

# ALASKA BOARD OF FISHERIES

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### Chignik Finfish December 2013 Meeting

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## 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

*~DRAFT~*

**ALASKA BOARD OF FISHERIES**

CRITERIA FOR DEVELOPMENT OF BOARD-GENERATED PROPOSAL

It has been suggested that criteria need to be established to guide Alaska Board of Fisheries (board) members when deliberating on whether or not to develop a board-generated proposal. The board will consider the following criteria when deliberating the proposed development and scheduling of a board-generated proposal:

1. Is it in the public's best interest (e.g., access to resource, allocation concerns, consistent intent, public process)?
2. Is there urgency in considering the issue (e.g., potential for escapement objectives not being met or sustainability in question)?
3. Are 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)?

Approved: January 20, 2013  
Vote: 6-0  
Anchorage, Alaska

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Karl Johnstone, Chairman  
Alaska Board of Fisheries

**ALASKA BOARD OF FISHERIES****OPERATING PROCEDURES  
POLICY FOR WRITTEN PUBLIC COMMENT**


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

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

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

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

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

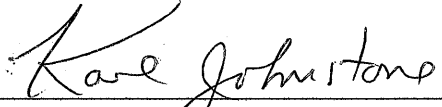
  
Karl Johnstone, Chairman  
Alaska Board of Fisheries

**ALASKA BOARD OF FISHERIES**

OPERATING PROCEDURES  
MOTION TO RECONSIDER

1. Only a board member who voted on the prevailing side of the original issue can move to reconsider a vote.
2. A motion to reconsider must be supported by a presentation of new evidence that was not before the board at the time the original vote was taken.
3. A board member who wishes to reconsider any vote must provide written notice to the chairman or notice on the record of his or her intent to move for reconsideration no later than 24 hours after the vote on the issue that reconsideration is requested. Failure to provide timely notice, either in writing or on the record, will preclude any member from moving to reconsider an earlier vote.
4. After receiving timely notice from a board member of his or her desire to reconsider a previous vote, the chair shall set a time and date to hear the motion to reconsider.

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

  
Karl Johnstone, Chairman  
Alaska Board of Fisheries

**ALASKA BOARD OF FISHERIES**  
**Resolution in Support of Habitat Intervention for Black Lake**

**2008-255-FB**

WHEREAS, the health of the environment and habitat for fish is critical to productivity and sustained yield and generational success of all fish stocks, and

WHEREAS, attention to habitat improvement or restoration can have a critical impact upon localized salmon stock wellbeing, and

WHEREAS, natural events have drastically altered the smolt-rearing habitat of Black Lake near Chignik, a condition that may be correctable through intervention,

NOW THEREFORE BE IT RESOLVED, that the Alaska Board Fisheries strongly supports habitat interventions and urges the Alaska State Legislature to annually address habitat interventions using resource infrastructure investments in their capital projects budget,

BE IT FURTHER RESOLVED, that an excellent candidate would be Black Lake, in the Chignik Management Area, where runs have declined by over 50 percent in recent years due to failures in the smolt-rearing habitat that may be correctable by habitat intervention.

ADOPTED this 12<sup>th</sup> day of January, 2008



\_\_\_\_\_  
Mel Morris, Chair  
Alaska Board of Fisheries

Vote: 7 in favor, 0 opposed

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

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

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

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

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

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

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

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

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

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

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

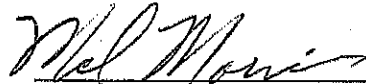
WHEREAS, reaffirmation of the Board's authority to allocate within fisheries would not authorize the Board of Fisheries to allocate to individual fishermen based on catch history without separate express statutory authorization;

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

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

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

Adopted: April 16, 2007

  
\_\_\_\_\_  
Mel Morris, Chairman  
Alaska Board of Fisheries

VOTE: 7/0



**ALASKA BOARD OF FISHERIES  
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:

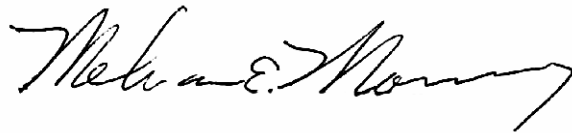
A. The commissioner may adopt, in accordance with the Administrative procedure Act (AS 44.62), permanent or emergency regulations, designated to eliminate inconsistencies, ambiguities, errors or omissions, or other technical deficiencies in existing regulations of the board.

