

**Tanana Chiefs Conference
Written Comments to the Board of Game
Interior and Eastern Arctic Region
March 6 - 14, 2020 Fairbanks, AK**



Tanana
Chiefs
Conference

The Tanana Chiefs Conference (TCC) respectfully offer written comments on several proposals before the Board of Game (the Board) in support of official TCC testimony provided by Vice President Dr. Charlene Stern and General Counsel Natasha Singh, as well as Tribal Government representatives and 29 Tribal citizens of the interior on March 6th, 7th, and 8th, 2020 in Fairbanks. These proposals and your decisions upon them stand to significantly impact our people, our communities, and our wellbeing.

The TCC region covers an area of 235,000 square miles in interior Alaska, which is equal to about 37 percent of the entire state, and just slightly smaller than the state of Texas. We encompass six subregions: Lower Yukon Subregion, Upper Kuskokwim Subregion, Upper Tanana Subregion, Yukon Flats Subregion, Yukon Koyukuk Subregion, and Yukon Tanana Subregion. Within our six subregions are 37 villages. We are organized as Dena' Nena' Henash or "Our Land Speaks"; an Alaska Native non-profit corporation, charged with advancing Tribal self-determination and enhancing regional Native unity. We provide services while balancing traditional Athabascan and Alaska Native values with modern demands. We work toward meeting the health and social service needs of Tribal members and beneficiaries throughout our region.

Our Vision: Healthy, Strong, Unified Tribes **Our Mission:** Tanana Chiefs Conference provides a unified voice in advancing sovereign tribal governments through the promotion of physical and mental wellness, education, socioeconomic development, and culture of the Interior Alaska Native people.

Alaska Native hunting and fishing practices, including the harvesting and sharing of fish, game, and other resources and the ceremonies which accompany these practices are essential to the social, cultural, spiritual, and economic well-being and survival of the Alaska Native people. Alaska Natives have served as the stewards of their traditional lands and resources maintaining healthy and productive ecosystems for thousands of years, and maintain the belief that human beings are an integral part of naturally functioning ecosystems, not separate from them. Maintaining a balance in population dynamics has always been a critical element of traditional management practices.

Implementation of Department and Board 2002 Tribal Consultation Policy

During Public Testimony here, several Tribal Government representatives and Tribal Citizens of the TCC region addressed the Board regarding the 2002 Policy of Government-to Government Relations with Federally Recognized Tribes of Alaska adopted by the Alaska Department of Fish and Game (the Department) and Alaska Boards of Fisheries and Game and how it appears that some of the proposals under consideration were submitted by the department without consulting tribes that would be significantly impacted. This is not acting in good faith and we look forward to more clarity as to exactly how the department and boards are currently implementing this

policy. It is challenging for our remote Tribes to continually monitor all the proposed changes that could impact their traditional territories and ways of life and then to stretch limited funds and staff to attend these meetings. We do not have the resources of the federal and state governments.

We urge you and the Department to implement your adopted policy which would allow us to address many of our long standing issues that continually come before you here. Together, in respectful consultation, we are more likely to develop solutions that we all can advance.

Proposal 57 - Allow residents to take game from a moving boat in Unit 21

TCC supports proposal 57 as amended by the proponent which would add Unit 21 to the exceptions on the prohibition on using power boats for taking of game. Originally, the request was for this exception to apply only to residents of Unit 21 in order to legalize customary and traditional hunting methods, but we understand that the Board is unable to provide this opportunity for only some Alaska residents. TCC also clarified with the proponents that they wish this exception to apply not only to big game, but also small game, again to recognize the customary and traditional methods of hunting that tribal citizens have been practicing since before statehood. We understand that the Department has concerns related to firearm safety and the potential for increased wounding and loss of game animals. Local hunters are raised with the ethic of gun safety and are both accustomed to and skilled at hunting from power boats. Furthermore, our traditional laws and teachings discourage needlessly wounding or carelessly losing animals. TCC also recognizes that customary and traditional methods of hunting have been previously recognized in Unit 23 for the take of caribou as well as use of snow machines for positioning of game and hunters in other parts of the state.

Proposal 63 and 64 - Dalton Highway Corridor Management Area

TCC opposes proposals 63 and 64 including the proposition to repeal the Dalton Highway Corridor Management Area AND/OR to revisit existing statutes and regulations. The Dalton highway is an already extremely dangerous road system with sporadic maintenance, industrial traffic, and weather conditions changing on an hourly basis, creating severe hazards. Public safety is a primary concern behind opposition, moving forward on these proposals would be a misstep.

We are discouraged that the Alaska Wildlife Troopers did not mention enforcement challenges in the Dalton Highway Corridor in the official comments to the Board. Enforcement efforts would be overstretched beyond current capacity. To adequately meet enforcement and public safety pressures created by these proposals, ensuring timely response to injury or accident in a remote area hundreds of miles from medical services, a huge financial burden would need to be placed upon the State. TCC understands that the Western Interior Regional Advisory Council requested that an ANILCA Section 810 analysis be conducted to evaluate the potential impacts of such proposed actions on subsistence uses and needs to better inform such proposed actions as required by law. Compliance with ANILCA Section 810, subtitled Subsistence and Land Use Decisions, outlines the requirements for addressing impacts to

subsistence uses of resources in the federal land use decision-making process in Alaska. Procedurally, subsection 810(a), depending on circumstances, requires up to four steps. These steps are: 1. An evaluation, which consists of three major parts; 2. A finding of whether or not a proposed action may have significant restriction on subsistence uses; 3. Notice and hearing, if an action may have a significant restriction on subsistence uses; and 4. If there may be a significant restriction on subsistence uses, a three-part determination must be made before the action may be authorized. An ANILCA 810 Evaluation is required for all public land use actions.

It is critical the Board oppose these proposals and initiate the Chair's suggestion to convene a working group to look at this matter in more detail. We further urge the Board to ensure that impacted Tribal Governments of the Interior are included when such a working group is convened. Additionally, the Tribes officially request consultation with the Department. Consultation with Tribes and local residents will give the Department the opportunity to verify and improve identification of impacts these proposals would create on public safety, the land and water, the wildlife, and subsistence uses.

Proposal 82 - Create Arctic Village Sheep Management Area in 25A

TCC opposes proposal 82 and any attempt to open a non-subsistence hunt in the Arctic Village Sheep Management Area. The Gwich'in people of Arctic Village have intergenerational knowledge about the sheep of the Red Sheep Creek and Cane Creek area and have consistently opposed efforts to open it up to non-subsistence drawing permit hunts. This area is included in our customary use area and any proposed change to the management of sheep must be discussed in advanced consultation with the Arctic Village Council at a minimum and quite possibly even the Venetie Village Council and the Native Village of Venetie Tribal Government.

Personal testimony from Dr. Jessica Black provides history: "Edward Sam, is a Gwich'in Elder from Arctic Village and he continues to educate us and emphasize the significance of Red Sheep Creek to our Gwich'in people to this day. Gwich'in people have been spiritually connected to this place for thousands of years. Edward has hunted in this sacred area for decades and has witnessed significant changes. He shared that 60 years ago there were approximately 70,000 sheep from Kobuk to the border, 60 years later there are approximately 2300-2500 sheep left. Edward shared that after 36 years of hunting in a row he didn't get one sheep. He was in Red Sheep Creek for two weeks and only saw one ram but let it go to repopulate. This is the kind of management he and our Gwich'in of the area engage in – respect. Respect for the animal so it can repopulate. He shared with us he walked up one valley and walked up another valley and only saw ewes and lambs. Edward recommends to close hunting there for 15 years to have them repopulate, but leave subsistence hunting open because Gwich'in hunters know when to conserve and manage according to our traditional values. Maybe after 15 years do a lottery for sheep like they do bison, to allow the population to rebuild. Our people don't believe the ADF&G population estimates are accurate and are based on density estimates from other areas; our traditional knowledge and time spent on the land give us more accurate estimates and we know the sheep in red sheep creek need to be left alone for a while. I am not sure

why this proposal continues to be brought up. The people of the area – the Gwich'in people – have requested many times for it to remain closed."

The Red Sheep Creek and Cane Creek area has a long history of going before management bodies and there are countless and continuous testimony and engagement by the Tribal citizens of Arctic Village on record. The Arctic Village people have never wavered in the protection of the sheep and of the area. It is clear in administrative record, the Arctic Village people observe the sheep population to be insufficient to provide non-subsistence hunting opportunities and the Red Sheep Creek and Cane Creek are a critical historical and spiritual site including burial grounds.

It is critical the Board oppose this proposal, and the Tribes officially request consultation with the Department. We envision a tribal consultation process which would result in more accurate sheep data. Consultation with tribes and local residents will give the department the opportunity to verify and improve data, and address this ongoing concern so we do not end up here in another three years.

Proposal 108 - Trophy destruction of moose antlers taken from Unit 21E under RM836 permits

TCC supports proposal 108, submitted by the Chief of Holy Cross to place trophy antler destruction requirements for subsistence registration permit moose hunts in the GASH region. TCC urges the Board to consider the trophy destruction requirements as a way to help alleviate user conflict that exists between sport/trophy hunters and local subsistence hunters currently within Unit 21E due to high moose densities. Trophy destruction requirements have been used by the Department to try to reduce conflict between subsistence hunters and sport/trophy hunters. AC member and Tribal citizen testimonies spoke to the need to provide subsistence opportunity. We also support this proposal to ensure subsistence needs and customary and traditional uses are met.

