

ALASKA BOARD OF FISHERIES
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October Work Session 2012

ACR Criteria

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POLICY FOR CHANGING BOARD OF FISHERIES AGENDA

5 AAC 39.999. POLICY FOR CHANGING BOARD AGENDA. (a) The Board of Fisheries (board) will, in its discretion, change its schedule for consideration of a proposed regulatory change in response to an agenda change request, submitted on a form provided by the board, in accordance with the following guidelines:

- (1) the board will accept an agenda change request only
 - (A) for a fishery conservation purpose or reason;
 - (B) to correct an error in a regulation; or
 - (C) to correct an effect on a fishery that was unforeseen when a regulation was adopted;
 - (2) the board will not accept an agenda change request that is predominantly allocative in nature in the absence of new information found by the board to be compelling;
 - (3) the board will consider an agenda change request only at its first meeting in the fall; the request must be sent to the executive director of the board at least 45 days before the first meeting in the fall.
- (b) The board will, in its discretion, change its schedule for consideration of proposed regulatory changes as reasonably necessary for coordination of state regulatory actions with federal fishery agencies, programs, or laws.
- (c) If the board accepts an agenda change request under this section, the executive director shall notify the public and the department of the change in the board's schedule and when the board will consider the proposed regulatory change requested.

*Authority: AS 16.05.251 Regulations of the Board of Fisheries
AS 16.05.300 Board Meetings*

Note: The form in 5 AAC 39.999 is available by writing to the Department of Fish and Game, Boards Support Section, P.O. Box 115526, Juneau, AK 99811-5526 or by calling (907) 465-4110.

(Send agenda change requests to: Board of Fisheries, Executive Director, at the above address.)

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 any agency 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, regional fish and game councils, and to over 500 other interested individuals.

(c) Copies of all proposals are available at local Department of Fish and Game offices. When the proposal books are available, the advisory committees and regional councils then 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 and regional councils 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 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 schedule 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. (Eff. 9/22/85, Register 95; am 8/17/91, Register 119; readopt 5/15/93, Register 126)

Authority: AS 16.05.251, AS 16.05.255, AS 16.05.258

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.

(Eff. 8/17/91, Register 119; readopted 5/15/93, Register 126)

Authority: AS 16.05.251, AS 16.05.255, AS 16.05.258

**ALASKA BOARD OF FISHERIES
DELEGATION OF AUTHORITY TO
CORRECT ERRORS OR OMISSIONS IN REGULATIONS AND TO
REFORMAT AND RENAME CHAPTERS WITHIN ALASKA ADMINISTRATIVE
CODE**

2006-250-FB
(Replaces Finding 99-192-FB)

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

1. The board characteristically adopts numerous regulations during the course of any year.
2. Many of the regulations adopted by the board are highly complex and interrelated with other regulations already in effect.
3. In view of the volume of regulatory proposals considered by the board at each meeting, it is impossible to prevent occasional ambiguities, inconsistencies, errors or omissions, or other technical shortcomings in regulations adopted by the board. Such deficiencies in regulations may preclude successful prosecution of regulatory violations, or prevent the intent of the board from being fully implemented or result in other consequences not desired by the board. Technical deficiencies may include some or all of the following items; formatting problems; typographical errors or inadvertent errors made during publication; conflicting regulations; lack of definition of terms and modification of terminology to reflect changes in technology.
4. As a result of the volume of regulations considered by the Board and the compressed timeline for getting regulations into place, errors or omissions, such as incorrect phrasing of Board conceptual regulatory language and failure to fully capture all amendments to a proposal in final regulatory language, do happen in the course of regulatory writing during a board cycle, and the board recognizes the need to correct such problems to make the regulations consistent with board's original intent.
5. It is impractical, unnecessary, and contrary to the public interest to initiate action by the full board to correct such errors or omissions, or address reformatting and renaming chapters within the Alaska Administrative code.
6. The commissioner and staff of the Department of Fish and Game, and personnel of the Departments of Law and Public Safety are most likely to notice technical deficiencies and errors and omissions in the regulations as a result of daily administration of Title 16 of the Alaska Statutes and Title 5 AAC regulations adopted by the board.