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.



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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 EMERGENCY PETITION PROCESS  
#2000-203- BOF**

The Board of Fisheries often receives petitions for emergency changes to its regulations during times of the year when it is not meeting and no meeting is scheduled within the next 30 days. The Alaska Administrative Procedures Act (APA) requires that the Board shall, within 30 days of receipt of a petition, deny the petition in writing or schedule the matter for public hearing. AS 44.62.230. 5 AAC 96.625(f) establishes criteria for acceptance or denial of an emergency petition, but it does not establish the procedure the Board will go through to address the petition. This policy lays out the procedure that the Board will follow upon receipt of a petition for an emergency change to its regulations.

If the Board is in session or scheduled to meet within 30 days of receipt of an emergency petition, the executive director will schedule the petition for consideration by the Board on the agenda of the current or upcoming meeting.

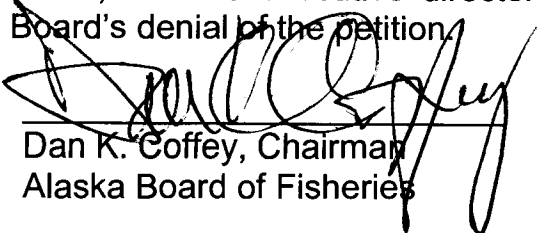
If the Board is not in session and is not scheduled to meet within 30 days of receipt of an emergency petition, the executive director will transmit to each Board member a copy of the petition, a cover memo in the form attached to this policy, and any information furnished by the Alaska Department of Fish and Game in response to the petition. After reviewing this information, each Board member will, on the cover memo, indicate his or her vote to deny the petition or schedule a special meeting for Board consideration and possible adoption of the petition, date and sign the document, and return it to the executive director as soon as practicable.

Pursuant to AS 16.05.310, if two or more Board members vote in favor of a special meeting to consider the emergency petition, then the executive director will, after consultation with the Board chair and members, schedule a public meeting of the Board at which it will consider acceptance or denial of the petition.

If two or more Board members do not vote in favor of a special meeting, the petition will be considered denied, and the executive director will write a letter to the petitioner indicating the Board's denial of the petition.

ADOPTED: November 5, 2000  
Anchorage, Alaska

VOTE: 7 - 0

  
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Dan K. Coffey, Chairman  
Alaska Board of Fisheries

## PROCEDURES FOR BOARD OF FISHERIES MEETING COMMITTEES

#2000-200-FB

### INTRODUCTION

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

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

### DESCRIPTION OF THE COMMITTEE PROCESS

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

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

## COMMITTEE PROCEDURES DURING REGULATORY MEETINGS

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

1. Early during each regulatory meeting the Board Chair will provide a brief description of how the committee system works and will further direct the public's attention to the location of a posted committee roadmap and committee assignments. The Chair will also announce that a copy of the Board's Policy Statement and this procedural description on the role of committees is available from the Board's Executive Director upon request.
2. Board committees consist solely of Board members appointed by the Board Chair. Advisory committee representatives and public panel participants are not committee members, but rather are advisors to the committee. Department staff as well as other state and federal agencies staff will provide technical assistance to committees.
  - A) Public panel participants are generally stakeholders in the fisheries under consideration. They may be CFEC permit holders, crewmen, processors, executive directors of associations, and private citizens.
  - B) A Board member will serve as a chairperson for each committee.
  - C) The Board Chair will announce the location and time of all committee meetings.
  - D) All committee meetings are open to anyone that desires to attend, although participation is limited to the advisory committee representatives, the public panel participants, the technical advisors, the department staff and the committee members.
3. Individuals that desire to serve as public panel participants to any committee should make their availability known to the chair of the respective committee. Willingness to serve can be expressed by personal contact with a committee chair or during presentation of formal oral testimony. Committee chairs are to keep a list of prospective public panel participants

during the course of the meeting.

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

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

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

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

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

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

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

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

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

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

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

committee report.

