



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Public Safety

DIVISION OF ALASKA WILDLIFE TROOPERS
Office of the Director

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Chairman Spraker
Alaska Board of Game
P.O. Box 115526
Juneau Ak, 99811-5526

Dear Chairman Spraker:

The following comments give a brief description of the positions that the Department of Public Safety, Division of Alaska Wildlife Troopers have on the proposals that are up for consideration at the November 2017 statewide regulations meeting in Anchorage.

In general, when the board considers seasons and or bag limit changes, the Alaska Wildlife Troopers request that every effort possible be made to align the season dates and bag limits with adjacent game management units and/or sub units. This is mainly due to enforceability of multiple seasons in multiple locations as well as consistency of the regulations for the public. When the board considers proposals having to do with allocation or biological concerns, AWT is generally neutral in position.

AWT recognizes that regulations are developed by the Alaska Boards of Fish and Game through the public process to support management plans. Further, all management plans rely upon public compliance with regulations to achieve success. Enforcement is a crucial element needed to ensure long-term compliance with regulations by the public. The Alaska Wildlife Troopers request the board recognize that the division has limited resources and man power and any new regulation scheme or area restrictions may place an additional burden on AWT.

Comments on specific proposals are included in this letter.

Thank you for you for your time,

Bernard Chastain

Major Bernard Chastain
Deputy Director
Alaska Wildlife Troopers

Proposal 1-

Proposal 1 seeks to change the definition of “bag limit” for hunting purposes. Careful consideration should be given to changing this definition as the term “bag limit” is used throughout regulation in both hunting and fishing situations. It is also important to recognize that “bag limit” has a different definition in sport fishing and can be found in 5 AAC 75.995(4). This definition also uses the term “take” in the definition.

The term “take” as defined in AS 16.05.940(35) is intentionally broad. If it was not broadly defined, a person would not actually be legally hunting until they killed the animal. Enforcement of all the regulations governing licensing, permits, tags and the consequences of “taking” these animals without them would only be enforceable after killing an animal. There is currently no enforcement issue with the definition of “take” in Title 16 or under sport fishing and hunting regulations.

Proposal 6-

Proposal 6 seeks to allow the incidental take of up to two furbearers per year during an open season for other furbearers.

The board should discuss the potential for cheating if this proposal passes. Trappers who catch furbearers incidentally and contact the Alaska Wildlife Troopers are dealt with fairly. In most situations simply turning over the incidentally caught animal in a timely manner results in no citation. If however enforcement catches the trapper trying to “launder” the illegally taken animal by claiming it was caught during an open season the trapper will receive a citation for the illegal take.

The proposal states that in order for the incidentally caught furbearer to qualify for one of the “two incidentally caught furbearers” that it must be caught in a trap set for a species that is currently open. Enforcement of this provision would be very difficult as AWT Troopers encounter trappers who are successful each year catching non-target species in traps and utilizing methods that were not set for the target animal.

The Alaska Wildlife Troopers ask that the board take this opportunity to discuss the importance of aligning seasons in trapping regulations as much as possible to alleviate these types of “bycatch” scenarios. Opening and closing as many trapping seasons as possible at the same time helps to ensure compliance with the regulations, eliminates bycatch and results in better enforcement.

This would be difficult for AWT to enforce since “take” when dealing with furbearers is over a prolonged period. When does take occur in trapping, and who takes an animal when multiple people operate a trap line?

Many times we see a group effort on a trap line where all participants might not be present. If three licensed trappers set traps at the beginning of the year, but only one person checks the traps

on a given day, who claims the animals? Any one of the trappers that had operated the line could seal furbearers that were caught.

As an example in SE AK there is a limit of one fisher per a trapper. Currently it is suspected that a way trappers have gotten around taking an over limit of fisher is by putting the extra fisher in another licensed trappers name. There has been at least one occasion where a first time trapping license holder sealed a fisher after obtaining their only trapping license ever. Coincidentally, this occurred the same year the known trapper for that area had also sealed a fisher. Though this proposal would not affect fisher since there is a bag limit, this example demonstrates a way trappers could get around regulations governing bag limit

Another concern would be a person shooting a wolverine after the season closes for hunting or trapping, then claiming it was caught in a trap set for a wolf and they had put it down. Again making this unenforceable if we are not present when it occurred.

