

FEDERAL SUBSISTENCE BOARD

Meeting Guidelines

AUTHORITY: The statutory authority for the following guidelines is Title VIII of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 16 USC § 3101, et seq. The regulatory framework establishing the Federal Subsistence Board (Board) and describing the Board's authority and responsibilities is contained in 36 CFR § 242 and 50 CFR § 100.

I. BOARD STRUCTURE

The members of the Board are the Chair and five public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee. A quorum consists of five members when the total number of Board members is nine or fewer and six members when the total number of Board members is 10 or higher.

The Chair presides over the Board meetings. In the Chair's absence, the Chair will designate a representative among the members, or, as a non-voting member, the Director of the Office of Subsistence Management, to chair meetings.

Liaisons to the Board are: a State of Alaska liaison and the Chair of each Regional Advisory Council (Council) or their designees. The State liaison and Council Chairs may attend public sessions of all Board meetings and be actively involved as consultants to the Board. Liaisons will not vote in Board decisions.

II. MEETING PROCEDURES

Generally, the Board will use the most current edition of Robert's Rules of Order. The Board's objective is to hear and consider the full range of advice and opinions available on topics importance to the public and to create a clear record of its rationale and decisions.

At public regulatory meetings, the Board uses a consensus and a non-consensus agenda to address action on regulatory proposals and closure reviews. Proposals and closure reviews are placed on the consensus agenda when there is agreement among the affected Federal Subsistence Regional Advisory Councils, the Federal Interagency Staff Committee, and the Alaska Department of Fish and Game on Board action. Anyone may request that the Board remove a proposal from the consensus agenda and place it on the non-consensus agenda. The Board retains final authority for removal of proposals from the consensus agenda. The Board takes final action on the consensus agenda after deliberation and decisions on all other proposals.

Board deliberation of regulatory proposals and closure reviews will be in the following sequence:

- Presentation of the analysis,

- Summary of written public comments,
- Summary of Tribal Governments and Alaska Native corporation consultations
- Tribal/Alaska Native Organization testimony,
- Advisory Group testimony (i.e. Subsistence Resource Commissions, State Advisory Committees, and multi-agency working groups),
- Public testimony,
- Council recommendation(s),
- Alaska Department of Fish and Game comments,
- Interagency Staff Committee comments,
- Board discussion with the Council Chairs and State liaison,
- Board motion, discussion, and action.

During Board proceedings prior to a motion, the liaisons will fully participate and be recognized by the Chair when they want to ask questions, raise concerns, or provide additional information or clarification. **Once a motion is made, only Board members will discuss the motion.**

This sequence may be modified or revised by a majority vote of the Board members present. The procedures for considering emergency and temporary special actions are different and described in Section V below.

III. SCHEDULING

Meetings to act on regulatory proposals shall be held at least once a year at such time and place as the Chair designates. Wildlife regulations will be revised in even-numbered years and fish/shellfish regulations in odd-numbered years. **Nonrural determinations will be addressed every other fish/shellfish cycle** and customary and traditional use determinations will be addressed during the applicable biennial cycle. **Individual customary and traditional use determinations for National Park Service managed lands will be addressed at the next public Board meeting after the affected Regional Advisory Council(s) and Subsistence Resource Commission(s) have had the opportunity to comment.** The Chair may call additional meetings at such times and under such circumstances as deemed necessary to carry out the duties of the Board.

IV. MEETING FORMATS

There are three types of meetings that the Board may hold—public meetings, work sessions, and executive sessions. Public meetings and work sessions are open to the public and liaisons while executive sessions are not.

A. Public Meetings

Purpose -- Public meetings are regularly scheduled meetings held primarily for the purpose of engaging in regulatory rulemaking, including the establishment or modification of seasons, harvest limits, or methods and means, as well as customary and traditional use determinations, **nonrural determinations**, §804 determinations, and the adoption of customary trade regulations. In addition, public meetings shall be held to take action on requests for reconsideration, **initial**

cultural and educational permit requests, temporary special actions, and to extend emergency regulations beyond the 60-day limit described in § ____.19(a)(2) of the Board regulations.

Attendance -- A quorum of the Board members or their designees must be present before the Board may engage in rulemaking. Liaisons representing the Councils and the State of Alaska are invited to attend and act in a consultative role. Attendance by teleconference, videoconference, or other electronic medium is sufficient for the purposes of establishing a quorum or permitting participation under these guidelines.