- C) Committee reports will not include recommendations for proposals when such recommendations will predetermine the ultimate fate of the proposal. For example, when the full Board consists of six or few voting members (because of absence, abstention or conflict of interest) a committee of three should not provide a negative recommendation on a proposal.
8. Committee reports will be made available to the public in attendance at the meeting prior to the Board beginning deliberations on proposals. The Board Chair will publicly announce when reports are expected to be available for review by members of the public. The public will be encouraged to provide written comments to the Board (submittal of record copies) regarding the content of the committee reports and/or to personally contact Board members to discuss the reports.
- A) The Board Chair will provide sufficient time between release of committee reports and deliberations for the preparation of written comments or for verbal communications with individual Board members to occur.
9. Board deliberations will begin after the full Board has had time to review committee reports, after the public in attendance has had an opportunity to respond to the reports, and after the full Board has had an opportunity to review the public's comments made in response to the committee reports. During the course of deliberations, committee chairs will present their committee's report and initially will lead the discussion relative to proposals assigned to their committee.
10. The full Board shall be involved in the debate or discussion of all proposals and will make regulatory decisions based on all information received to the record, including information from committees.

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

Vote: 6-0-1  
(Miller absent)

  
Dan K. Coffey, Chairman



**ALASKA BOARD OF FISHERIES**  
**POLICY STATEMENT**

**Policy for Formation and Role of Committees at Board Meetings**

#2000-199-FB

**INTRODUCTION**

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

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

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

**DISCUSSION**

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

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

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

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

1. Acquisition of additional detailed information from both the public and staff.
2. Providing a consensus-building forum that assists in the understanding and resolution of complex and controversial conservation, allocation, fishery resource, habitat and management issues.
3. Enhancing the interaction among the Board, the public and department staff which results in broader public understanding of the regulatory decisions of the Board and the Department's management of the fisheries.
4. Promoting efficient use of time by organizing and grouping similar proposals, reducing redundancy and organizing the huge volume of written materials provided before and during meetings by the department and the public.
5. Insuring completion of the Board's work within fiscal and temporal constraints.

The Board now finds as follows:

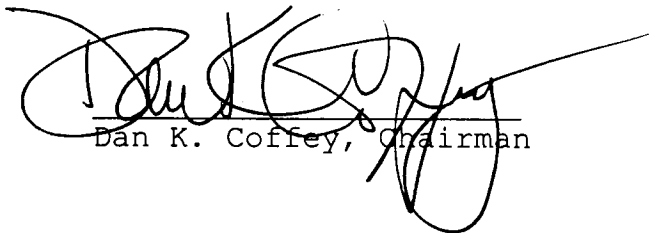
1. The goals and objectives are appropriate;
2. The statements of fact accurately reflect the beliefs and opinions of the Board as to the matters stated;
3. The committee process has, over a full three-year cycle of the Board, resulted in the goals and objectives having consistently been met.

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

1. The Policy Statement is hereby adopted as the policy of the Board of Fisheries.
2. The description of the committee process attached to this Policy Statement will be followed, in most circumstances, by the Board during the course of its regulatory meetings, subject always to the exceptional circumstance as determined by the Board.
3. The committee process is intended to be dynamic and flexible to meet the needs of the public, the Board and the Department. Thus, this Policy Statement and the attached description of the committee process are subject to ongoing review and amendment by the Board.

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

\_\_\_\_\_  
Vote  
(Miller Absent)

  
\_\_\_\_\_  
Dan K. Coffey, Chairman

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

Generally, written findings explaining the reasons for the Board of Fisheries' regulatory actions governing Alaska's fisheries are not required by law. The Alaska Supreme Court has specifically held that decisional documents are not required where an agency exercises its rulemaking authority. *Tongass Sport Fishing Association v. State*, 866 P.2d 1314, 1319 (Alaska 1994). "Adoption of a decisional document requirement is unnecessary and would impose significant burdens upon the Board." *Id.* The Board recognizes, however, its responsibility to "clearly voice the grounds" upon which its regulations are based in discussions on the record during meetings so that its regulatory decisions reflect reasoned decision-making. *Id.* The Board also recognizes that there may be times when findings are appropriate to explain regulatory actions that do not 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:

