

MEMORANDUM

State of Alaska
Department of Law

TO: Kristy Tibbles
Executive Director
Alaska Board of Game
Art Nelson
Executive Director
Alaska Board of Fisheries

DATE: March 22, 2024

FILE NO.: 20231006056

TEL. NO.: 269-5232

SUBJECT: Comments on Certain Proposals
for March 2024 Joint Board of
Fisheries and Game meeting

FROM: Cheryl Rawls Brooking
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GENERAL COMMENTS

In general, ethics disclosures: Before staff reports begin on any new agenda item, or, if preferred, at the very beginning of the meeting, Ethics Act disclosures and determinations must be made under AS 39.52.

In general, record-making: It is very important that Board members carefully explain and clearly summarize on the record the reasons for their actions and the grounds upon which the actions are based. The Alaska Supreme Court has stressed the importance of a clear record to facilitate the courts in determining that the Board's actions are within its authority and are reasonable. A clear record also assists the public in understanding the Board's rationale. If Board members summarize the reasons for their actions before they vote, it will help establish the necessary record.

The Alaska Administrative Procedure Act requires that State agencies, including the Joint Board, "[w]hen considering the factual, substantive, and other relevant matter, ... pay special attention to the cost to private persons of the proposed regulatory action." AS 44.62.210(a). This requirement to pay special attention to costs means, at a minimum, that the Board should address any information presented about costs, or explicitly state that no such information was presented, during deliberation of any proposal likely to be adopted. In our view, this requirement does not go so far as to mandate that the Board conduct an independent investigation of potential costs, nor does it require that cost factor into the Board's decision more than, for example, conservation concerns might. However, it does require the Board to address and "pay special attention to" costs relevant to each regulation adopted.

Comments on Individual Proposals

Proposal 18: This proposal seeks adoption of a regulation or policy that prevents either board from amending any proposal in such a way that changes or reverses the intent of the proposal and instead directs that board to develop a board generated proposal. The Board of Fisheries adopted this restriction in 1991 by policy. The Department of Law does not recommend that the Board of Game restrict its ability to amend a proposal, or otherwise to limit its ability to exercise the authority granted by the statutes. Further, there is a risk of unnecessary litigation if a person challenges whether the amendment “changes” the intent of a proposal, even if the proposal is within the scope of the meeting notice and within the board’s authority.