This proposal would lawfully extend wolverine season for up to two months in some areas and put a bag limit of two-wolverine in those areas. Though there is other incidental catches that will occur, wolverine would likely be one of the most affected furbearers due to the length of wolf season and the range a wolverine covers during the early spring.

Proposal 8-

Proposal 8 seeks to allow same day airborne shooting of a wolf or wolverine during trapping seasons as long as the person is more than 300 feet from the airplane.

5 AAC 92.095(8) allows for same day airborne shooting of furbearers by trappers using a firearm if the animal is already caught in a trap or snare.

Proposals 10, 11, 12-

These proposals seek to change the regulation on the use of aircraft for spotting sheep during open sheep hunting seasons.

The Alaska Wildlife Troopers are the primary enforcement for regulations created by the Alaska Board of Game. The board should avoid creating regulations that are extremely difficult to enforce. While some in the public will choose to follow these regulations, the others that choose to not follow the regulations will not be held accountable. This creates a scenario where law abiding citizens are held to a different standard than law breakers. The long term outcome will be that the regulation will be ineffective. The Alaska Wildlife Troopers ask that the board carefully review the benefit of the current regulation and compare that to enforceability.

Proposal 13-

This is a proposal generated by the Alaska Wildlife Troopers. 5 AAC 92.080 (7) is the regulation where most unlawful methods of taking game are housed. This section grows each statewide

regulation cycle because the board cannot keep up with technological advances. Due to the way 5 AAC 92.075 (a) is written, all methods of taking game are allowed unless specifically prohibited in 5 AAC 92.080 and 5 AAC 92.085.

5 AAC 92.075 (a) states:

- (a) Big game may be taken by any method unless prohibited in 5 AAC 92.080 or 5 AAC 92.085.

The Alaska Wildlife Troopers ask the board to clearly define the use of cellular or satellite phones to take or assist in taking big game. This is one of many problems associated with the advancements in technology. When cellular and satellite phones were added to 5 AAC 92.080 no one ever imagined the technology that is commonly available and fairly inexpensive today. Some examples of these include;

- 1) Texting
- 2) Remote cameras that notify you when you have game at a certain location
- 3) Satellite spot messengers / Garmin Inreach

Alaska Wildlife Troopers interpret the prohibition of cellular and satellite phones in this section to mean they are not allowed in any capacity to take or assist in taking game. Additionally, discussion should occur about the length of time that needs to pass after a phone call before a hunter is legally allowed to take that animal. AWT asks the board to discuss the scenarios where cellular and satellite phones could be used to take game and then create a clear regulation that directs the intent of the board and takes into consideration enforceability.

Proposal 16-

This proposal seeks to allow the use of high powered air guns to take big game during regular firearm and muzzleloader hunting seasons.

The Alaska Wildlife Troopers have some concerns about wounding loss with this proposal. If the board chooses to pass this proposal, we ask that the board establish clear minimum requirements for the caliber and foot pounds of muzzle energy for these weapons when used to take big game.

While discussing this proposal the board should consider adding a definition to 5 AAC 92.990 defining the term "firearm" and the term "air gun" or "air rifle/pistol". The board has a definition for muzzleloader, bow and cross bow but does not have one for firearm.

Alaska Statute AS 11.81.900 (26) defines the term "firearm"

AS 11.81.900 (26) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury.

Additional case law has directed that a firearm discharges a projectile with "explosive means". Therefore, any change to the definition of firearm should include the term "explosive means".

This will distinguish a firearm in 5 AAC 92 for hunting purposes from other types of rifles, pistols and devices capable of taking game.

The board should create these defined terms in 5 AAC 92 and craft the definitions for hunting purposes. Further, regulation throughout 5 AAC 92 should follow these definitions, using the correct term for specific hunts, restricted weapons hunts and future hunts utilizing air guns.

In *Kinnish v. State* the court held that a “pellet pistol” was not a firearm under the statutory definition. The court reasoned “that a pellet pistol, which operates by the use of compressed air, does not qualify as a firearm because the weapon does not propel a shot through some sort of explosive means.” This case concerned a man that was charged with possessing a firearm while intoxicated, and was decided in 1989 – well before modern air rifles were available.

