

MEMORANDUM

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Boards Support Section

TO: Boards of Game and Fisheries Joint
Committee

DATE: February 2, 2018

THRU:

PHONE: 907-465-4110

FROM: Glenn Haight, Executive Director ^{GH}
Boards Support Section

SUBJECT: Options for call for proposal
and future meeting schedule
of the Joint Board

CC: Hazel Nelson, Director
Division of Subsistence

Bruce Dale, Director
Division of Wildlife Conservation

Scott Kelley, Director
Division of Commercial Fisheries

Tom Brookover, Director
Division of Sport Fish

Introduction

This memo provides options for Call for Proposal (call) guidelines and future meeting cycle timing if the Joint Board Committee (committee) recommends a Joint Board meeting in the near future.

In general, the Joint Board's authorities are to oversee the fish and game regulatory process, establish the advisory committee system, and oversee subsistence procedures, including nonsubsistence areas. Alaska Department of Fish & Game (ADF&G) recommends no limitations in a call for the first two authorities. However, the committee may consider a suite of options which tailor a call related to nonsubsistence areas. This is warranted given the significant amount of work required to analyze nonsubsistence areas proposals with outdated federal census information and the history of limited change from nonsubsistence area proposals submitted in the past. This path may be more palatable to the interested public if the committee also recommends a future meeting cycle outlining when nonsubsistence area proposals will be fully vetted.

As discussed in this memo, potential options for tailoring a call related to nonsubsistence areas include:

1. No modification of the call. Leave the call open to all regulations including proposals related to nonsubsistence areas.
2. Establish a set meeting cycle for the Joint Board, but accept nonsubsistence area proposals only on a decennial basis linked to the release of federal census data.

3. Tailor the call for nonsubsistence area proposals to identify new data related to the 12 criteria in AS 16.05.258(c) that identify the nonsubsistence areas. This option necessitates two further process considerations - 1.) what data is expected in the proposal and 2.) a review process to determine if a proposal meets the call. For example, one recommendation is to require the proposal to provide information on 4 of the 12 criteria, and reconvene the committee to assess the proposals that do not meet the call. From this assessment, forward the findings as consent agendas to each board's consideration at their earliest meetings in the next cycle, and in each board's review any board member may request a proposal be returned to the Joint Board for full consideration at the scheduled meeting.

ADF&G further recommends the committee consider a set regulatory meeting schedule for the Joint Board. If timed to coincide with the release of federal census data, that would set the Joint Board on a meeting path starting in 2021/2022. Given how far in the future this cycle occurs and the level of issues that accrued since the last Joint Board meeting, a sooner meeting may be warranted.

Nonsubsistence Areas Authority and History

A potential topic for a Joint Board meeting is Chapter 99 – Subsistence Uses, Section 015. Joint board nonsubsistence areas. Under AS 16.05.258(c), the Joint Board is charged with identifying nonsubsistence areas, where “dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life” by considering 12 socio-economic characteristics of the areas.

The 12 characteristics in AS 16.05.258(c) are:

1. The social and economic structure.
2. The stability of the economy.
3. The extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment.
4. The amount and distribution of cash income among those domiciled in the area or community.
5. The cost and availability of goods and services to those domiciled in the area or community.
6. The variety of fish and game species used by those domiciled in the area or community.
7. The seasonal cycle of economic activity.
8. The percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game.
9. The harvest levels of fish and game by those domiciled in the area or community.
10. The cultural, social, and economic values associated with the taking and use of fish and game.
11. The geographic locations where those domiciled in the area or community hunt and fish.
12. The extent of sharing and exchange of fish and game by those domiciled in the area or community.

The Joint Board established the current nonsubsistence areas during two multi-day meetings in 1992 and 1993, following the passage of the current state subsistence law. ADF&G prepared a detailed report addressing each of the 12 socioeconomic characteristics for each area (this is now Technical Paper 335 in the Division of Subsistence Technical Paper Series). The Joint Board also adopted detailed findings for each area (which appear as Appendix C in Technical Paper 386).

In 2006, the Joint Board issued a call for proposals to address potential changes to nonsubsistence areas. Two proposals were received: Proposal 37 to modify the boundary of the Juneau

Nonsubsistence Area, and Proposal 38 to add portions of GMUs 13 (Copper Basin) and 20 to nonsubsistence areas. Again, ADF&G prepared a detailed report with summaries of available data relevant to the proposed changes (Division of Subsistence Technical Paper No. 336) for the four-day Joint Board meeting in October 2007. In comments on the two proposals, the Department of Lawⁱ advised:

Similar to past advice we've given on proposals to modify Customary and Traditional Determinations, the Joint Boards should carefully consider proposals to modify Nonsubsistence Area regulations. The current Nonsubsistence Area regulations are presumed to be legally valid. They were based on an extensive administrative record, and reviewed and approved by the Department of Law. We recommend that, in considering the current proposals, the Joint Board concentrate on any new information that has been developed since the adoption of the current regulations in 1993.

