

Cultural & Subsistence Uses

PROPOSAL 53 – 5 AAC 99.025(a)(12). Customary and traditional uses of game populations. Reevaluate the customary and traditional use finding for migratory game birds statewide as follows:

The proposal requests that the Board of Game (board) review the information provided in the customary and traditional use worksheet provided by ADF&G as well as other available information, including information from the public, to determine if populations of migratory game birds (ducks, geese, swans, snipe, and cranes) statewide support customary and traditional subsistence uses. If a positive determination is made, the regulation would read as follows:

5 AAC 99.025. Customary and traditional uses of game populations (a)

SPECIES & UNIT	FINDING	AMOUNT REASONABLY NECESSARY FOR SUBSISTENCE USES
(12) Small Game		
<u>(X) Migratory game birds</u>	<u>positive</u>	

All units with a harvestable portion except within the nonsubsistence areas as defined in 5 AAC 99.015.

What is the issue you would like the board to address and why? AS 16.05.258 requires the board to identify game populations or portions of populations that support customary and traditional subsistence uses (a “C&T finding) and to adopt regulations that provide reasonable opportunities for Alaska residents to participate in these subsistence uses. 5 AAC 85.065(a)(4) provides hunting opportunities for migratory game birds, including ducks, sea ducks, geese, tundra swans, sandhill cranes, and common snipe. However, until January 2017 the board had only made a positive C&T finding for Canada geese in Unit 6. In January 2017, the board made a positive customary and traditional use determination for emperor geese throughout their Alaska range as well as for all migratory waterfowl (ducks, geese, swans), sandhill cranes, and common snipe in Units 18, 22, 23, and 26A. The finding was based in part on a report prepared by ADF&G titled “Customary and Traditional Use Worksheet: Migratory Game Birds, featuring Emperor Geese” (RC 5, Tab 4 at the January 2017 meeting). The report provided background harvest and use information on uses of migratory game birds in Alaska organized around the eight criteria used by the Board of Game and the Board of Fisheries to identify customary and traditional uses (5 AAC 99.010(b)). Although the board expressed an interest in including all migratory game birds (ducks, geese, swans, snipe, and cranes) throughout their ranges in Alaska (excluding nonsubsistence areas) in their positive finding, the legal notice for the meeting limited action to emperor geese throughout their Alaska range and other migratory game birds only in Units 18, 22, 23, and 26A. After adopting the C&T finding, the board requested that ADF&G prepare a proposal to address a C&T finding for migratory game birds statewide to be considered at the statewide regulatory meeting in November 2017.

Making a C&T finding would not result in any changes to seasons, bag limits, or other state regulations governing the taking of migratory game birds.

Because of the broad scale of the proposed C&T finding, it is not recommended that the board establish an amount reasonably necessary for subsistence (an “ANS finding”) for migratory game birds at this time.

PROPOSED BY: Alaska Department of Fish and Game (HQ-F17-006)

PROPOSAL 54 – 5 AAC 92.070. Tier II subsistence hunting permit point system. Modify the Tier II subsistence hunting permit point system as follows:

Eliminate the Tier II eligibility rural preference application point-scoring questions on:

1. Location of purchase of most of applicant’s gasoline and groceries during the last year; and
2. Number of days in the local hunt area spent on subsistence activities.

Change to: (1) Eligibility questions on number of the applicant’s related **living**-generations that have and will benefit from applicant’s subsistence harvests; and

(2) applicant’s total reliance and dependency on all their subsistence use activities no matter where applicant does subsistence hunt-fish-pick berries in the state; and

(3) the number of years the applicant has hunted or applied for this particular Tier II hunt; based on the following:

(1) Count each living generation as one each for applicant and spouse, plus one generation for children, plus one for grandchildren, plus one for parents of applicant, plus one for grandparents, plus one for great grandparents, plus one for great grandchildren, plus one for generation of living nieces and nephews, and plus one great nieces and nephews. This will help assure compliance with 5 AAC 99.010 defining long-time customary and traditional subsistence use of at least one generation, i.e., ten years or more.

(2) Consider all the subsistence activities use days for all hunt-fish-pick berries subsistence reliance and dependency of the applicant, no matter where applicant lives in the state or exercised subsistence use rights.

(3) Consider applicant’s number of years for hunting or applied for the Tier II species hunt being applied for, along with any other Tier II and Tier I general hunts for other big game species hunted or applied for and used for subsistence reliance and dependency.