Public Participation -- The public will be given advance notice of the time, date, and place of a public meeting. In addition, every reasonable effort will be made to provide a draft agenda to the public in advance of the meeting. Items may be added to or deleted from any draft agenda provided to the public when reasonably necessary to accommodate the best interests of the public or the needs of the Board.

Participation by the public is encouraged. This participation includes the presentation and reading of summaries of written public comments by Federal staff. Unless prohibited by the Chair for reasons to be explained on the record, the public shall also be permitted to present verbal testimony. The Chair may limit verbal testimony by the public on regulatory proposals to specified time periods. However, the public can testify on non-agenda items at the beginning of each day of a public regulatory meeting. The Chair may permit the representatives of the Councils to present summaries of public comments heard at Council meetings or elsewhere.

Recordkeeping -- A record must be kept of each public meeting to include the meeting materials, meeting transcripts, and news release.

B. Work Sessions

Purpose -- The Chair calls work sessions for the purposes of gathering information and resolving administrative problems and issues. In addition, if a quorum is present, the Board may make decisions on administrative, policy, and business matters, including, but not limited to:

- Approval of Fisheries Resource Monitoring Program Plan
- Review of Council annual reports and approval of Board replies
- Recommendations on the Councils biennial charter change requests
- The adoption or modification of Board policies and protocols
- Threshold acceptance or rejection of requests for reconsideration
- Individual customary and traditional use determinations for National Park Service managed lands
- Decisions on proposed research projects
- The formation of committees and task forces
- The adoption of Memorandums of Understanding

During work sessions the Board does not make decisions on regulatory proposals, without advanced public notice. If the Board wishes to take regulatory action, the Board will use the attendance and public procedure components of the public meeting format described in section IV(A) of this document.

Attendance -- A quorum is not necessary to hold a work session, but a quorum is required if the Board intends to make a decision. Liaisons representing the Councils and the State are invited to attend.

Public Participation -- Work sessions are open to the public. Prior public notice is not legally required for the Board to hold a work session. However, reasonable efforts will be made to provide prior notice and a draft agenda to the public in advance of a work session. The public generally does not participate in a work session unless the Chair requests either public testimony or testimony by a specific individual(s) on a particular issue.

Recordkeeping -- A record is kept of each work session to include the meeting materials, meeting transcripts, and news release.

C. Executive Sessions

Purpose -- Executive sessions are held at the discretion of the Chair for the purpose of reviewing proprietary data or private information, engaging in attorney-client communications, making decisions on personnel matters, reviewing Council nominations, and addressing other issues determined by the Chair to be appropriate for a closed session and for which a public meeting is not otherwise required under these guidelines. The Board will minimize the use of executive sessions to the extent possible. The Board will not use an executive session to engage in regulatory rulemaking.

Attendance -- A quorum of Board members is not required to hold an executive session. However, a quorum is required if the Board is rendering a decision on an administrative issue, such as Council nominations, which requires a vote. Only Board members, legal counsel, Interagency Staff Committee members, and required support staff may attend executive sessions unless the Chair concludes that a particular individual's input is required on a specific issue.

Public Participation -- Executive sessions are closed to the public and prior public notice is not legally required. However, reasonable efforts will be made to provide prior notice and a draft agenda to the chairs of the Councils and public in advance of an executive session. If an executive session is called during a public meeting, the topics to be discussed will be announced prior to the executive session and upon its conclusion a general summary of the topics discussed will be announced to the public.

Recordkeeping -- A summary of each executive session will be kept and at a minimum will include who was in attendance and subjects that were discussed. This summary will be available to the Councils and, upon request, the public.

V. SPECIAL ACTIONS

A Special Action Request is an out-of-cycle change of a season, harvest limit, or method of harvest. Special Actions are taken when unusual situations arise, such as a significant change in

resource abundance that could not reasonably have been anticipated. Special Actions may restrict, close, open, or reopen the taking of fish and wildlife on Federal public lands and waters. Such actions are taken to ensure the conservation of healthy populations of fish or wildlife, ensure the continued viability of a particular fish or wildlife population, ensure continued subsistence use, or for reasons of public safety or administration. These guidelines and requirements can be found in 36 CFR § 242.19 and 50 CFR § 100.19.

A. Emergency Special Actions

The Board may take action on requests for emergency special actions at public meetings or by email poll. Meetings open to the public are the preferred forum. Prior public notice of the Board's action on an emergency special action is not required. A record of the Board's discussion and decision-making process must be compiled and retained.

If the timing of a regularly scheduled meeting of the affected Council(s) permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action (<https://www.ecfr.gov/current/title-50/section-100.18>). Emergency special actions approved by the Board may not exceed 60 days and may not be extended unless the procedures for adoption of a temporary special action have been followed.

