



March 7, 2011

Part I of II

Alaska Dept. of Fish and Game
Boards Support Section
P.O. Box 115526
Juneau, AK 99811-5526

Dear Ms. Tibbles:

Enclosed are the comments of the Ahtna Tene Nene' Customary & Traditional Use Committee's comments on the wildlife proposals for the upcoming ABOG meetings, Statewide, Central/Southwest, and Interior Regions.

Sincerely,

Eleanor Dementi,
Chair

Comments on the Alaska Board of Game 2011 Wildlife Proposals

Glennallen Area – Units 11 and 13

Proposal 39:

5 AAC 85.065. Hunting seasons and bag limits for small game. By Andrew Gryska and Dave Stoller.

Comments:

We support Proposal 39 to increase Unit 13B hunting season dates to coincide with the rest of Unit 13 hunting season, August 20-March 31, 10 per day 20 in possession. We support more hunting opportunity in Unit 13B so that people will have more opportunity to harvest more ptarmigan.

Proposal 40:

5 AAC 85.020. Hunting seasons and bag limits for brown bear. By National Park Conservation Association.

Comments:

We oppose Proposal 40 to changing the No Closed Season for Unit 13 Remainder for Brown Bear, and Unit 13E Brown bear hunting season dates from Aug. 10-June 15 to Sept. 1-May 31, and to reduce the bag limits for Residents and Nonresidents, as well as requiring a Resident tag fee.

The population of Brown bears in Wrangell St. Elias Park and Preserve and the Denali National Park and Preserves can sustain a No Closed Season and 1 bear every year. State public lands can also sustain a No Closed Season with 1 bear every year. Calves of moose and caribou have been decimated within the Wrangell St. Elias Park due to predators. Moose populations in Unit 13 are healthy and we would like to see it remain that way.

Proposal 41:

5 AAC 85. 020. Hunting seasons and bag limits for brown bear; and 92.044. Permit for hunting black bear with the use of bait or scent lures. By Paul Rude.

Comments:

We are neutral on Proposal 41 to “suggest changes for the legal take of brown/grizzly bears over black bear bait stations in Unit 13D”.

Proposal 42:

5 AAC 85.025. Hunting season and bag limit for caribou; and 92.050. Require permit hunt condition and procedures. By John Winsor.

Comments:

We oppose Proposal 42, and urge the Board of Game to not forward Proposal 42 to the Joint Boards of Fisheries and Game. No new information has been provided to change a portion of Unit 13 to a Nonsubsistence Area. We continue to support a Community Harvest hunt for caribou in Unit 13, and do not want it changed. The Tier I hunt and drawing hunt the Board adopted in October of 2010 should also be kept in place and given a chance to work..

Proposal 43:

5 AAC 92.050. Required permit hunt conditions and procedures. By Andrew Glasgow.

Comments:

We oppose Proposal 43 to remove the hunting restriction that a person who hunts under a Tier I caribou permit in Unit 13 is restricted from hunting for moose anywhere but GMU 13. The Board passed this regulatory change because it found that the pattern of subsistence use for the non-communal or "household" use of caribou in GMU 13 included using a wide diversity of subsistence resources in the area; that the close and intimate relationship between subsistence users to an area and the resources in the area is an essential aspect of the subsistence way of life protected through the subsistence statute. This finding is consistent with the Joint Board's regulation for identifying C&T subsistence uses. 5 AAC 99.010(b). Ahtna therefore believes that the Board was acting consistent with its legal responsibilities in adopting the moose hunting restriction and that the restriction is justified. The restriction also accomplishes two goals that are consistent with the subsistence law and the policy adopted by this Board. First, the restriction acts to ensure that only those who wish to participate in subsistence uses apply for a Tier I permit; only those willing to hunt according to the pattern of subsistence use identified by the Board will apply. Second, the restriction has the effect of providing more opportunity for non-subsistence consumptive uses by Alaska residents. The general pattern of non-subsistence consumptive use of Nelchina caribou is accommodated by the drawing hunt opportunity adopted by the Board in October of 2010. Regulations such as the restriction on moose hunting only in GMU 13 for Tier I caribou hunters helps restrain the Tier I hunt to actual subsistence uses, thereby providing more opportunity for those wishing to engage in the drawing hunt.

However, the proposal does raise some very important and legitimate issues regarding the moose hunting restriction. The restriction has the definite potential to increase the hunting pressure on the GMU 13 moose population. This could make it much harder for those engaged in the communal pattern of moose hunting the Board has identified to get the amount of harvest they need and the hunting opportunity necessary to sustain their traditional patterns, practices and way of life. It is important, therefore, for the Board to retain the 100 any bull subsistence bag limit and August 10-September seasons for the community hunts in GMUs 11, 12 and 13.

