

PROPOSAL 81

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

Reestablish seasons and bag limits for sheep hunting in Unit 19C as follows:

I don't have access to the new language passed by the board in March. My ideal suggestion would be for two members of the board call a meeting to delay implementation of this action for one year pending better data. Failing that, the seasons and bag limits for Unit 19C should be reestablished for the 2024 season.

END NOTE: The practice of board-generated or board amended proposals is not clearly permitted in Alaska Statute or regulations. Just where the idea arose is uncertain, but it seems to have come along when former ADF&G biologists (who were accustomed to being managers) began to serve on the Board of Game.

Complicating the issue is the underlying confusion between “management” and “allocation.” management has to comply with the Alaska Constitution and statutes. However, “management” can be effectively altered or truncated by regulation. There is little safeguard against this eventuality. If the Board of Game cannot tease this confusion out satisfactorily with the actual manager of record, the Commissioner’s Office/department, it would be rational for the legislature to provide more direct guidance. That process is presently being debated for the “Area M” commercial fishery via HB 128.

When the Board of Game makes its own proposal for regulatory change where the manager has not been substantively involved, then subsequently amends the proposal in deliberation (with no opportunity for public comment), and the final board vote is apparently swayed by emotional appeal. The optics (whether procedurally allowable or not) are not good.

What is the issue you would like the board to address and why? The recent board action banning nonresident Dall ram hunting in Unit 19C should be rescinded or delayed. I offer two lines of thinking for this suggestion. One is biology and management related. The other is procedural.

BIOLOGY AND MANAGEMENT:

1. Dall sheep populations have waxed and waned with variations in environmental resistance for thousands of years. Although Dall sheep populations are currently down compared to the highs of the last several decades (most likely due to weather), there is no evidence suggesting the light past harvests of mature rams are linked in any way to today’s declines. Consequently, there is no rationale for assuming an adjustment in Dall ram harvest opportunity is necessary as a matter of Dall sheep conservation or would be likely to speed population recovery at this time.

2.This means any change in harvest opportunities at this time would be inconsistent with the known biology and management history for Dall sheep.

3.Consequently, any change in harvest opportunity would have to be for reasons other than biological conservation. That is, any change would be arbitrary.

4.The arbitrary nature board action banning nonresidents from Dall ram harvest opportunity leads to questions about procedure.

PROCEDURAL ISSUES (THE SEQUENCE OF EVENTS)

1. The apparent declines in Dall sheep populations have led to the *intuitive assumption* that the light and sustainable mature ram harvests contributed to population declines, and if continued will delay population recovery.

2. Sufficient concern over these *intuitive assumptions* was expressed to the Board of Game that it requested an informational meeting with Alaska's Dall sheep biologists and managers about the status of Dall sheep research and management last October.

a. It is significant that these concerns were solicited by the Board of Game rather than volunteered by the manager of record, the Commissioner's Office through the Department of Fish and Game. According to the established statutes, the Commissioner's Office is the manager. It is not known why the department did not bring concerns about sheep populations to the Board of Game.

3. When the Board of Game became concerned, the board inquired of the department about whether (or not) there was conservation concern requiring regulatory action. This department reported to the board on October 19, 2022.

4. At that time, the department gave an excellent three hour presentation to the Board of Game. The gist of the data presented was that ram hunting had little to nothing to do with the population declines. The coinciding changes in weather severity of recent years have apparently resulted in the population declines due to poor lamb production and recruitment.

5. The obvious recommendation that flowed from the available data presented to the board was that there was no immediate need for harvest opportunity adjustment at this time.

6. Despite this strong presentation by the department, a senior board member immediately announced he would be bringing forth a board Agenda Change Request (ACR) to allow consideration of a board-generated proposal for total Dall sheep harvest closure for all Alaska residents (including recognized subsistence users) as well as nonresident hunters in Unit 19C.

7. This ACR was considered by the board, and passed by a 6-1 vote. Subsequently, a board-generated proposal was drafted.

a. At this time, the total input from the "generating board" is unknown. Whether the whole board, a select committee, or just the senior member participated in drafting the board-generated proposal is unknown. It appears the managers (the department) were not asked for, nor did they provide any input.

8. Subsequently, the board met in mid March to consider the board-generated proposal to close all Dall sheep in Unit 19C for five years.

