



UNITED FISHERMEN OF ALASKA

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November 16, 2012

Honorable Sean Parnell
Governor, State of Alaska
Alaska State Capitol
PO Box 110001
Juneau, AK 99811-0015

RE: Seeking Attorney General review of Current Practice on use of Board Generated Proposals by the Board of Fisheries

Dear Governor Parnell,

United Fishermen of Alaska (UFA), has been actively involved in the Alaska Board of Fisheries process since UFA's inception in 1974. UFA has always supported a transparent and meaningful public process. UFA would like to express our concern about the Board of Fisheries (BOF) current practice of using board generated proposals to replace agenda change request (ACR) proposals that fail to meet the Board's own criteria for consideration. This practice is becoming commonplace and UFA is troubled by the use of board generated proposals (BGP) that circumvent the public process.

The intent of an ACR is to provide an opportunity for proposals to be considered on an extremely limited basis for fishery conservation purposes or reasons; to correct an error in regulation, to correct an effect on a fishery that was unforeseen when a regulation was adopted¹. The BOF policy is not to accept an ACR that is predominately allocative in nature in the absence of new information found to be compelling. It is poor public policy to take no action or reject an ACR because it does not meet the criteria or misses a deadline, and then generate their own board proposal using the same general language with a reference to the ACR proposal which the Board rejected or decided to formally take no action on¹.

Governor, we request that you and the Attorney General review the current use of Board generated proposals, to determine if their use is in the best interest of the public. At the October 2012 Board of Fisheries work-session, out of 21 ACR proposals submitted, there were 6 instances where the Board generated their own proposals to match the purpose of the ACRs that failed to meet the Board's "own" criteria or was a "late proposal"². Narrowly defined ACR criteria or a prescriptive deadline for a proposal serves virtually no purpose if the process can be circumvented or the criteria ignored.

¹ <http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2012-2013/statewide/statewide-props.pdf> (see proposal #247 page 25 & 26 for example)

² "late proposal" is a proposal that meets the topics under consideration this cycle but did not meet the April deadline for submittal

UFA is concerned about the lack of criteria for BGPs, and we question if the practice is deemed to be in the best interest of the public. Board generated proposals that are out of cycle and/or out of the affected region can result in the public becoming disenfranchised since they are not expecting proposals that affect their region. Costs are also higher not only for the affected public to participate in the process since the public meeting is held outside of the affected region, but also for Alaska Dept of Fish and Game (ADF&G) due to the additional work load, additional travel and a disruption from their normal duties. Fish and Game advisory committees (AC) don't always catch a board generated proposal that directly or indirectly impacts their region. Thus the Advisory Committee process is also being thwarted.

Board generated proposal 249³ can be viewed as an extreme example of how this practise denies the public meaningful participation. Designated as a "placeholder" proposal for a combination of two ACR's that received "no action" motions, it simply states it is a placeholder for a committee task force to provide content at a later date. The public or the ADF&G cannot provide constructive comments or information when there is not even a properly defined proposal to address. Generally, a task force formed by the BOF would meet between a region's regulatory cycle and may submit proposals during the normal meeting for that region. This would better accomodate the ADF&G advisory committees, stakeholders and the public.

If board generated proposals are to be used in the future, very narrowly defined criteria should be developed and properly submitted through the Board of Fisheries public process.

We are unable to identify a statute, regulation, finding or policy that defines the proper use of a board generated proposal. In fact, the Department of Law memo on these ACRs dated September 26, 2012 advises "The criteria in 5AAC 39.999 do not apply to Board-generated proposals."⁴ Our question is basic; how do you apply this practice within accordance of AS 44.62, the Administrative Procedures Act?

Thank you for your consideration and attention to our concerns.

Sincerely,



Mark Vinsel
Executive Director

CC:

Commissioner Cora Campbell, Alaska Department of Fish and Game
Karl Johnstone, Chairman, Alaska Board of Fisheries
Stefanie Moreland, Special Assistant to the Governor,
Monica Wellard, Executive Director, ADFG Board of Fisheries,

³ <http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2012-2013/statewide/statewide-props.pdf> page 27

⁴ <http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2012-2013/worksession/dol.pdf>