Proposal 44:

5 AAC 85.025. Hunting season and bag limit for caribou. By Andrew Glasgow.

Comments:

See comments under Proposal 42, Nonsubsistence Areas and Caribou hunting season.

Proposal 45:

5 AAC 85.025. Hunting season and bag limit for caribou; and 5 AAC 92.050. Required permit hunt conditions and procedures. By Douglas Hopper.

Comments:

See comments under Proposal 42, Nonsubsistence Areas and Caribou hunting season. We oppose archery hunts in Unit 13.

Proposal 46.

5 AAC 85.025. Hunting season and bag limit for caribou. By Vince Holton.

Comments:

We oppose Proposal 46; we support the continuation of the Community Hunt and Tier I for caribou in Unit 13. Drawing permits are based upon a lottery system, which the public is aware of, when they sign up for a drawing permit. Much more will be understood about the number of likely drawing permits after the system of community and Tier I hunts set in place by the Board in October 2010 is given a chance to work for a few years. It is far better to give the Board's recently adopted hunting regulations a chance to work than prematurely changing them to a system that violates the subsistence law and is inconsistent with the facts and policy necessary to regulate this hunt.

Proposal 47:

5 AAC 85.025. Hunting season and bag limit for caribou; and 5 AAC 92.050.

Required permit hunt conditions and procedures. By John Schandelmeier.

Comments:

We oppose Proposal 47; we support the continuation of the Community Hunt and Tier I for caribou in Unit 13 that was passed by Board at the October 8-12, 2010 meeting. The proposal ignores the Board's 2006 Findings that acknowledge the community based subsistence use pattern for caribou in GMU 13. In fact it ignores all aspects of the Board's recent determinations about the subsistence use patterns for the Unit. Also, the weighted drawing system proposed for the Tier I hunt appears to be inconsistent with the Kenai superior court's decision of July 2010 striking down a similar system. It is also inconsistent with the Board's response to that court decision. It is time to move forward, not backwards.

Proposal 48:

5 AAC 85.025. Hunting season and bag limit for caribou; and 92.074. Community subsistence harvest hunt areas. By Alaska Outdoor Council.

Comments:

We adamantly oppose Proposal 48 to do away with the Community hunt for Unit 13 caribou and Community subsistence harvest hunt areas. These are the same arguments by the Alaska Outdoor Council that were rejected by the Board when it rejected that position and adopted a community caribou hunt for GMU 13 in October of 2010. The proposal misrepresents Alaska case law and precedent and the mandates of the subsistence law. Under the proposal's version of the law, the Board's hands would be tied in implementing the subsistence law consistent with the intent of the law. The intent of the subsistence law is to provide hunting opportunities reasonably necessary to sustain a subsistence way of life, and to minimize the impact of the subsistence priority on other consumptive uses. The Board has come close to achieving this goal through the community and household Tier I hunts and the drawing hunt it adopted only months ago in October. This hunting regime should be allowed to proceed.

No court has ever held that the Board may not identify two or more distinct subsistence use patterns for the same caribou population and then provide a different subsistence

hunting opportunity for each distinct use. In fact, the Board is mandated by the subsistence statute, 16.05.258(a)&(b) to identify subsistence uses and determine the ANS for the uses (not use) identified. Then, pursuant to subsection (c) of the statute, the Board must provide a reasonable opportunity for each subsistence use identified. Contrary to the proposal's view of the law, the Board is well within its authority to create two Tier I subsistence hunts for the Nelchina herd so long as it provides a reasonable opportunity for both of the distinct subsistence uses it has identified for the herd. The Boards of Fish and Game regularly allocate different hunting and fishing opportunity based on differing use and taking patterns, and courts have repeatedly affirmed the Boards power to do so. Such distinctions and regulations are required for reasonable subsistence regulation just as they are for the regulation of recreational fishing, commercial fishing and general hunting.

The proposal is also mistaken about the holding in *State v. Morry*. That case did not contain any holding about the Board's ability to create two Tier I hunts. First, *Morry* was not based on an interpretation of the Alaska Constitution – it was based on the 1986 state subsistence law. The law was amended in 1992, severely limiting the relevance of the holding in *Morry*. Second, nothing in *Morry* speaks to the Board's authority to authorize the two Tier I subsistence hunts it adopted in October 0f 2010 for the Nelchina herd. The proposal illustrates a simple disagreement with the Board's policy and interpretation of the subsistence law – it disagrees that the intent of the law is to provide meaningful opportunities to sustain a way of life. The more ineffective and meaningless the implementation of the subsistence law, the more blurred the line between subsistence uses and general and recreational uses, the better for those who want to minimize protection for subsistence and that way of life.