Primarily because the Joint Board determined that there had been no new information provided that demonstrated any significant changes relevant to the 12 factors, the Joint Board declined to adopt both proposals and made no changes to nonsubsistence area boundaries.

The most recent Joint Board review of nonsubsistence areas took place during a five-day meeting in October 2013. The Joint Board issued a call for proposals to address nonsubsistence areas in 2012. Four proposals were received. Proposal 38 proposed elimination of all the existing nonsubsistence areas. Two proposals targeted specific communities for nonsubsistence area status: Kodiak (Proposal 40) and Bethel (Proposal 41). The fourth proposal (39) addressed the boundaries of the Fairbanks Nonsubsistence Area. As noted by Department of Law and ADF&G comments, none of these proposals provided any evidence relevant to the 12 factors; as in 2007, the Department of Law advised against changes to nonsubsistence area boundaries absent any “information supporting such a reevaluation.”ⁱⁱ ADF&G updated the extensive data cited in the findings from the 1992/1993 Joint Board meetings in a detailed report (Division of Subsistence Technical Paper No. 386: <http://www.adfg.alaska.gov/techpap/TP386.pdf>). After several days of public testimony, an oral staff report, and deliberations, the Joint Board, as in 2007, chose to make no changes to nonsubsistence areas, again primarily because the available data did not justify any significant changes since the areas were established in 1992 and 1993.

Experience from these previous Joint Board meetings, based on staff reports and Joint Board findings, shows that the 12 socio-economic characteristics used to identify nonsubsistence areas are unlikely to change meaningfully over a relatively short time period of time, primarily because the characteristics address broad features of the economy such as employment rates, cash incomes, and harvest patterns.

Relevant Data Sources

A primary source for information on many of the characteristics is the federal decennial census. Data from the 2010 census were used extensively in the 2013 Joint Board report and deliberations. New information from the 2020 federal census will not be available until approximately 2021 or later.

The federal census bureau's American Community Survey (ACS) is another major source of demographic and economic data. The ACS reports data at the community level only by 5 year running averages, rather than a series of single year updates. The most recent data cover the period 2012-2016; data available for an early 2019 Joint Board meeting would likely be for the period

2013 – 2017. Therefore, it is unlikely if significant change from values reviewed by the Joint Board in 2013 will be measurably noticeable for most of the 12 socioeconomic characteristics at a community level.

Demography is a good indicator of potential socioeconomic change. As noted in the report prepared for the 2013 Joint Board meeting (Technical Paper 386, pages 7-8), the population of nonsubsistence areas increased 36% from 1990 to 2010, while the population of other areas increased only 5%. This demographic trend continues: based on Alaska Department of Labor estimates, the population of nonsubsistence areas grew 4.5% from 2010 to 2016, while other areas increased by 2.5%.

Process and Meeting Cycle Considerations

In developing a recommendation to the boards for the call for proposals, one option for the committee is to recommend a limited call for proposals to exclude 5 AAC 99.015 Nonsubsistence Areas based on the information provided above. This option may work well if it is further determined to set a meeting schedule that includes nonsubsistence areas in the future.

If the committee recommends all regulations under the Joint Board's authority be open in the call, the committee may consider stipulating that proposals address changes since 2013 to the 12 statutory characteristics to justify reconsideration of nonsubsistence area boundaries. A reasonable approach is for proposals to provide strong evidence of change to the 12 characteristics, or a subset of the characteristics. In reviewing the characteristics, ADF&G notes four of the criteria are reasonably available for use in proposals. From the list provided on page 2 of this memo, those four criteria are #s 3-5, and 9. If some threshold of information is required in nonsubsistence area proposals, Boards Support will create a website that directs individuals to the data sources.

If a call requires nonsubsistence area proposals provide additional detail, a vetting process is necessary. In a typical proposal review process, ADF&G coordinates with the Department of Law to determine which proposals do not make the call. This process may be characterized as "limited", withholding only those proposals that are clearly unrelated to the call or not asking for regulatory change. ADF&G is not comfortable making criteria-based determinations more commonly performed by the boards in processes such as agenda change requests or emergency petitions.

With that in mind, it is recommended the committee serve as the review panel to evaluate the content of proposals with staff assistance. This would be a public meeting that may allow for public comment. Following this review, initial decisions would be forwarded to each board at their work sessions (or earliest meeting) as consent agendas. At that time, each board member would be afforded the ability to remand any of the rejected proposals in the consent agenda back to the meeting cycle for full review and deliberation by the Joint Board. This extra step provides significant insulation and a two-step process for proposals to be addressed.