THEREFORE THE BOARD RESOLVES that in hereby makes the following delegation of its rulemaking authority under AS 16.05.251 and AS 16.05.258 to the commissioner of the Department of Fish and Game to be carried out under AS 16.05.270:

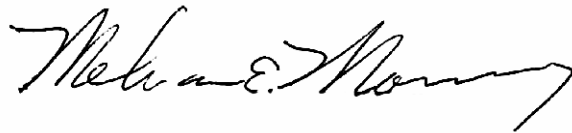
A. The commissioner may adopt, in accordance with the Administrative procedure Act (AS 44.62), permanent or emergency regulations, designated to eliminate inconsistencies, ambiguities, errors or omissions, or other technical deficiencies in existing regulations of the board.

B. The commissioner may reopen board regulatory projects after filing of the original regulations, and may sign a new adoption order reflecting the board's adoption of the regulations, within the current or previous board cycle, when through administrative error, the regulations are not correctly reflected in the administrative code. The commissioner may make such corrections in the regulations so long as they continue to be consistent with the board's original intent, as explained in the record of the board's proceedings.

C. All regulatory changes adopted by the commissioner under this delegation must be consistent with the expressions of the board's intent at the time it adopted the regulation to be corrected. Regulatory amendments that would result in a significant, substantive amendment or addition to existing board regulations that are not clearly manifest in the board's record, may not be adopted by the commissioner under the authority of this delegation and will require a separate delegation or direct board action.

D. This resolution replaces Finding 99-192-FB.

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



Mel Morris, Chairman
Alaska Board of Fisheries

Adopted: 12/13/2006
Dillingham, AK

VOTE: 6-0-1 (Andrews absent)

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

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

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

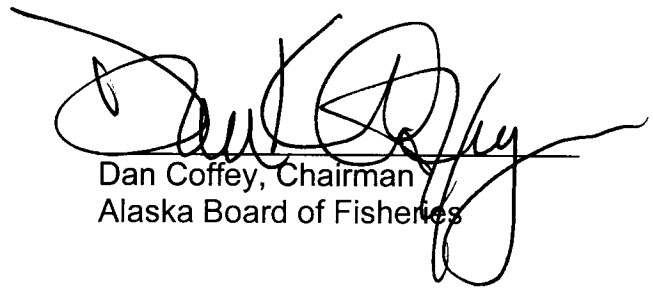
1. The Board will provide written explanations of the reasons for its decisions concerning management of crab fisheries that are governed by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs as required by that plan.
2. The Board will, in its discretion and in consultation with the Department of Law, provide written findings for regulatory decisions regarding issues that are either already the subject of litigation or are controversial enough that litigation is likely.
3. The Board will, in its discretion, provide written findings for regulatory actions where the issues are complex enough that findings may be useful to the public in understanding the regulation, to the department in interpreting and implementing the regulation, or to the Board in reviewing the regulation in the future.
4. The Board will, in its discretion, provide written findings for regulatory actions where its reasons for acting are otherwise likely to be misconstrued by the public, the legislature, or other state or federal agencies.

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

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

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

ADOPTED: 10/27, 1999
Fairbanks, Alaska



Dan Coffey, Chairman
Alaska Board of Fisheries

VOTE: 7/0

JOINT PROTOCOL
BETWEEN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC)
ANCHORAGE, ALASKA
and
ALASKA BOARD OF FISHERIES (BOF)
JUNEAU, ALASKA
ON
MANAGEMENT OF FISHERIES
OFF ALASKA

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

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

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

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

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

I. Applicable Fisheries

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

II. Duration of the Agreement

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

III. NPFMC and BOF shall undertake the following activities:

- A. NPFMC and BOF shall jointly agree upon and implement an annual management cycle that provides for coordinated, compatible, and sustainable fisheries management in State and Federal waters. Management measures shall be consistent with the national standards of the Magnuson-Stevens Act, with the laws of the State of Alaska, and with all other applicable laws.