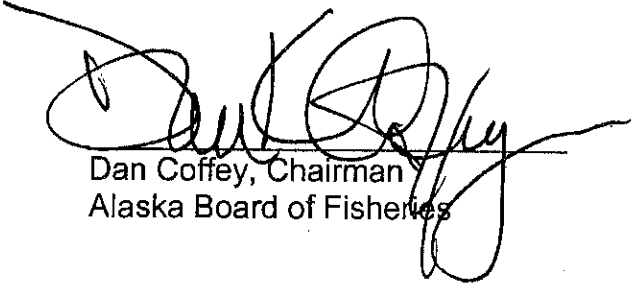
1. The Board will provide written explanations of the reasons for its decisions concerning management of crab fisheries that are governed by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs as required by that plan.
2. The Board will, in its discretion and in consultation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

(Previously: Finding #: 93-07-FB)  
Mixed Stock Policy Finding

ALASKA BOARD OF FISHERIES  
FINDINGS ON POLICY FOR MIXED STOCK SALMON FISHERIES

The Board of Fisheries, at a meeting from March 16 through 20, 1993, adopted 5 AAC 39.220, POLICY FOR THE MANAGEMENT OF MIXED STOCK SALMON FISHERIES.

The Alaska Board of Fisheries originally adopted an informal policy for mixed stock salmon fisheries in 1976 and revised it in 1980. It was applied only occasionally by the Board or by litigants challenging Board actions. In 1990, the Alaska Supreme Court held that the policy could not be used in Board decisions because it had not been adopted as a regulation under the Administrative Procedure Act (AS 44.62). The court, however, held that several Board allocation decisions on mixed stock fisheries were valid under other authorities. In 1992, the Alaska Legislature enacted AS 16.05.251(h) requiring the Board to adopt by regulation a policy for the management of mixed stock salmon fisheries consistent with sustained yield of wild fish stocks.

At the March 1993 meeting the Board considered information contained in Alaska Department of Fish and Game oral and written staff reports, oral public testimony from 91 individuals and 11 advisory committees, as well as a multitude of written public comments submitted prior to and during deliberations. Additionally, during deliberations, the Board established a committee made up of various interests in order to focus discussion on key issues.

The Alaska Board of Fisheries finds that:

Alaska's salmon industry and communities dependent upon that industry have developed and rely upon stable fisheries, many of which harvest a variety of mixed stocks. This development represents the successful application of principles of management to achieve sustained yield which have produced increasing harvestable surpluses of salmon statewide. Creation of the Limited Entry System stabilized participation in the fisheries and managers developed successful rebuilding programs which suited the unique characteristics of the fish stocks, geography and gear types of the regions.

For example, in the Bristol Bay region harvest effort was confined to the terminal areas of the five major sockeye producing systems. Escapement goals which suited the carrying capacity of the lake systems were established and managed for. Consistent harvests of tens of millions of sockeye have been achieved.

Conversely, in Southeast Alaska where pink salmon runs were depressed, a different management style arose. Rather than a few huge systems, a myriad of medium to tiny streams produce the Southeast stocks. Commercial fisheries effort occurs away from the terminal areas and through the application of time, area and gear

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Mixed Stock Policy Finding

restrictions, a style of management developed on these mixed stocks which permitted harvest of a high quality product, distributed harvest pressure over larger areas, distributed harvest temporally throughout the run, and diluted impacts on weaker stocks.

As another example, the fisheries of the Yukon River encompass the entire spectrum of fisheries management from the mixed stock fishing of the lower main stem to the terminal fisheries near the contributing systems.

The Board finds that most of Alaska's fisheries harvest stocks which are mixed.

Mixed stock salmon fisheries are often the focus of intense political controversy. Fishermen need to know what standards will be used by the Board in making decisions affecting those fisheries. Equally important, fishermen need to be assured that those standards will be applied uniformly to all mixed stock salmon fisheries, not just those that engender controversy and notoriety.

In this policy, stocks are considered to be species, subspecies, geographic groupings or other categories of fish manageable as a unit. Many stocks of Alaska salmon are not manageable throughout their range. Salmon management is an art, not an exact science. Decisions should be based upon the best information available but with no expectation that such information will be always accurate or precise.