Enclosed with this memo are the proposals submitted for the 2007 Joint Board meeting along with the Call for Proposals, which requested proposals to: "identify any significant new information available that the Joint Board did not have available in 1992 when it made the determinations or identify if the board made any errors in its previous decision" and that "proposals should also reference the 12 socio-economic characteristics specified in AS 16.05.258(c)." The proposals provide good examples of what the Joint Boards can expect to receive under a future call for proposals, and the need for clear criteria or a vetting process for accepting proposals.

The other consideration for future Joint Board meetings is the availability of adequate and reliable data. As discussed previously, the best information comes from the federal census survey every ten years. Census work occurs in the last portion of each decade (ex. 1999, 2009, 2019...) with data available at the beginning of each decade. A call that is made at the end of the year 2020 for proposals to be due in 2021 will provide information to proposers, staff, and the Joint Board for making determinations on nonsubsistence areas.

ADF&G encourages the committee consider establishing a regular Joint Board cycle. When the Joint Board last met in 2013 it was left undetermined when the next meeting would occur. The public relies on a regularly scheduled participatory process as the basis for changing fish and game regulations, including those under the authority of the Joint Board. Regulatory certainty is also helpful for budgetary and workload planning, and allowing the public and ADF&G adequate time to evaluate proposals for an informed discussion.

CALL FOR PROPOSALS

The Joint Board of Fisheries and Game calls for proposed changes to

I. ADVISORY COMMITTEE REGULATIONS, and

II. NONSUBSISTENCE AREA REGULATIONS.

PROPOSAL DEADLINE – 5:00 p.m., Friday, December 8, 2006

I. ADVISORY COMMITTEE REGULATIONS

The Joint Board of Fisheries and Game is accepting proposed changes to its regulations pertaining to local fish and game advisory committees to be considered at its next regulatory meeting, to be scheduled in October 2007. The following sections of Title 5 Chapter 96 of the Alaska Administrative Code will be considered:

- 5 AAC 96.010. Establishment of a local fish and game advisory committee system
- 5 AAC 96.020. Creation of local fish and game advisory committees
- 5 AAC 96.021. Establishment of fish and game advisory committees
- 5 AAC 96.040. Qualifications for members
- 5 AAC 96.050. Functions of local fish and game advisory committees
- 5 AAC 96.060. Uniform rules of operation
- 5 AAC 96.410. Distribution of local fish and game advisory committees
- 5 AAC 96.420. Review of requests for local fish and game advisory committees
- 5 AAC 96.440. Board assistance
- 5 AAC 96.450. Committee status and change of status
- 5 AAC 96.460. Attendance at meetings

The Joint Board is particularly interested in receiving proposals to enhance the effectiveness of the advisory committee system. For example, the Joint Board would like to consider options to consolidate committees A) where multiple committees represent the same geographic area or share in the use of the same fish stocks and game populations; B) where committees have been inactive for two or more years; or C) where a change in committee structure would better facilitate resolving resource issues at the local level before coming to the boards.

II. NONSUBSISTENCE AREA REGULATIONS

The Joint Board of Fisheries and Game is accepting proposed changes to its regulations pertaining to the Joint Board nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture and way of life of the area or community. The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The following section of Title 5 Chapter 99 of the Alaska Administrative Code will be considered:

5 AAC 99.015. Joint Board nonsubsistence areas.

(Includes Ketchikan, Juneau, Anchorage-Matsu-Kenai, Fairbanks, and Valdez nonsubsistence areas)

The Joint Board established the current nonsubsistence areas as required under AS 16.05.258(c) in 1992. Proposals submitted to modify the existing areas, delete areas, or add new areas should identify any significant new information available that the Joint Board did not have available in 1992 when it made the determinations or identify if the board made any errors in its previous decision. Written findings detailing the boards action can be found on the boards website (<http://www.boards.adfg.state.ak.us/fishgame/regs/jbfind.php>) or by contacting one of

the Board Support offices listed below. Proposals should also reference the 12 socio-economic characteristics specified in AS 16.05.258(c), which are also available by contacting the Boards Support Section.

The Joint Board intends to follow a two-step approach to acting on the nonsubsistence area proposals. The board will perform a preliminary review of the proposals during a meeting scheduled in October 2007. During this preliminary review, the board will conduct an initial assessment of the proposals, will identify the information needed for a full review of appropriate proposals, and will schedule appropriate proposals for further public review and department analysis prior to regulatory action at a meeting to be scheduled in 2008.

