

## Submitted by Ahtna C&T Use Committee

The attached substitute language for Proposal 71 is submitted for the following reasons and purposes.

- The Department of Law has opined that neither the report by a community or group administrator or the reports by the households who are community or group members may be scored or used to determine future eligibility to participate in the community hunt community harvest hunt area described in 5 AAC 92.074(d). Reasonable minds can differ, and Ahtna respectfully disagrees with DOL's interpretation of the law and particularly the holding in *Morry*. Ahtna believes the law supports the board's authority, indeed duty, to identify a subsistence pattern of use and to create a subsistence hunt that provides a reasonable opportunity for those that choose to engage in the pattern of subsistence use identified by the board. The board also has the authority and duty to ensure that those who choose to engage in a subsistence use pattern are genuinely doing so. Therefore, the board can create a system of reporting that is scored and can result in lost eligibility for some reasonable future time for those who fail to demonstrate that they have walked the walk.
- Regardless of this difference of opinion, until this issue is settled by the Alaska Supreme Court, neither ADF&G of the Board seem likely to adopt a system of accountable and scored reporting that will determine compliance with the C&T use patterns and hunt conditions. This is evident in RC 3 as proposed by the Department.
- The result is that the failure by a community hunt administrator to file a complete report as required by RC 3 may result in the department not issuing that community or group a community permit for the next year. It is not clear whether the intent is that no member of the group may be allowed to participate in the community hunt for the next regulatory year. **It must be made clear on the record that a person cannot simply switch groups and avoid the penalty for the administrator's failure to file a complete report.**
- However, a hunt administrator may file a report that is "complete" but completely not responsive or fails to show compliance with any of the eight elements the board identified for the Copper basin community hunt. For example, a report could simply say no sharing occurred and that the households ignored every one of the elements, and the report would be "complete" and submitted, and the group would be eligible for a community permit for the next regulatory year. What a shame. The same is true for the suggested individual household reports
- The result is that the individual household reports are a burden and have no impact on eligibility. They do, however, provide some possibly valuable future information. The same information can be collected if they are voluntary for the individual households and do not carry the failure to report penalty. The hunt

administrator would be required to make attempts to collect household reports and attach these reports to the hunt administrator's annual report. No failure to report penalty would be attached to the individual household reports, but requiring the hunt administrator to make efforts to get such reports will at least provide the board with information about how many groups are willing to make the effort. And it will give the groups and households time to get used to individual reporting without losing hunting opportunity.

- Ahtna's substitute language includes a provision that would allow a community to create its own household form so long as it gathers the same kind of information sought on the department's form. Ahtna thinks it may be able to create a form that is easier to understand and complete for the hunters in the villages.
- Failure to file a complete report by the hunt administrator must carry the failure to report requirement. Anything else would be completely unfair and inconsistent with other FTR regulations, and would undermine the intent of the board in creating the community hunt.
- Perhaps in three years or less we will all understand the law on *Morry* and the board's authority to create a scoring and eligibility system based on reporting. At that point, the board can look at many issues, including making the household reports mandatory with the FTR consequence.

Substitute Language for Proposal 71 (Amending Option 2 substitute language for proposal 71 by ADF&G in RC 03). Text with ~~Strikeout~~ is deleted from ADF&G RC 3; Text in ***bold italics*** is new proposed regulatory language.

#### Option 2:

5 AAC 92.072 (c)(1) ... the community or group representative must

(D) make efforts to ensure that the applicable customary and traditional use pattern described by the board and included by the department as a permit condition, if any, is observed by subscribers including meat sharing...

(E) submit a complete written report, on a form provided by the department, for households participating in the community harvest hunt area described in 5 AAC 92.074(d), that describes efforts by households ***the community or group*** to observe the customary and traditional use pattern described by board findings for the game population(s) hunted under the conditions of this community harvest permit.

**(i) In completing the report, the community or group representative shall make efforts to collect a complete report from each household that is a member of the community or group that describes efforts by the household to observe the customary and traditional use pattern using the eight elements described in (c)(1)(E(i) of this section. Household reports may be submitted to the community or group representative on a form provided by the department or on a form created by the community or group that is consistent with the information collected on the form provided by the department. A copy of all household reports collected by the community or group representative shall be submitted to the department as a part of the representative's written report.**

**(i) (ii) Complete reports submitted by hunt administrators shall report information about ~~their~~ the community or group's efforts to observe the customary and traditional use pattern of the game population, as follows;**

**(1) Element 1, participation in a long-term, consistent pattern of noncommercial taking, use, and reliance on the game population: the number of years of taking and use of the game population; and involvement of multiple generations in the taking and use of the game population; and use of areas other than the community subsistence hunt area for harvest activities; and**

**(2) Element 2, participation in the pattern of taking or use of the game population that follows a seasonal use pattern of harvest effort in the hunt area: the months and/or seasons in which noncommercial harvest activities occur in the hunt area; and**

**(3) Element 3, participation in a pattern of taking or use of wild resources in the hunt area that includes methods and means of harvest characterized by efficiency and economy of effort and cost: costs associated with harvests; and methods used to reduce costs and improve efficiency of harvest; and number of species harvested during hunting activities; and**

**(4) Element 4, participation in a pattern of taking or use of wild resources that occurs in the hunt area due to close ties to the area: number of years of taking and use of the game population; and involvement of multiple generations in the taking and use of the game population; and variety of harvesting activities that take place in the hunt area; and evidence of other areas used for harvest activities; and**

**(5) Element 5, use of means of processing and preserving wild resources from the hunt area that have been traditionally been used by past generations: complete listing of the parts of the harvested game that are used; and preservation methods of that game; and types of foods and other products produced from that harvest; and**

**(6) Element 6, participation in a pattern of taking or use of wild resources from the hunt area that includes the handing down of knowledge of hunting skills, values, and lore about the hunt area from generation to generation: involvement of multiple generations in the taking and use of the game population; and evidence of instruction and training; and**

**(7) Element 7, participation in a pattern of taking of wild resources from the hunt area in which the harvest is shared throughout the community: amount of harvest of the game population that is shared; and evidence of a communal sharing event; and support of those in need through sharing of the harvest of the game population; and**

**(8) Element 8, participation in a pattern that includes taking, use, and reliance on a wide variety of wild resources from the hunt area: the variety of resource harvest activities engaged in within the hunt area; and evidence of other areas used for harvest activities.**

**(ii) (iii) failure to report under this subsection, or under 5 AAC 92.072(f), may result in denial of a community subsistence harvest permit during the following regulatory year.**

[E](F) beginning July 1, 2014, in the community harvest hunt area...

**(G) must, be given the opportunity to request a hearing if the representative fails to submit a complete report as required by (c)(1)(F) of this section. A community or group aggrieved under by a decision under (c)(1)(F) of this section will be granted a hearing before the commissioner or the commissioner's designee, if the community or group representative makes a request for a hearing in writing to the commissioner within 60 days after the conclusion of the hunt for which the person failed to provide a report. The commissioner may determine that the penalty provided under (c)(1)(F) of this section will not be applied if the community or group representative provides the information required on the report and if the commissioner determines (i) that the failure to provide the report was the result of unavoidable circumstance, or (ii) that extreme hardship would result to the community or group.**

5 AAC 92.072 (c)(2) a resident of the community or member of the group who elects to subscribe to a community harvest permit ...

~~(G) must, in the community harvest hunt area described in 5 AAC 92.074(d), submit a complete report on a form provided by the department that describes efforts by the participant's household to observe the customary and traditional use pattern using the elements described in (c)(1)(E) of this section for the game population(s) hunted under the conditions of this community harvest permit. Participants who are members of the same household may submit a single report. Failure to submit a complete report that includes all information requested by the department may result in denial to a household of a community subsistence harvest permit for this area during the following regulatory year.~~

~~(H) must be given the opportunity to request a hearing if a person fails to submit a complete report as required by (c)(2)(G) of this section. A household aggrieved under by a decision under (c)(2)(G) of this section will be granted a hearing before the commissioner or the commissioner's designee, if the household makes a request for a hearing in writing to the commissioner within 60 days after the conclusion of the hunt for which the household failed to provide a report. The commissioner may determine that the penalty provided under (c)(2)(G) of this section will not be applied if the household provides the information required on the report and if the commissioner determines that (i) the failure to provide the report was the result of unavoidable circumstance, or (ii) that extreme hardship would result to the household.~~

5 AAC 92.072(f) The department may disapprove an application for a community subsistence harvest permit from [A COMMUNITY SUBSISTENCE HARVEST PERMIT FROM] a community or group that has previously failed to comply with requirements in (c)(1) of this section.