The Board framed, by unanimous consensus, the principles upon which its policy would be developed. These tenets included reasserting the statutory preference for wild stock conservation as well as the subsistence preference. Consensus principles were:

(1) The policy should provide that all users of salmon resources should share in actions taken to conserve the resource in a manner which is, ideally, fair and proportional to respective harvest of the stock in question.

(2) The policy should state that the Board prefers to develop management plans as the mechanism to express how the burden of conservation is to be distributed among users and that these management plans also state allocation objectives as determined by application of the allocation criteria. Most mixed stock fisheries are long standing and have been scrutinized many times by past Boards. Consequently, existing regulatory management plans are understood to incorporate conservation burden and allocation, although such burdens can be readjusted.

(3) The policy should recognize that salmon resources are generally fully utilized and that stability is an important aspect of the fisheries.

(4) New or expanding fisheries on mixed stocks may potentially change management schemes for conservation or may change existing allocations. Therefore new or expanding mixed

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stock fisheries will be discouraged unless a management plan or application of the Board's allocation criteria warrant otherwise.

(5) The policy should not be a tool to be used for allocating outside of the Board's allocation criteria.

(6) The policy should not pass the burden of allocating mixed fish stocks to the department in-season, but rather allocation decisions should be made only by Board regulation; consequently, mixed stock issues requiring redress between Board meetings should be undertaken only pursuant to existing procedure (Petition Policy, Agenda Change Policy and Subsistence Petition or Proposal Policy).

(7) The policy should reflect that new or expanding fisheries will not be gauged against single year anomalies in distribution or effort, or against natural fluctuations in the abundance of fish.

(8) This is a salmon policy and applies to all users.

Section by Section Findings:

The Board determined in section (a) of the policy that mixed stock salmon fisheries management should be fully consistent with the statutory preference for wild stock conservation, and accorded it the highest priority consistent with sustained yield. Achievement of sustained yield cannot be tied to annual attainment of each and every escapement goal each and every year. Such a standard is too limiting and not practical. The Board recognized that sustained yield was not a precisely measurable standard to be applied in a strict sense, but rather connoted a system of management intended to sustain the yield of the particular salmon resource being managed. The Board's management system, therefore, seeks the goal of sustained yield over time. The Board also determined that nothing in this policy development was intended to diminish in any way the subsistence preference.

In subsection (b) the Board addresses the burden of conservation. Burden is a subjective term but the Board wishes to state that under ideal circumstances, management actions to achieve conservation objectives will be shared fairly among users. This sharing depends on information, and the Board recognizes stock specific information will not always be available. It is expected that, over time, more and more stock specific data will evolve from scale analysis, tagging, and genetic research.

Intrinsic within the management of mixed stocks is the question of how conservation and allocation of the weaker stocks which may be present shall be achieved. In each regulatory decision, the Board must weigh how harvests of healthy stocks will be managed in order to protect the less robust components of fisheries. Where stock information is not precise or unavailable, the sharing of the conservation burden may be unavoidably disproportional.

Consistent with AS 16.05.251(e), the Board has adopted criteria for the allocation of fishery resources among competing users, and the Board uses these criteria when adopting management



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plans. In subsection (c), the Board determined that such regulatory management plans are the preferred mechanism to address complex fishery issues. Regulatory management plans are presumed to assign proportional burdens of conservation and to allocate harvest opportunity.


It is the intent of subsection (d) of this policy to restrict new or expanding fisheries that rely heavily upon harvests of mixed stocks of fish, particularly if those stocks are fully utilized and allocated elsewhere, unless otherwise warranted by application of the Board's allocation criteria.

Definition of new or expanding fisheries will not be based on natural fluctuations in abundances of fish. Rather, expansion of fisheries must be gauged against the behavior of fishermen, such as increases in effort, movement to new areas, or targeting on different species. It is seldom practical to declare a fishery as "new" or "expanding" based on a single year's events.

This policy is intended to guide future action by the Board of Fisheries in establishing regulatory restrictions on fisheries; this policy is not to be used directly by the department to make in-season adjustments not otherwise specified or called for in regulatory management plans. Nothing in this policy affects the Department's emergency order authority to make in-season adjustments for conservation purposes. Action by the Board to implement this policy will occur under its normal schedule of deliberations, except for those issues that warrant consideration under the various regulatory petition and agenda change policies.