Proposals must be received by 5:00 p.m. Friday, December 8, 2006 at one of the following locations:

Scott Crass
ADF&G, Boards Support
PO Box 115526
Juneau, AK 99811-5526
Phone: (907) 465-4110
Fax: (907) 465-6094

Joe Chythlook
ADF&G, Boards Support
PO Box 1030
Dillingham, AK 99576-1030
Phone: (907) 842-5142
Fax: (907) 842-5514

Sherry Wright
ADF&G, Boards Support
333 Raspberry Road
Anchorage, AK 99518-1599
Phone: (907) 267-2354
Fax: (907) 267-2489

Charlie Gregg
ADF&G, Boards Support
PO Box 689
Kotzebue, AK 99752-0689
Phone: (907) 442-1717
Fax: (907) 442-2847

Rita St. Louis
ADF&G, Boards Support
1300 College Road
Fairbanks, AK 99701
Phone: (907) 459-7263
Fax: (907) 474-8558

Proposal forms may be obtained from any office of the Boards Support Section or on the board's website at <http://www.boards.adfg.state.ak.us/>. All proposals must contain an original signature, contact telephone number, and address. Please print or type the individual's name and an organizational name if appropriate. A fax is acceptable and considered an original. **Proposals must be received in one of the above offices by the deadline** (a postmark is NOT sufficient for timely receipt). You are encouraged to submit proposals at the earliest possible date.

Proposals are reviewed by the board's proposal review committee prior to publication. Language that is emotionally charged detracts from the substance of the proposal. It may draw opposition that may not be germane to the element(s) of the proposal and may elicit nonresponsive charges from the public/board members. The proposal review committee reserves the right to edit or reject proposals containing offensive language. Following publication, proposal booklets will be available to advisory committees and interested members of the public for review and comment.

NONSUBSISTENCE AREAS

PROPOSAL 37 - 5 AAC 99.015. Joint Board nonsubsistence areas. Remove Funtner Bay from Juneau Nonsubsistence Area as follows:

We would like Funtner Bay and an area surrounding the entrance of the bay to be allocated a subsistence fishing area.

ISSUE: Funtner Bay was included in the nonsubsistence boundary of the Juneau Borough and Funtner Bay is not in the Juneau Borough. Under Title 16. Fish and Game, Sec. 16.05.258. Subsistence Use and Allocation of Fish and Game, your boards have the authority to resolve this problem due to our family's dependence, socially, culturally and economically, on fish and game. Our family more than meets the criteria stated in Sec. 16.05.258 on the dependence of fish and game in our lives. We have lived in Funtner Bay for over 30 years. There is no economic structure in Funtner Bay, our income is derived from seasonal commercial salmon trolling as there are no employment opportunities in Funtner Bay. Our children were home schooled through Alyeska Central School and attended high school at Mount Edgecumbe in Sitka because there are no services in Funtner Bay. The stability of the economy in Funtner Bay is dependent on my seasonal commercial fishing. We live off our garden in season and various fish and venison. There are no stores, roads or services in Funtner Bay. Funtner Bay has one service and that is a once a week mail plane. All goods and foods must be brought in by plane or my fishing boat. To charter a small float plane from Juneau is approximately \$200 one way, and it is a seven hour round trip, when possible, in our fishing boat. If you were to walk into our house today and look in our freezer you would find that about 90 percent of the food is venison or fish that we have attained through hunting, sport fishing, commercial trolling or supplied by friends. Halibut and other bottom fish, including shrimp are usually exchanged with these friends. I believe we meet all the criteria for the importance of subsistence use of fish and game both socially and economically as stated under the subsistence use and allocation of fish and game.

WHAT WILL HAPPEN IF NOTHING IS DONE?

WHO IS LIKELY TO BENEFIT?

WHO IS LIKELY TO SUFFER?

OTHER SOLUTIONS CONSIDERED?

PROPOSED BY: Phil and Donna Emerson (HQ-07JB-008)

PROPOSAL 38 - 5 AAC 99.015. Joint Board nonsubsistence areas. Include portions of Units 13, 14, and 20 in a non-subsistence area as follows:

5 AAC 99.015(a) would be amended to join (3) Anchorage-Matsu-Kenai Nonsubsistence Area with (4) the Fairbanks Nonsubsistence Area, using the Parks Highway as the new boundary to the west and the Glenn and Richardson Highways to the south and east.

ISSUE: Subsistence hunting being conducted in an area that no longer meets the criteria for a subsistence area under 16.05.258.

WHAT WILL HAPPEN IF NOTHING IS DONE? Continued abuse and inequality of the subsistence system.

WHO IS LIKELY TO BENEFIT? Current nonsubsistence users.

WHO IS LIKELY TO SUFFER? Current subsistence qualified users.

OTHER SOLUTIONS CONSIDERED? We have considered all of the options put forth by the Board of Game subsistence subcommittee as well as participated in both Board of Game meetings about this subject. The bottom line is that no other options fix the true reality that this particular area no longer meets the criteria to continue being a subsistence area under AS 16.05.258.

PROPOSED BY: Matanuska Valley Fish and Game Advisory Committee (SC-07JB-002)