The court also noted that “the statute expressly includes ‘pistol, revolver, rifle or shotgun.’ All of the dictionary definitions of these weapons refer to them as “firearms. Black's Law Dictionary defines a firearm as a ‘weapon which acts by force of gunpowder.’ Thus, all of the weapons expressly included in the statute are weapons which act by the force of gunpowder. Because these are the only weapons specifically included in the statute, it is reasonable to infer that the legislature only intended to include within the statute those weapons that act by the force of gunpowder. It would follow that the legislature did not intend to have the statute prohibit the possession of a pellet pistol because a pellet pistol does not act by the force of gunpowder.”

Proposal 24-

Proposal 24 seeks to define “equipment” as it pertains to bear baiting and allow tree stands to remain in the field after the closure of bear baiting with land owner permission.

The Alaska Wildlife Troopers support clarity in definitions and support adding a definition for equipment as it pertains to bear baiting.

Leaving tree stands in the field year round could present a problem for the public as they locate a new area the following year for bear baiting. A hunter who hikes into an area to set up a bear bait site only to find a tree stand in that location will likely move to another area. If the board chooses to allow tree stands to remain in the field year round it sets up a possible scenario where the hunter that set up the stand has “exclusive” hunting rights to that area. Public lands are set aside for everyone equally and “ownership” of that bear bait site could cause legal issues. This is likely one of the reasons that the Department of Natural Resources requires that items be moved every 14 days.

Proposal 30-

This proposal seeks to allow nonresidents to harvest big game on behalf of a resident relative within the second degree of kindred. It would further allow the take of the animal to occur utilizing the resident relative’s permit.

The board should discuss who is legally responsible for the take of that animal. It should be clear who will be held responsible for illegal take; the resident relative or the nonresident hunter.

Proposal 38-

This proposal seeks to establish a sliding scale bag limit for Dall sheep hunting for residents.

In consideration of this proposal the board should be aware that they do not have the authority to establish criminal penalties, fines, jail time or hunting license revocations. This ability lies with the Legislature. The board and the Department of Fish and Game do have the authority to establish administrative procedures to restrict hunting (e.g. applying for and receiving a drawing permit after failing to report the previous year). If the board chooses to pass this proposal any restrictions on hunting sheep that are imposed should be administrative and not criminal.

Proposal 39-

This proposal seeks to establish a sliding scale bag limit for Dall sheep hunting for residents and nonresidents.

In consideration of this proposal the board should recognize that in creating a regulation that requires a certain configuration of horn or antler, in this case Dall sheep, the regulation created is the law. If the board decides that a legal animal is full curl or larger; anything less than that is not legal.

The author of this proposal suggests that ADFG could simply decide to not forward charges. This decision lies with the Department of Public Safety, Alaska Wildlife Troopers in consultation with the Department of Law.

Proposal 46-

This proposal seeks to modify the transfer of possession regulations as it pertains to guided and transported hunters.

A hunter who takes a big game animal is legally required to salvage game meat from the field. The term “salvage” as used in the boards regulations is defined in 5 AAC 92.990 (70). The Statute (AS 16.30.010 wanton waste of a big game animal) and the regulation (5 AAC 92.220 salvage of game meat) both require salvage of the game meat from the field for human consumption. Failure to salvage game meat in accordance with regulations carries very stiff criminal penalties. The Alaska Legislature and the Board of Game have placed the salvage of game meat above all other things to be salvaged (antlers, horns, capes etc.) Because of this priority, enforcement of salvage of game meat is a priority for the Alaska Wildlife Troopers.

Enforcement of salvage requires a responsible party. This is the hunter who takes the animal. The hunter is legally responsible to comply with statutes and regulations governing salvage unless the hunter legally transfers possession of that meat to another person. Legal transfer of possession requirements can be found in 5 AAC 92.135. The reason these requirements are in place in 5 AAC 92.135 is so there can be a successful prosecution of persons who choose to leave game meat in the field and not salvage it. The requirements in place are necessary for the Alaska Wildlife Troopers to identify who is responsible for the waste.

This proposal recommends taking these tools away from enforcement when big game guides and transporters are involved. The author of the proposal does not want to comply with the current regulation requirements because they already have it written in other places. While it may be true that some of the information is listed on hunt records and transporter activity reports, these documents do not legally transfer possession and the liability of failing to salvage meat from the field to the guide. If a Wildlife Trooper contacts a person transporting game meat we must be able to determine who it belongs to and who is legally responsible for any salvage issues.

Proposal 47-

This proposal also seeks to modify the transfer of possession regulations.

As previously stated in comments for proposal 46, transfer of possession paperwork is important for law enforcement to determine who is legally responsible for meat salvage.

The requirement for the information on the transfer of possession form and the requirement for a signature from both parties is a “contract” between both parties. Person “A” agrees to transfer responsibility to person “B”. Once signed, person “B” agrees to take care of the meat to the destination where it will be processed for human consumption or eaten.

The board should consider implications of allowing persons to create the transfer of possession form upon request. The addition of the signed statement requirement in 1994 was to curb abuses and make it easier for enforcement to determine if the person legally had a right to possess the game or if it was taken illegally. The board should be aware that in the absence of a signed statement, enforcement must assume that there is a potential that the game was taken illegally. Having a signed statement from both parties makes enforcement efficient and effectively reduces overall illegal take.

Many different Board of Game members over the years have passed changes to this regulation to ensure enforcement of the regulations can occur efficiently. The Alaska Wildlife Troopers do not have any concerns with the current regulation as written.

Proposal 49-

This proposal seeks to require a permit for the sale of brown bear skulls and hides with claws attached.

The Alaska Wildlife Troopers support a permitting process to allow for lawful sale. Having a permitting process in place will allow enforcement to target illegal sales and possible illegal take. Enforcement has no way to determine where a brown bear was taken, so legalized sale of these items effectively creates legalized sale everywhere. Obtaining a permit will allow persons taking a brown bear in areas that sale is allowed to sell it lawfully.

Proposal 54-

This proposal seeks to change the scoring criteria for Tier II applications.

Enforcement of Tier II application fraud is extremely difficult for Wildlife Troopers due to the way the questions are worded. AWT does not have the ability to prove or disprove many of the questions asked in the tier II application making fraudulent answers the norm in these applications.

AWT asks that in review of this proposal the board consider ways to make enforceability of these questions easier. If the goal is to recognize the people who receive priority and eliminate the ones who don't have as high a priority, the questions need to be modified to allow enforcement the ability to effectively enforce this area of law.

Proposal 55-

This proposal seeks to combine regulations allowing the take of big game for certain religious ceremonies.

The taking of big game out of season for religious ceremonies has long been difficult for AWT to enforce. Without permits in hand or prior notification that the take will happen, AWT Troopers are left trying to figure out if the take is legal or the take is illegal.

Any changes to regulations that involve take for religious ceremonies should include ways that identify immediately to enforcement that the take was legal and the animal is possessed legally.

Proposal 65-

This proposal seeks to modify the Taylor Highway hunting management scheme.

The Alaska Wildlife Troopers are neutral in any allocation or management proposals. This proposal has a substantial public safety nexus. The 40 Mile Caribou Registration Hunt was open for two days, August 29 and 30, 2017 in Zone 1 most commonly accessed along the Steese Highway. The Alaska Wildlife Troopers patrolled the area and the hunter harvest rate was very high. Troopers contacted hundreds of hunters. Most hunters complied with state game statutes and regulations. Unfortunately some hunters did not and Troopers issued 17 citations to hunters who shot cow caribou in the bull only hunt, 16 of those hunters reported their own violation. Troopers also issued 13 citations for failing to leave evidence of sex attached to big game in a sex restricted hunt, 21 citations to hunters who failed to properly cancel their permit after taking big game, 1 citation for failure to salvage meat, 2 citations for transporting antlers from the kill site before all edible meat, 2 citations for shooting from the road and 1 citation for take caribou closed season.

Troopers also investigated 3 bull caribou that were either shot and left or only partially salvaged. Troopers either investigated or took complaints of at least 15 cow caribou that were shot and

left. Additional reports continued to come in regarding wasted caribou well after the season. Several hunters assisted Troopers with salvaging caribou that were shot and left.

The Alaska Wildlife Troopers are concerned about hunter safety with concentrated numbers of hunters in a small area. Any changes to this hunt must involve input from enforcement.