Finally, the proposal pointedly personalizes the community caribou hunt adopted by the Board. While it is true that Ahtna Tene Nene' has initiated and strongly supported the community hunt regulations for the Nelchina herd, those hunts are open to all Alaskan communities and groups of 25 or more regardless of residency so long as these groups and communities engage in the customary and traditional community practices of taking and use identified by the Board.

Proposal 49:

5 AAC 99.025. Customary and traditional uses of game populations. By Paxson Advisory Committee.

Comments:

We oppose Proposal 49 to change ANS to be set at 500 animals. The Board of Game already addressed ANS and it does not need to be brought before them again. Reducing the ANS number will adversely affect true subsistence users, who rely upon Nelchina Caribou herd. The ANS set at 600-1000 was set by the Board with substantial evidence by ADF&G Subsistence Division. It is a reliable figure for the time being, it should be reviewed every 5 to 7 years by the Board of Game.

Proposal 50:

5 AAC 85.025. Hunting season and bag limit for caribou; and 5 AAC 92.050. Required permit hunt conditions and procedures; 92.071. tier I subsistence permits; and 092.072. Community subsistence harvest hunt area and permit conditions. By Alaska Department of Fish and Game at the request of the Board of Game.

Comments:

Ahtna supports the continuation of the Community Tier I Hunt the Household Tier I hunt and the drawing permit hunt for caribou in Unit 13 that was adopted by Board at the October 8-12, 2010 meeting. We believe this provides a fair allocation that the hunts established by the Board are consistent with the subsistence laws and other statutes that guide the Board, the constitution, and the July 2010 decision of the Kenai Superior Court. The only changes Ahtna believes are necessary in the community hunt regulations adopted by the Board in October of 2010 is to increase the reporting time for an individual harvesting a caribou from 5 days to 10 or 15 days – this will make it consistent with caribou and moose reporting requirements for other hunts. The final report from the community hunt coordinator should be due in March or April to allow time to fully document sharing and other aspects of the community hunt – 30 days is far too short to get a full report. The Board should also make it clear its intent that the community hunt will continue to allow for the opportunity to harvest 300 caribou even if the drawing hunt and Tier I registration hunt are closed before the end of the season due to the harvest in these hunts.

Proposal 51:

5 AAC 85.055. Hunting seasons and bag limits for Dall sheep. By Copper Basin Advisory Committee.

Comments:

We support Proposal 51 to change ¾ curl to a “full curl” for sheep in Unit 11 for resident season. Less small sheep will be taken with a “full curl” regulatory change. Unit 11 in Wrangell St. Elias Park & Preserve is easily accessible in some areas of the park and preserve, which encourages abuse of taking small sheep with less than “full curl”.

Proposal 52:

5 AAC 85.055. Hunting seasons and bag limits for Dall sheep. By Aaron Bloomquist.

Comments:

See comments under Proposal 51.

Proposal 53:

5 AAC 85.055. Hunting seasons and bag limits for Dall sheep. By Paul and John Claus, Ultima Tuile Outfitters.

Comments:

See comments under Proposal 51.

Proposal 54:

5 AAC 85.055. Hunting seasons and bag limits for Dall sheep; and 92.171 Sealing of Dall sheep horns. By Ray Atkins.

Comments:

We support the horn sealing requirement for sheep in Unit 13 for all non-subsistence hunts.

Proposal 55:

5 AAC 85.040. Hunting seasons and bag limits for goat. By Aaron Bloomquist.

Comments:

We are neutral on Proposal 55 to “add a remote portion of the Tonsina Controlled Use Area to RG580”.

Proposal 56:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Paxson Advisory Committee.

Comments:

We oppose a general resident moose season in Unit 13, 1 bull with spike/fork antlers, 3 brow tines on one side or over 50 inches, August 19-25.

Proposal 57:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Robert Gerlach.

Comments:

We support Proposal 57 to “limit nonresident moose hunting in Unit 13E”. We also support Proposal 61, Ahtna’s Community Hunt for moose in Unit 13. Nonresident hunting in Unit 13E should not be taking place, if the biologist does not have a good handle on the moose population in this subunit.

Proposal 59:

5 AAC 85.045(11). Hunting seasons and bag limits for moose. By Alaska Department of Fish and Game.

Comments:

Through its Preliminary Comments, ADF&G has essentially withdrawn this proposal. Ahtna will therefore wait until the Board meeting to determine the status of this proposal and will comment on it at that time.

Proposal 60:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Aaron Bloomquist.

