

November __, 2017

Submitted by Boards Support

Jahna Lindemuth,
Alaska Attorney General
Department of Law
1031 West 4th Avenue,
Suite 200
Anchorage, Alaska 99501

Dear Attorney General Lindemuth,

The Alaska Board of Game respectfully requests that you as the Attorney General for Alaska issue an opinion regarding the authority of the Board and the Alaska Department of Fish and Game to enforce the regulatory conditions of the community subsistence hunts as provided in 5 AAC 92.072.

In particular, the Board has authorized community subsistence hunts for moose and caribou for the Copper River Basin area as described in 5 AAC 92.074(d). That hunt is based on findings the Board adopted in 2006 that described the community based customary and traditional use pattern of moose and caribou for this area. It was the Board's intent that the groups that participated in this community hunt should follow this community based pattern of subsistence use. The regulation adopted by the Board included this as a condition to participate in the hunt. Under section (c)(1)(D) of the regulation, a group representative is required to make efforts to ensure that the traditional pattern of use described by the Board is observed by the group members. Section (c)(3) of the regulation requires groups to submit reports each year that describe the group's efforts to follow this customary and traditional use pattern. Section (f) of the regulation also includes authority for the Department to disapprove a group's application to participate in the hunt if it fails to comply with these hunt conditions.

The Board has heard testimony, including reports from the Division of Subsistence, that some groups participating in the community hunt have turned in reports that demonstrate little if any attempt to follow the customary and traditional use pattern that this hunt structure was designed to facilitate. The Department has taken the position that it can deny a group, and the members of that group, the opportunity to participate in a community hunt the next season if the group fails entirely to file a report. However, the Department has also expressed the opinion that it does not have that same authority (to deny) if a group submits a report, regardless of attempts to meet any customary and traditional use patterns.

In a recent meeting in Glennallen, the Board discussed the issue of enforcing this hunt condition through a reporting and scoring system developed by the Subsistence Division. The reporting system was originally developed through a request to the Copper Basin Area

Subsistence Hunting Committee established by the Board in 2013. The Board has been advised that it does not have the legal authority to enforce this hunt condition through a reporting and scoring system approved by the Board and applied to all participating groups, and which could result in a participating group being denied the opportunity to participate in a future hunt for a limited period of time.

As you are likely aware, the Copper Basin hunts are perhaps the most contentious and complex to manage in our state due to relative ease of access and close proximity to the majority of our state's population. The Board has spent many years developing hunt structures that protect specific customary and traditional use patterns as well as other types of subsistence harvest opportunities in this area. It has become evident through public testimony that a number of participating groups are possibly not complying with the condition for the community hunt that is intended to help ensure that participants are engaged in the community pattern of subsistence uses identified by the Board. The Board believes that it is necessary to have a more complete analysis at this time to help us more clearly understand the limitations of the Board's authority to implement and enforce this hunt condition based on the reporting and scoring system mentioned above. The Board therefore requests that you as the Attorney General provide us your opinion on this issue on or before February 16, 2018, which is the start of our regulatory meeting at which this topic will be discussed.

The Board is not requesting an analysis of its authority to determine a group's eligibility at the Tier I level prior to a group initially joining and participating in the Cooper Basin community subsistence hunt. The specific question the Board would like addressed is whether it has the authority to adopt a regulation requiring mandatory reporting and applying a scoring system for the reports that applies equally to all groups participating in the community hunt, which could result at the Tier I level in penalizing an already participating group that fails to achieve a minimal score by declaring the members of the group ineligible to participate in the community hunt for the following year or two years, provided that the group and its members are afforded an opportunity to appeal a decision that restricts their eligibility to participate in a future hunt.

Thank you.