The intent of subsection (e) of this policy is to embody the current practices of salmon management employed by the Board and the department. It is not the intent of this policy to create a terminal fisheries preference, nor a mixed stock preference. It is not the intent of this policy to require readjustment of existing regulatory management plans, either for conservation or for allocative purposes. Future shifts in allocation, even under this policy, must comply with the Board's allocation criteria.

Approved: October 26, 1993  
Location: Alyeska Resort; Girdwood, AK  
Vote: 7/0 (Yes/No)

  
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Tom Elias, Chair  
Alaska Board of Fisheries

## ALASKA BOARD OF FISHERIES

## ALLOCATION CRITERIA

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

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

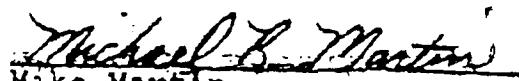
- 1) the history of each personal use, sport, and commercial fishery;
- 2) the characteristics and number of participants in the fisheries;
- 3) the importance of each fishery for providing residents the opportunity to obtain fish for personal and family consumption;
- 4) the availability of alternative fisheries resources;
- 5) the importance of each fishery to the economy of the state;
- 6) the importance of each fishery to the economy of the region and local area in which the fishery is located;
- 7) the importance of each fishery in providing recreational opportunities for residents and nonresidents.

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

Adopted: November 23, 1991

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

Location: Anchorage International Airport Inn

  
Mike Martin  
Chair  
Alaska Board of Fisheries

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Adopted: November 23, 1991

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

Location: Anchorage International Airport Inn



Mike Martin, Chairman  
Alaska Board of Fisheries

## ALASKA BOARD OF FISHERIES STANDING RULES

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

- Take No Action. Has the effect of killing a proposal or issue upon adjournment. There are two reasons for taking no action: 1) It is found that the proposal is beyond the board's authority; or 2) due to board action on a previous proposal(s).
- Tabling has the effect of postponing indefinitely (Robert's Rules of Order). One of the primary reasons the board tables a proposal/issue is to gather more information during that meeting since a tabled proposal/issue dies when that meeting session adjourns.
- One amendment at a time. As a practice, the board discourages an amendment to an amendment. This is a proper motion by Robert's Rules of Order, however the board tries to avoid the practice because of the complexities of issues.
- Do not change or reverse the intent of a proposal/issue. For example, if a proposal's intent is to restrict a particular fishery and the board wishes to close or expand the fishery, the board will not amend the original proposal. The board will defeat, table or take no action on that proposal and then develop a board generated proposal to accomplish the action they feel is needed.
- "Ruling of the Chair" or "Chair's Ruling". When the chair makes a ruling, the board members have two options; 1) accept the ruling and move on; or 2) appeal/challenge the chair's ruling. By Robert's Rules of Order, the process is as follows (When a chair's decision is appealed/challenged):

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- 1) The chair makes a ruling;
- 2) A member appeals (challenges) the chair's ruling (i.e. "I appeal the decision of the chair") and it is seconded (Note: All board members present can or could appeal/challenge the ruling);
- 3) Any board member can debate the ruling and appeal/challenge (Note: By Robert's Rules the chair and the person appealing/challenging the ruling are the only two who are to debate the issue);
- 4) The question before the board is: "Shall the decision of the chair be sustained?"
- 5) After the result of the vote is announced, business resumes.

- The public depends on or expects the board members to keep an open mind on the issues before the board. To accomplish this the board will listen to and ask questions: 1) staff reports, advisory committee and regional council reports, and 2) during deliberations on the issues, listen to fellow board members points and issues. It is not conducive to soliciting public involvement if the board members express that they already have an opinion and it is up to the public or staff to "change their mind."
  
- Note another "Standing Rule" contained in Board of Fisheries Finding Number: 80-78-FB. This finding is regarding the Reconsideration Policy of the board.

Adopted: November 23, 1991

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

Location: Anchorage International Airport Inn

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Mike Martin, Chairman  
Alaska Board of Fisheries

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