What is the issue you would like the board to address and why? The present Tier II application questions, and the community subsistence harvest (CSH) applications, do not adequately address and protect long-time customary and traditional subsistence use reliance and

dependency. Present questions are geared toward **rural preference** as the controlling eligibility, and not protection of long-time customary and traditional subsistence use and reliance (dependency). AS 16.05.258(b).

Eligibility questions presently use location of residency and priority for location of hunt area of subsistence use, while denying (ignoring) a resident's all other subsistence use activities in other areas of the state. For example, I exercise my hunt-fish-pick berries subsistence use in the Kenai Peninsula area almost year round, yet I receive unequal or no subsistence use days eligibility if I apply for Tier II moose and caribou or subsistence use permit anywhere else in the state.

Naturally, a person hunts-fish-picks berries, as well as buys most groceries and gasoline annually—in and closest to his location of residency.

The present cumulative eligibility criteria in effect is a poorly disguised rural preference, where grants a location-residency-rural preference priority for the hunt area, without consideration of total subsistence use needs, reliance, and dependency of the individual applicant on subsistence use.

This will require a new way of thinking for the Board of Game, to get away from unconstitutional rural-local-residency and **racial** C&T priority preference eligibility, and change focus to protect long-time customary and traditional subsistence use reliance and dependency, no matter where the applicant resides in the state, and **equal for all races**, and will avoid continued litigation for unconstitutional residency-rural-racial-location permit priority preferences that violate *McDowell v. State*, 785 P.2d 1 (Alaska 1989); violate Alaska Constitution Article VIII Section 3 common use, and Alaska Native Claims Settlement Act (ANCSA) 43 U.S.C. 1601 Section 4b terminating all future aboriginal native priority preference of fish and game rights.

PROPOSED BY: Kenneth Manning (HQ-F17-014)

PROPOSAL 55 – 5 AAC 92.019. Taking of big game for certain religious ceremonies.
Combine the regulations allowing the take of big game for religious ceremonies and ceremony potlatches as follows:

Amend: 5 AAC 92.019. Taking of big game for certain religious **and ceremony potlatches** [CEREMONIES]

(a) The hunting and taking of game species having a positive finding in 5 AAC 99.025, outside the seasons or bag limits established in 5 AAC 85, for use in this state as food in customary and traditional Alaska Native funerary, [OR] mortuary religious **or potlatch** ceremonies [WITHIN 12 MONTHS PRECEDING THE CEREMONY IS AUTHORIZED IF] consistent with sustained yield principles.

(b) The department shall publicize a list of game populations and areas, if any, for which the taking of game is inconsistent with sustained yield principles. It is the hunter's responsibility

to contact the department to find out which game populations and areas are excluded from taking under this regulation.

(c) A written permit from the department is [not] required for taking **big** game under this section, [except that in nonsubsistence areas, described in 5 AAC 99.015, and the Gulkana, Cantwell, Chistochina, Gakona, Mentasta, Tazlina, Chitina, and Kluti Kaah Community Harvest Area defined in 5 AAC 92.074(d),] a ceremonial **or potlatch** harvest report form, provided by the department, must be obtained and jointly completed by the hunter and the tribal chief, village council president, clan leader, traditional Native head of family, or clan leader's designee for the village associated with the customary and traditional Alaska Native funerary, [or] mortuary religious ceremony, **or potlatch**.

(d) the department may limit the amount of big game to be harvested

(1) by unit or area

(2) by sex

(3) females with offspring

(4) amount of big game

(5) time frame

(i) reporting of harvested big game will be reported no later than 15 days after harvest or permit requirement.

(ii) permit must be in possession of hunter/hunters and upon request from a peace officer of the state or authorized department person. A permittee may not refuse to present it or any big game in possession.

[(D) BEFORE GAME IS TAKEN UNDER THIS SECTION A TRIBAL CHIEF, VILLAGE COUNCIL PRESIDENT, CLAN LEADER, TRADITIONAL NATIVE HEAD OF FAMILY, OR THE CHIEF'S, PRESIDENT'S, TRADITIONAL NATIVE HEAD OF FAMILY, OR CLAN LEADER'S DESIGNEE FOR THE VILLAGE ASSOCIATED WITH THE RELIGIOUS CEREMONY, MUST NOTIFY THE NEAREST OFFICE OF THE DEPARTMENT THAT A HUNT FOR GAME WILL TAKE PLACE. THE NOTIFICATION MUST INCLUDE THE NUMBER OF ANIMALS EXPECTED TO BE TAKEN AND THE LOCATION WHERE THE TAKING WILL OCCUR. THE TRIBAL CHIEF, VILLAGE COUNCIL PRESIDENT, CLAN LEADER, TRADITIONAL NATIVE HEAD OF FAMILY, OR DESIGNEE MUST MAINTAIN RECORDS OF THE SUCCESSFUL HUNTERS AND THE DECEDENTS FOR THE CEREMONY, AND MAKE THAT INFORMATION AVAILABLE TO AN AUTHORIZED REPRESENTATIVE OF THE DEPARTMENT UPON REQUEST. THE TRIBAL CHIEF, VILLAGE COUNCIL PRESIDENT, CLAN LEADER, TRADITIONAL NATIVE HEAD OF FAMILY, OR DESIGNEE MUST NOTIFY THE DEPARTMENT OF THE LOCATION, SPECIES, SEX, AND NUMBER OF ANIMALS TAKEN UNDER THIS SECTION AS SOON AS PRACTICABLE, BUT NOT MORE THAN 15 DAYS AFTER THE TAKING OF GAME.]

(e) It is an affirmative defense to a prosecution for hunting or taking big game outside the season or bag limit restrictions established in 5 AAC 85 that

(1) the person is a resident of this state;

(2) the person must possess a valid hunting license.

[(2)] **(3)** the hunting or taking was authorized under this section and the meat was used in a customary and traditional Alaska Native funeral [OR] mortuary religious **potlatch** ceremony; and

[(3)] **(4)** if the person took big game, the requirements of (d) of this section have been met.

(f) This section does not authorize the taking of game in areas where hunting is prohibited or when prohibited by a federal law that preempts state laws on point.

(g) In this section, "traditional Native head of family" means a person who, according to an Alaska Native tradition, is viewed as a head of a family and is charged with duties similar to those of a tribal chief, village council president, or clan leader regarding traditional Alaska Native funerary or mortuary rites.

What is the issue you would like the board to address and why? To centralize ceremony potlatches and religious ceremonies within the codified. The intent is to repeal 5 AAC 92.053, 92.017, and 92.055, and merge into 92.019, but these regulations were not on the Call for Proposals.

PROPOSED BY: Fairbanks Fish and Game Advisory Committee (EG-F17-096)

Note: The following proposal requests regulatory changes that are both statewide and specific to the Central/Southwest Region (see Proposal 98). The board will take public testimony at the November 2017 Statewide Regulations Meeting, and may defer taking final action on the proposal until the February 2018 Central/Southwest Region Meeting.

PROPOSAL 56 – 5 AAC 92.072. Community subsistence harvest hunt area and permit conditions. Modify the community subsistence harvest permit conditions as follows:

Amend 5 AAC 92.072. Community subsistence hunt area and permit conditions:

Throughout the regulation the term/phrase “a resident of a community or member of a group” is used to define those participating in the community subsistence hunt (CSH). The regulations should be amended to clarify that the CSH is for “communities”, not simply any “group” of individuals who are Alaska residents. The use of the term “group” diminishes the “community” aspect of the hunt. A “group” can be those who only get together over the internet. A “group” can consist of those who only get together once a year for a potluck that includes a dish or two containing a little moose or caribou taken by a member of the group. The use of the term “group”

encourages the kind of abuse that has occurred in the CSH. It takes a “community” to practice the community pattern of C&T (customary and traditional) uses that the Board of Game (board) has set as a condition for participating in the hunt for the Copper Basin area (5 AAC 92.074(d)). Therefore, the term “group” should be stricken from the regulation and replaced when necessary with “community.”

The term “resident” should also be stricken, because a “community” of subsistence users may not all be residing in the same physical location. For example, the community composed of the eight Ahtna villages includes some Alaska residents who do not live in the area, but who continue to hunt, fish and gather subsistence resources in the area and to participate in the Ahtna customary and traditional hunting way of life, including widespread sharing, teaching traditional knowledge and values, potlatches, etc. Therefore, the term “community members” should be uniformly applied throughout the regulation when describing who is eligible to participate in the CSH. The term “residents” should be stricken.

Likewise, when describing the CSH administrator, the term “community administrator” should be used throughout the regulations. The term “group” should be deleted when the regulation references CSH administration.

Additionally amend 5 AAC 92.072. Community subsistence harvest hunt areas as follows:

(a) The commissioner or the commissioner's designee may, under this section and 5 AAC 92.052, issue community-based subsistence harvest permits and harvest reports for big game species where the Board of Game (board) has established a community harvest hunt area under (b) of this section and 5 AAC 92.074. **Prior to issuing a permit and harvest reports for the community hunt area described in 5 AAC 92.074(d), the commissioner or designee shall determine, on the basis of an application form developed by the department, that the community applying for the permit conforms with the definition of “community” set forth in section (i) of this regulation.**

...

(c) If the board has established a community harvest hunt area for a big game population, [RESIDENTS] **members** of the community [OR MEMBERS OF A GROUP] may elect to participate in a community harvest permit hunt in accordance with the following conditions:

(1)(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]; the applicable board finding and conditions will be identified on the permit; this provision does not authorize the community [OR GROUP] administrator to deny subscription to any community **[RESIDENT OR GROUP] member who agrees to practice the applicable customary and traditional use pattern as practiced by the community;**

...

(c)(3) in addition to the requirements of (1) of this subsection, the community [OR GROUP] representative must submit a complete written report, on a form provided by the department, for the community [OR GROUP] participating in the community harvest hunt area described in 5

AAC 92.074(d), that describes efforts by the community [OR GROUP] to observe the customary and traditional use pattern described by board findings for the game populations hunted under the conditions of this community harvest permit; in completing the report, the representative must 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 this paragraph; 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; complete reports must include information about efforts to observe the customary and traditional use pattern of the game population, as follows:

(A) 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;

(B) 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 seasons in which noncommercial harvest activities occur in the hunt area;

(C) 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;

(D) 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;

(E) Element 5: use of means of processing and preserving wild resources from the hunt area that have been traditionally 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;

(F) 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;

(G) 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

(H) 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.

(c)(4) the department may waive the annual reporting requirement and institute a five-year reporting period for any community which has demonstrated, through reports submitted annually over a five-year period, a high degree of participation in the customary and traditional community use pattern described in board findings for the area.

...

(f) The department may disapprove an application for a community subsistence harvest permit from a community [OR GROUP] that has previously failed to comply with requirements in (c)(1) and (3) of this section. The failure to **submit a report by the community [OR GROUP] representative under (c) [(1) AND] (3) of this section which demonstrates, pursuant to criteria and a scoring system established by the department, that the community is observing the customary and traditional use pattern described by board findings for the game populations hunted under the conditions of this community harvest permit shall** [MAY] result in denial of a community subsistence harvest permit for the area during the following **two regulatory years for all members of the community.** The department must allow a representative the opportunity to request a hearing if the representative fails to submit a complete report as required under (c)(1) and (3) of this section. A community [OR GROUP] aggrieved by a decision under this subsection will be granted a hearing before the commissioner or the commissioner's designee, if the community [OR GROUP] representative or **a member of the community** makes a request for a hearing in writing to the commissioner within 60 days after **receiving notice from the department that the community will be denied a community subsistence harvest permit for the following year.** [THE CONCLUSION OF THE HUNT FOR WHICH THE PERSON FAILED TO PROVIDE A REPORT]. The commissioner may determine that the penalty provided under this subsection will not be applied if the community [OR GROUP] representative **or member** provides the information required on the report **sufficient to satisfy the department's requirements** and if the commissioner determines that

(1) the failure to provide the report was the result of unavoidable circumstance; or

(2) extreme hardship would result to the community [OR GROUP] **or member.**

...

(h) Nothing in this section authorizes the department to delegate to a community [OR GROUP] representative determination of the lawful criteria for selecting who may hunt, for establishing any special restrictions for the hunt and for the handling of game, and for establishing the terms and conditions for a meaningful communal sharing of game taken under a community harvest permit, **except that a community representative shall require participating community members to observe the customary and traditional use pattern described by board findings for the game populations hunted as that pattern of use is practiced by the community.**

...

(i) In this section,

(2) a "community" [OR "GROUP"] is "a group **of 25 or more individuals** [OF PEOPLE] linked by a common interest in, and participation in **a consistent pattern of noncommercial taking, use, and reliance on a wide diversity of subsistence resources in** [,] an **identified** area [AND

THE WILDLIFE POPULATIONS IN THAT AREA,] that **provides substantial economic, cultural or social, and nutritional elements of the subsistence way of life of the community and its members** [IS CONSISTENT WITH THE CUSTOMARY AND TRADITIONAL USE PATTERN OF THAT WILDLIFE POPULATION AND AREA AS DEFINED BY THE BOARD].