Comments:

We oppose Proposal 60, which would eliminate moose hunting within 2 miles of the Edgerton and Richardson Highways. A few of us hunt for moose along the small portions of hunting areas along the Edgerton and Richardson Highways.

Proposal 61:

5 AAC 85.045(a)(9), (a)(10) Hunting seasons and bag limits for moose and 92.072. Community subsistence harvest hunt area and permit conditions. By Ahtna, Inc.

Comments:

The proposal speaks for itself. No action is required by the Board in order to authorize a community hunt for moose in the community hunt area established under 5 AAC

92.074(d). Ahtna will work with the Department and the Board during the meeting to determine how to allocate the 100 any bull harvest consistent with conservation.

Proposal 62:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Copper Basin Advisory Committee.

Comments:

We support the intent of Proposal 62 to provide for a community hunt for Unit 13 moose. It is Ahtna's position, however, that the regulations authorizing the 100 any bull moose should remain in effect.

Proposal 63:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Andy Couch.

Comments:

We oppose Proposal 63 to change Unit 13 Moose Resident hunting season to September 1-30 that includes the Any Bull hunting season. Late September month is the beginning of the rutting season; it is not a good hunting season date to harvest a moose. We support Proposal 61. See comments under Proposal 61.

Proposal 64:

5 AAC 85.045. Hunting seasons and bag limits for moose. By Andy Couch.

Comments:

See comments under Proposals 56 and 59..

Proposal 65:

5 AAC 92.025 Customary and traditional uses of game populations. By Wade Willis, Science Now Project!

Comments:

We oppose Proposal 65 to establish an ANS for Unit 13 Wolves. The Board addressed the Wolf Predator Control Program at the last meeting, and an ANS for Unit 13 Wolves does not need to be addressed. There are too many wolves in Unit 13 as it is. We would like to keep the calves of caribou and moose protected by the aerial shooting of wolves in Unit 13.

Proposal 66:

5 AAC 92.025 Customary and traditional uses of game populations. By Wade Willis, Science Now Project!

Comments:

We oppose Proposal 66. Additionally, the Mentasta Caribou Herd has been drastically decimated by predators in Unit 11 most likely by wolves and bears.

Proposal 67:

5 AAC 85.045. Hunting seasons and bag limits for moose; 85.025. Hunting seasons and bag limits for caribou; and 92.074. Community subsistence harvest hunt areas. By Kenneth Manning.

Comments:

We adamantly oppose Proposal 67 to “outlaw the CHP”. We do not “hire a hunter to get meat for us, nor do we slaughter any wild game; we have great respect for our customary and traditional resources; and our Native/Indian men to know how to hunt for caribou and moose. Additionally, it was customary and traditional for a few men to hunt for the rest of the community”. The language in this proposal is offensive to us.

Proposal 68:

5 ACC 92.070. Tier II subsistence hunting permit point system. By Ahtna Tene Nene’ Customary & Traditional Use Committee.

Comments:

Ahtna fully supports the Tier I community hunt currently authorized in regulation (see Ahtna proposal 61). Ahtna believes the most effective way to serve all groups of moose hunters in GMU 13 is for the Board to adopt a moose hunt that follows the pattern and policy the Board very recently adopted for the Nelchina caribou herd. However, if the Board determines that it is necessary to return to a Tier II hunt for the any bull or antlerless bull moose populations in GMU 13, it should revise the scoring criteria for Tier II permits according to this proposal. The suggested changes will better serve the intent of the subsistence statute to provide for those most dependent for their way of life on the tier II subsistence resource. The changes will also serve the goals the Board set forward in its 2006 Findings for moose in GMU 13 – to provide more reliable permits to those most dependent on the resource and those whose pattern of taking and use is consistent with the subsistence way of life. And the changes are consistent with the subsistence statute, Alaska’s Constitution, and court decisions.

Proposal 70:

5 AAC 92.540. Controlled use areas. By Paxson Advisory Committee.

Comments:

We opposed Proposal 70 to “dis-allow ATV use ¼ mile corridor on either side of the Maclaren River for its entirety (with the exception of the lower Maclaren crossing at Moore’s Trail which begins at milepost 51.5 on the Denali Highway and crossed the Maclaren River approximately 25 miles below the Maclaren River bridge at milepost 42 on the Denali, and Also the same ¼ mile restricted access corridor along the Susitna River upstream of the confluence of the Oshentna River.”

Access with ATVS to the hunting areas along the Maclaren and Susitna are needed to hunt with. Repairing damaged trails would be a better solution. DNR should repair damaged trails and maintain hunting trails.

Region-wide and Multiple Units

Proposal 105: