

Board Process for Developing Regulations

PROPOSAL 17

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

Establish a process in regulation for developing board proposals as follows:

Under 5 AAC 96.610(c) Phase 2 ADD a paragraph:

Proposals may be submitted by the boards. After discussion a board generated proposal (BGP) cannot proceed to final action without an opportunity for public review. If the BGP was noticed as part of a regular or special meeting no new opportunity for public review is necessary. If not previously noticed the board cannot proceed to final action without an opportunity for public review. As a minimum, a board generated proposal with statewide application shall be tabled for 24 hours. At least two fish and game advisory committees in each fish and game region must be consulted for review and comment. If a board generated proposal less than statewide application, at least two fish and game advisory committees with Area of Jurisdiction (5 AAC: 97.005) must be consulted for review and comment. Final action on a board generated proposal may proceed after the review period.

What is the issue you would like the board to address and why? Board Generated Proposals: Add under Procedure for developing fish and game regulations.

This section of 5 AAC identifies and defines the process for proposals generated by individuals, fish and game local advisory committees, organizations, department staff and other government agencies. A major factor clearly expressed is the opportunity for public involvement and review. Alaska's public process is considered to be among the best natural resource regulatory processes anywhere. This opinion is expressed by nearly all participants.

This proposal would add guidelines for the Boards of Fisheries and Game to the list of participants in regulatory process. Dozens of active and former fish and game advisory committee members as well as individuals and organizations who are active participants in board meetings and processes were consulted. To a person, we believe the use of Board Generated Proposals should be discontinued. There are procedures in regulation for dealing with emergency problems. Other than emergency issues should be developed with the processes in 5 AAC 96. THE PUBLIC REVIEW AND COMMENT on regulatory changes is uniquely important to the process.

Realistically, the Joint Boards are unlikely to agree to limit themselves to use the processes set forth for all other participants submitting proposals.

This proposal seeks to add guidelines directing the boards to include some public input before final action on board generated proposals.

Under most decision making "rules" a proposal with completely new language is considered a substitute proposal. New language is usually considered as an "amendment by substitution". Our boards seem to avoid substitute language when trying to reach common purpose combining ideas. Often the problem is solved off the record by a combination of participants from board members to public participants. When boards bring up completely new issues or drastically change language not previously having the benefit

of public review and comment they are avoiding the intent of the process to involve those who will be affected by their decisions.

Unfortunately for the Alaskan public and advisory committees, the boards have increased their use of board generated proposals in recent years. The Board of Fisheries not as badly because of working out issues in their committee process. By making a proposal just prior to at a scheduled regular meeting, the public access to meaningful review is gone. (The general term "public" herein means the normal range of commenters, individuals, advisory committees, other agencies and organizations).

Under present regulations there are procedures for emergency regulations. Those procedures work well and in almost every situation they provide for a more detailed or permanent change at the next regulatory cycle. Board generated proposals are seldom emergencies, rather they make a long-term change.

The codified procedure for developing fish and game regulations should include direction for using board generated proposals. By adding to the regulation, the Joint Boards can insure some level of meaningful public review.

PROPOSED BY: Mike Tinker

(EJ-F23-668)

PROPOSAL 18

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

Adopt a regulation or a Joint Board policy to limit certain types of amendments as follows:

5 AAC 96.610(e):

Phase 4. Each board will give legal notice of timely received proposals. In accordance with the Administrative Procedures Act (AS 44.62), each board will hold a public hearing and will act on proposals or develop alternatives on the subject matter legally noticed. **Each board shall not make amendments to any proposal that change or reverse the intent of a 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.** The final decision on all proposals remains the responsibility of a board.

What is the issue you would like the board to address and why? Amendments to proposals submitted by the public that run completely contrary to the original intent.

At the last Region III (Interior and Northeast Arctic Region) Board of Game meeting in 2020, Resident Hunters of Alaska (RHAK) submitted a proposal (#146) to limit the number of nonresident hunters being awarded the DC 827 caribou draw permit, asking that no more than ten percent of the permits be awarded to nonresidents, and a minimum of 90 percent of the permits to residents. At that time the DC 827 caribou draw permit application was open to all equally, and due to an influx of hunt booking agents flooding the draw permit application pool, nonresidents were typically receiving 25 percent of the permits, which we strongly disagreed with.

When the board deliberated our proposal, it was successfully amended and passed to guarantee nonresidents a 25 percent allocation of DC 827 permits.

This decision was the complete opposite of the intent of our proposal! The board could have just voted down our proposal, allowing hunt bookers to continue to flood the application pool for the DC 827 caribou permit, leading to the same high nonresident percentage of awarded permits. Or, created their own board-generated proposal to set such a nonresident allocation. Instead, they amended our proposal in a way that they knew was the complete opposite intent and forever guaranteed nonresidents a minimum of 25 percent of the DC 827 caribou permits.

The Alaska Board of Fisheries has Standing Rules that address this issue in their Finding #91-128-FB¹, and in that Finding it states: *“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.”*

We have submitted a letter to the Joint Board, along with this proposal, asking for a Joint Board policy or standing rule that both boards adhere to regarding amendments to proposals.

However, if this is best addressed under regulations, perhaps 5AAC 96.610 may be the avenue to do so, with additional language under section (e).

We understand that amendments to public proposals are often necessary for clarification, and that minor changes are often warranted. We are not asking that either board be disallowed from making amendments.

¹ <http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/findings/ff91128x.pdf>

PROPOSED BY: Resident Hunters of Alaska (HQ-F23-003)
