentally circumvent the boards' processes developed in 5 AAC 96.610. By not directing the reader back to subsection (a), there may be confusion that "petitions" in (e) refer to the boards' emergency petition process defined in the next subsection, (f).

DEPARTMENT COMMENTS: The department submitted and **SUPPORTS** the proposal with a corrective amendment. The proposed correction for 5 AAC 96.625(b) cites 5 AAC 96.600(b). This should refer to 5 AAC 96.610(a).

COST ANALYSIS: Approval of this proposal is not expected to result in an additional direct cost for a private person to participate in the regulatory process.