9. Reports from the board meeting in March were that the proposal to curtail all Dall sheep hunting opportunity in Unit 19C for five years was unlikely to pass.

a. A similar ACR by the Resident Hunters of Alaska (RHAK) to eliminate non-resident hunting had been denied by the board in the interim.

i. Eventually the board would ban nonresident hunting as RHAK had suggested, but via differing methodology in spite of the fact that the board had denied RHAK's request for an ACR to deal with the alleged crisis presented as a result of non-resident hunting in Unit 19C.

10. In an apparent effort to garner more board support (votes) for the (his or the Board's?) board-generated proposal, the sponsoring board member moved to amend the proposal to simply ban nonresident hunting.

a. Whether strategically planned or not, this amendment would have left the biologically more risky (because it allowed a lengthy season and bag limit of multiple sheep, including ewes—but biologically inconsequential because of limited participation) subsistence hunt in place.

11. The board approved the amendment, and moved to consider the amended proposal.

12. During deliberation, it looked like the board-generated and subsequently board-amended proposal was unlikely to pass.

13. The sponsoring board member then offered an emotional argument sufficient to persuade enough board members to pass the board-generated and board-amended proposal by a one vote margin.

a. It is reported that the emotionally-charged appeal by the senior Board member persuaded two members to change their votes.

14. As things stand at present, nonresident participation in mature Dall ram harvesting is scheduled for prohibition in Unit 19C, but unlimited resident hunting for mature Dall rams and the biologically riskier subsistence hunt. are still allowed by regulation.

PROCEDURAL COMPLICATIONS:

1. The board, which according AS 16.05.221 (b) was created for,

“... the conservation and development of the game resources of the state” appears to have, by the use of this Board-generated and amended proposal, assumed management authority that properly resides in the Commissioner's Office.

a. Alaska law (AS 16. ARTICLE 1. Sec. 16.05.010.

Commissioner of the Department of Fish and Game (THE DEPARTMENT OF FISH AND GAME) says “The commissioner is the principle executive officer of the Department of Fish and Game.”

2. **Sec. 16.05.020 . Functions of the commissioner.** says, “The commissioner shall (2) manage, protect, maintain, improve, and extend the... game resources of the state in the interest of the economy and general well-being of the state.”

a. By eliminating non-resident mature Dall ram hunting, the board has arbitrarily usurped the Commissioner's obligation and authority to manage in the best interests of Alaska's economy.

1. Nonresident hunting in Unit 19C is certainly going to generate less revenue than when mature Dall rams were more abundant, but the economic contribution from non-resident Dall ram hunters to both the private economic and ADF&G funding sectors is nonetheless significant. In license and tag fees alone, non-residents provide about twenty times more management revenue than residents in Unit 19C. Additionally, the economy of the private sector benefits substantially from cash spent on nonresident hunting apart from license and tag fees.

2. In eliminating participation by nonresident hunters, the Board seems likely to violate the POLICY Section of Alaska Constitution Article VIII. Sec. 1 POLICY. This section says, “It is the policy of the

State to encourage . . . development of its resources by making them available for maximum use consistent with the public interest.”

a. Unit 19C has always been a major non-resident use area because the logistics involved in hunting there are complicated and more costly than most residents are willing to pay. Consequently, excluding nonresident participation is highly unlikely to make the harvestable rams available in Unit 19C for “maximum use consistent with the public interest.” It is doubtful, given the circumstances of lower ram abundance and consistently challenging logistics that residents will take the maximum allowable harvest of rams. Nonresident participation, will not harm the population, and there is no evidence that banning nonresident hunters will hasten population recovery.

b. It seems unlikely that resident hunters (particularly in light of diminished resources) will flock to Unit 19C to “replace all non-resident use for mature Dall ram hunting.’ If so, this will result in practical submaximal use, and be out of step with constitutional policy.

3. Alaska Constitution Article VIII. Sec. 4. Sustained Yield. says:

“ . . . replenishable resources . . . shall be utilized, developed, and maintained on the sustained yield principle subject to preferences among beneficial uses.”

a. If use isn’t maximized, sustainable yield will be hard to realize, and maximal use via open hunting opportunity will not be offered either. Unless resident hunters gravitate to a challenging, non-resident-free, logistically challenging, and expensive locale in Unit 19C (where harvest of mature Dall rams has been historically light) the sustainable yield will not be recognized or even provided for.

PROPOSED BY: Wayne Heimer

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