What is the issue you would like the board to address and why? This proposal: 1) amends the regulation to delete the terms “group” and “residents” and replaces these terms with the term “community” and “members”; 2) amends the authority of the Department of Fish and Game (department) to issue community-based subsistence harvest permits and harvest reports for the Copper Basin area (5 AAC 92.074(d)) to require the department to create an application form that establishes that the applicant is a “community” as that term is defined in the regulation; 3) amends the definition of “community” to make it clear that groups applying for and participating in the CSH share a common interest and participation in the pattern of C&T community use identified by the board for wildlife resources in that area and which provides substantial economic, cultural or social, and nutritional elements of the subsistence way of life of the community and its members; 4) requires the department to develop and apply a scoring system for annual reports from CSH administrators for the CSH in the area described in 5 AAC 92.074(d), and to disqualify a community and all members of the community for two years from participating in a CSH in this area if the annual report fails to satisfy the minimum score developed by the department for demonstrating that a community is observing the community pattern of subsistence use that is a condition of the permit for the area; 5) allows the department to waive the annual CSH administrator reporting requirement for the area described in 5 AAC 92.074(d) if a community has established a solid record of practicing the applicable C&T pattern of use, and replace it with a report once every five years; and 6) allows a CSH administrator to require all members of the CSH community to observe the C&T pattern of use recognized by the board in establishing the CSH, including specific practices of the community that are consistent with the pattern of use recognized by the board.

PROPOSED BY: Ahtna Tene Nene’ (HQ-F17-026)

PROPOSAL 57 – 5 AAC 85.072(i)(2). Community subsistence harvest hunt area and permit conditions. Change the definition of “community” or “group” for community subsistence harvest hunts as follows:

5 AAC 92.072(i)(2) is entirely repealed and readopted to read:

(2) a “community” or “group” is a mutual support network of people who routinely (at least several times each year) provide each other with physical, emotional, and nutritional assistance in a multi-generational and inter/intra familial manner to assure the long-term welfare of individuals, the group, and natural resources they depend on.

Existing 5 AAC 92.072(i)(2)

(2) a “community” or “group” is a group of people linked by a common interest in, and participation in uses of, an area and the wildlife populations in that area, that is consistent with the customarily and traditional use pattern of that wildlife population and area as defined by the board.

What is the issue you would like the board to address and why? The Board of Game requested this proposal during the March, 2017 board meeting concerning caribou and moose hunting in Units 11, 12 and 13. During that meeting, the board received several public comments from community subsistence harvest hunt participants about the effectiveness of the program. Testimony also emphasized the importance for natural resource conservation to ensure long term sustenance and customary and traditional uses. The board agreed a modification to the definition of community/group is necessary to more accurately reflect the intent of the community subsistence harvest hunt regulations and further clarify how the community hunt is distinguished from the individual Tier I hunt. The customary and traditional use pattern described in regulation (92.072 subsection c), and the Board of Game findings #2006-170-BOG and #211-184-BOG, remain in effect and are an important element of the Copper Basin Community Subsistence Harvest hunt.

The board encourages input from the public on the current and proposed definitions to be considered at the November 2017 Statewide Regulations meeting.

PROPOSED BY: Board of Game (HQ-F17-056)

PROPOSAL 58 – 5 AAC 92.072. Community subsistence harvest hunt area and permit conditions; and 92.220. Salvage of game meat, furs, and hides. Modify the salvage requirements for moose and caribou taken under community subsistence harvest hunts as follows:

Community harvest hunts for caribou and moose must have all meat stay naturally attached to the bone.

What is the issue you would like the board to address and why? By having all meat stay naturally attached to the bone, the Denali Fish and Game Advisory Committee suggests that this will help prevent and simplify enforcement of wanton waste. This includes the existing front quarter, hind quarter and rib meat as well as all of the neck meat, all of the brisket, and all of the meat along the backbone.

PROPOSED BY: Denali Fish and Game Advisory Committee (HQ-F17-004)

Note: The Board of Game does not have authority to change the Tier II scoring criteria to include nonconsumptive use per Alaska Statute 16.05.258.

PROPOSAL 59 – 5 AAC 92.072. Community subsistence harvest hunt area and permit conditions; and 92.070. Tier II subsistence hunting permit point system. Consider all customary and traditional uses as eligibility criteria for Tier II and community subsistence harvest hunts as follows:

Consider all customary and traditional (C&T) uses as eligibility criteria preferences for all Tier II and community subsistence harvest (CSH) permit applications.

What is the issue you would like the board to address and why? Customary and traditional uses of fish and game populations. Consider the use of customary and traditional hand-made manufacture and use of subsistence harvest of non-edible animal parts harvested for customary and traditional practical use of hides, bones, horns, antlers, religious use, jewelry, barter, trade, and gifts, as priority preferences eligibility for all statewide subsistence use application permits.

Presently, no ADF&G applications for Tier II or CSH subsistence use permits consider or respect the customary and traditional uses of non-edible long-time traditional and customary uses and handicrafts for subsistence eligibility criteria.

PROPOSED BY: Kenneth Manning (EG-F17-056)
