

## MEMORANDUM

## State of Alaska

Department of Law

TO: Clifford Judkins  
Chairman, Alaska Board of Game

DATE: January 19, 2012

FILE NO:

*Submitted by  
Steve Flory*

THRU:

TEL. NO.:

FAX:

FROM: Kevin M. Saxby *KMS*  
Senior Assistant Attorney General

SUBJECT: Re: Antlerless moose  
reauthorization for subunit 20A

Yesterday near the end of the Statewide Board meeting, you requested a memo that lays out the applicable legal principles for determining which local fish and game advisory committees must vote in the affirmative before antlerless moose hunts may be reauthorized for Subunit 20A. As you know, the applicable statute states that,

Sec. 16.05.780. Taking of antlerless moose prohibited.

(a) The taking of antlerless moose in any game management unit or subunit or a portion of a unit or subunit is prohibited except that antlerless moose may be taken only under regulations adopted under (b) of this section after

(1) the department recommends the season be opened in that year, based on biological evidence, and

(2) a majority of active local advisory committees for that unit or subunit have recommended an opening for that year, after each has taken a vote and a majority of the members of those committees have voted in the affirmative.

The question that has arisen recently is what is meant by the term "active local advisory committees for that unit or subunit"? This question is largely answered by a regulation, as

**5 AAC 98.005. Areas of jurisdiction for antlerless moose seasons**

For the purpose of implementing AS 16.05.780, antlerless moose seasons require approval by a majority of the active advisory committees located in, or the majority of whose members reside in, the affected unit or subunit. For the purpose of this section, an "active advisory committee" is a committee that holds a meeting and acts on the proposal.

We understand that several local advisory committees, including at least the Middle Nenana, Minto-Nenana, Fairbanks, and Delta Advisory Committees, have held or will be holding meetings to act on pending antlerless moose hunting proposals for the area. Each of these committees would, thus, be "active" within the meaning of the above regulation.

What remains is for Board staff to identify which committees meet the standard that they "are located in, or the majority of whose members reside in, the affected unit or subunit." The relevant subunit boundaries are the east bank of the Nenana River, the north bank of the Tanana River, and the west bank of the Delta River. 5 AAC 92.540(a)(20(A)). In looking at a map, it appears that the communities of Big Delta and Delta Junction, as well as the main residential areas for those communities, are located east of the Delta River, outside of Subunit 20A boundaries. So, it seems unlikely that the Delta Advisory Committee is located in Subunit 20A or has the majority of its members residing therein.

Likewise, it appears that the Community of Fairbanks and the main residential areas for that community are located north of the Tanana River, outside of the subunit boundaries. So, it would appear that the Fairbanks Advisory Committee is not located in Subunit 20A and the majority of its members do not reside therein.

However, the community of Nenana is located south of the Tanana River and east of the Nenana River, although there appear to be nearby residential areas located north of the

According to 5 AAC 96.021(c)(6)(H), the committee is assigned five member from Minto, five from Nenana, and one that is undesignated. Because this advisory committee explicitly covers the community of Nenana, which is located in-unit, it would appear to meet the regulatory language of being "located in, or the majority of whose members reside in" Subunit 20A. Likewise, if six of its eleven members reside south of the Tanana River and east of the Nenana River, it would also meet this standard.

The Middle Nenana Advisory Committee is supposed to have 5 members from Healy, which is located west of the Nenana River with nearby residential areas located east of the river; 3 members from Clear, which is located east of the river; 1 from McKinley Village, which straddles the river; 1 from Ferry, which is east of the river; and 1 undesignated seat. 5 AAC 96.021(c)(6)(B). Because this advisory committee explicitly covers communities that are located in-unit, it would appear to meet the regulatory language of being "located in, or the majority of whose members reside in" Subunit 20A. Likewise, if six of its eleven members reside east of the Nenana River, it would also meet this standard.

There may be a question as to whether the Board should look to Unit 20 as a whole, in this circumstance. Because the Subunit 20A moose population is managed at the subunit level, as a distinct population, it would seem to be most consistent with applicable management plans and statutes to look to the subunit, rather than the unit boundaries. Likewise, it should be understood that the Legislature intended the words "unit or subunit" to be meaningful, which is accomplished by choosing the designation that most logically applies in a given instance. However, if the Board elects to rely on the Unit 20 boundaries, the following committees would potentially appear to have jurisdiction under 5 AAC 98.005; Middle Nenana