B. Temporary Special Actions

After adequate notice and a public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, modify the requirements for subsistence take, close public lands for the taking of fish and wildlife for nonsubsistence uses or restrict take for nonsubsistence uses. Temporary special actions will not extend longer than the end of the current regulatory cycle. Prior to adopting a temporary special action, the Board will consult with the State and the Chairs of the Councils of the affected regions. Board deliberation will generally follow those outlined in Section II. Meeting Procedures (see above). A record of the Board's discussion and decision-making process must be compiled and retained.

If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § 100.18(a)(4).

VI. VOTING

Decisions of the Board on agenda items will be by majority vote. All members of the Board, including the Chair, shall vote, unless abstaining. In the event of a tie vote, a motion fails.

- *Proxy Voting* -- In a public Board member's absence, said member may give another public Board member their proxy. The proxy can be in writing before or given verbally during a meeting and included in the public record. The proxy only applies to the meeting during which it was given and may not be passed on to another Board member.

VII. DECISIONS

The Chair will initiate Board action on a proposed regulatory rulemaking by entertaining a motion. When offering such a motion or additional motions to amend, a Board member must either state their reasoning on the record, or expressly adopt reasons offered by a Council, Tribal Government, Alaska Native Corporation, the Office of Subsistence Management, the Interagency Staff Committee, the State, or a testifying member of the public.

- A motion should address the proposal and be made in the positive, that is, to adopt the proposal or adopt with modification. The motion should be clear and understandable. The motion should be followed by a clear statement of position in terms of how the motion maker intends to vote. This should be followed by a statement as to how the position relates to the Council(s)' recommendation, e.g., "contrary to" or "consistent with" the Council(s)' recommendation.
- If the position is contrary to an affected Council(s)' recommendation concerning the taking of fish or wildlife, it must be supported by a rationale that addresses at least one of the three criteria from §805(c). A Council recommendation may be rejected when it is: 1) not supported by substantial evidence; 2) violates recognized principles of fish and wildlife conservation; or 3) would be detrimental to the satisfaction of subsistence needs. If there are multiple affected Councils with conflicting recommendations, the maker of the motion must give a clear rationale for accepting one recommendation over the other.
- Board member votes only apply to the motion stated on the record. Codified regulations are written to reflect the Board's motion and final action on record.
- §815 authorizes restrictions to non-subsistence uses only when necessary for the conservation of healthy populations of fish and wildlife (natural and healthy populations in a national park or monument), to continue subsistence uses of such populations, for reasons of public safety or administration, or pursuant to other applicable law.

When a Board member votes in favor of a motion on a regulatory rulemaking, they are encouraged to state if they agree with the reasoning and justification set forth by the movant or to provide different or additional justification. Any written materials proffered to or relied upon by the Board when making its decision shall be preserved as part of the administrative record.

When offering a motion on a matter not involving a regulatory rulemaking, a Board member may verbally state their reasoning and justification. This statement shall be incorporated into the meeting record.

VIII. MEETING RECORD

An accurate and complete record of every public meeting, every portion of work sessions, or Board polling when the Board makes decisions will be prepared within 30 days after the meeting. Summaries of executive sessions will be maintained in the administrative record. At the

discretion of the Chair, records or summaries of non-decision portions of work sessions may also be prepared. **The Office of Subsistence Management** shall be responsible for retaining an original copy of the meeting record for inclusion in the Board's administrative record. Copies of records of public sessions will be made available to the public on the Federal Subsistence Management Program website.

IX. OTHER

These guidelines do not infer, impose, or create any legal obligations on the Secretaries, the Board, and its members, the members of the Councils, the State, or any employee of the Federal government. Rather, the Board has compiled these guidelines for the sole purpose of providing a general framework for conducting its administrative and decision-making functions. These guidelines are not intended to anticipate or encompass all functions of the Board, nor do they impose any limitations on the Board's ability to fulfill its duties under Title VIII of ANILCA. Consequently, the Chair and the Board retain the discretion to adjust, modify, or deviate from these guidelines when required by law or when unusual or unanticipated circumstances warrant such actions.

Adopted by the Federal Subsistence Board December 4, 2003.
Revised by the Federal Subsistence Board September 14, 2004.
Revised by the Federal Subsistence Board March 4, 2005.
Revised by the Federal Subsistence Board August 29, 2007.
Revised by the Federal Subsistence Board April 29, 2008.
Revised by the Federal Subsistence Board May 3, 2011.
Revised by the Federal Subsistence Board XXX.