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

1. The NPFMC and BOF will endeavor to coordinate their proposal schedules to the greatest extent practicable.
2. The NPFMC will provide the BOF with the latest stock assessment information shortly after the NPFMC's September meeting, noting any special management or conservation concerns with individual groundfish fisheries. The NPFMC will also review fisheries management proposals that it receives that could have impacts on State programs and forward such proposals to the BOF for consideration at an appropriate BOF meeting. The NPFMC will provide all available information concerning such proposals and will identify particular issues that should be analyzed before taking final action.
3. The BOF at its fall meeting will review groundfish proposals. Those proposals identified as being of mutual concern to both the BOF and NPFMC, will be forwarded to the NPFMC for consideration at its December meeting. The BOF will provide any information available concerning the proposals, and will identify particular issues that should be analysed before taking final action.
4. In December the NPFMC will review stock assessments, set acceptable biological catch and harvest limits, consider proposals and other information received from the BOF, and task staff with developing a discussion paper on potential impacts of the proposals if adopted.
5. Final action by the BOF will occur at their next groundfish meeting following the February joint meeting with the NPFMC. After a BOF final decision, the BOF shall adopt findings explaining the basis for the regulation. This provision shall not apply to emergency regulations, however, justification should be provided to the NPFMC in a timely manner, not less than ten days after the emergency action.

C. A joint NPFMC-BOF committee, not to exceed three members from each body, will be formed and meet in January and at other times as necessary to review available analyses, proposals, and any other matters of mutual concern, and to provide recommendations to the joint NPFMC and BOF.

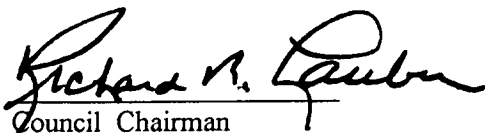
D. The NPFMC and BOF will meet jointly in Anchorage each February to consider proposals, committee recommendations, the analysis, and any other issues of mutual concern. All interested persons and agencies shall have the opportunity to submit comments to the NPFMC and BOF at these meetings on proposals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

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

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

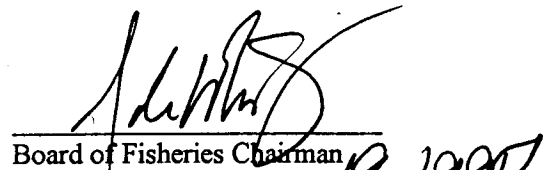
Approved:

For the North Pacific Fishery Management Council


Richard M. Leuben
Council Chairman

Mar. 7, 1997
Date

For the Alaska Board of Fisheries


Board of Fisheries Chairman
March 19, 1997
Date

ALASKA BOARD OF FISHERIES

PROCEDURES FOR DELEGATIONS OF AUTHORITY

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

1. AS 16.05.270 authorizes the board to delegate its authority to adopt regulations under AS 16.05.251 and AS 16.05.258 in accordance with the Administrative Procedure Act (AS 44.62), so that the Commissioner of Fish and Game may adopt regulations on behalf of the board.
2. The need for a delegation of authority most often arises where regulatory action is necessary but it is impossible or impractical to simultaneously convene the entire board, or a quorum of the board, either in person or by telephone.
3. Where regulatory action is necessary but it is impossible to convene the board, the state government may be unable to undertake any regulatory action unless a delegation of authority can be executed.
4. Neither AS 16.05 nor AS 44.62 require a formal meeting of the board in one geographical location to accomplish a delegation of authority.
5. Requiring the board to meet in one physical location or by telephone simultaneously to make a delegation of authority would largely defeat the purpose of AS 16.05.270, since a meeting of the board could eliminate the necessity for a delegation.
6. Delegations of authority have been carried out in the past using a telephone poll of board members or in the alternative, a vote by mail.
7. The type of procedure described in paragraph 6 has been utilized (in the form of notation voting) by federal agencies with the full knowledge of Congress and the approval of federal courts.


THEREFORE, THE BOARD RESOLVES that it hereby interprets AS 16.05 and AS 44.62 to permit telephone polls or mail votes for purposes of executing a delegation of authority; Provided, that in any instance where the commissioner solicits a delegation from the board, he or she shall (1) make a good faith effort to contact all board members so as to enable each of them to vote, and (2) permit board members the opportunity

to discuss the proposed delegation with other board members before voting, if they express a desire to do so; and Provided further, that nothing in this Resolution shall be construed to waive the right of any two board members to call a board meeting under AS 16.05.310.

This resolution replaces #75-2-FB.

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

Dated: March 13th - 1980



Gary Slaven, Chairman
Alaska Board of Fisheries

At: Anchorage, Alaska

Vote: Consensus