Proposal 140 - Reauthorize the antlerless moose seasons in Unit 20B

Proposal 141, 142, 143 – Eliminate registration moose permit hunt RM785, in the Minto Flats Management Area in Unit 20B for antlerless moose

TCC opposes proposal 140, reauthorizing the antlerless moose seasons in Unit 20B. ***TCC supports proposals 141, 142, and 143***, to eliminate registration moose permit hunt RM785 in the Minto Flats Management Area in Unit 20B for antlerless moose.

Due to proximity and easy access from Fairbanks, demand for moose hunting opportunities in Unit 20B is high. Extensive road and trail systems provide overland access with water access from Tolovana, Tatalina, Chatanika, Goldstream, Salcha, and Chena rivers. Local residents and Tribal citizens have reported observing a lower moose population than witnessed historically, they do not agree with the Department's reported moose population level of the Minto Flats. Their observations indicate that there are less moose than the biological reports indicate. They have recently reported having difficulty meeting subsistence needs, with many families in Minto not harvesting a moose to provide for their households in the 2019-2020 winter.

Local residents are on the land regularly for: berry picking, bird hunting, gathering wood, checking traps, visiting family, overnights at their camps, and traveling. In the past, moose sightings and moose tracks occurred at significantly higher rates. Today they see far less moose. This kind of constant presence on the land creates an accumulation of knowledge of the land, vegetation and animals that could assist the Department in the management of moose.

The Tribal Governments and Tribal citizens of this area have expressed concern regarding the moose management and population objectives as established by the Department, observing a population that currently does not support their subsistence needs. The intent of the cow hunts have been the Department's management effort to decrease the moose population to more sustainable levels, to attain the Department's goal of zero population growth. Local observations and traditional knowledge suggest the population is not stabilized, but decreasing.

As stated in the Moose Management Report and Plan, Game Management Unit 20B: moose management in Unit 20B has been reviewed and modified through public comments, staff recommendations, and Board actions. TCC is unaware of any Tribal Consultation or outreach conducted in the development of this plan. Additionally, there was a timely newspaper article highlighting the science conducted for the moose management in Unit 20 B. Again, there was a critical piece missing from this article and the noted work, local observation and traditional knowledge. It is concerning the department chooses not to communicate and collaborate with local Tribal hunters and residents at the level that is necessary to improve management. Local traditional knowledge can improve current Department data.

In a letter dated, December 4, 2018, ADFG Division of Wildlife Conservation determined that the use of cow moose for certain Alaska Native religious ceremonies is unsustainable in Unit 20B, Minto Flats Management Area, Unit 20C, Unit 20F, and Unit 25C. The chief of Nenana only learned about this decision thru word of mouth, without any communication prior to or proceeding the decision from the Department. The Department's Tribal Consultation policy 2002-BOG-136 was clearly violated.

The Fairbanks Area Management Biologist justified this decision, stating there is a lack of adequate harvest records for ceremonial, cultural education, and potlatch moose. TCC requests the Department uphold the law as outlined by the Alaska Supreme Court in *Frank v. State*, 604 P.2d 1068 (1979) and remind the Board that "justifications founded only on fear and apprehension are insufficient to overcome rights asserted under the First Amendment..." (Id at 1074).

This action to limit religious practice had no compelling state interest, meaning there was no legitimate biological or policy reason. *Carlos v. Frank* provided the department must have a compelling state interest if they take action to restrict an Alaskan's religion. The lack of compelling interest is demonstrated by the Department's current desire to

maintain the moose population level in their justification for submitting and supporting proposal 140 which seeks to reduce the moose population.

Limiting ceremonial moose, then supporting proposal 140 are contradictory actions. While inaccurate population numbers are a constant struggle in wildlife biology, the Department's action to limit the religious practices of the Native people is not simply a data problem, it is a direct violation of our constitutionally-protected rights.

TCC is concerned the constitutionally-protected ceremonial harvest of cow moose outside normal hunting seasons for funerary and memorial religious uses was unilaterally curtailed in order to maintain drawing permit hunts of cow moose that do not even provide reasonable opportunity under the subsistence law let alone the higher priority uses of certain religious ceremonies as outlined by the Alaska Supreme Court.

TCC holds these constitutionally-protected ceremonial harvests be provided priority, then subsistence, and then all other uses. Department comments cite ceremonial harvest and cultural education harvest in Minto Flats Management Area as generally low, estimated 4-5 moose annually. Again, local observations do not reflect moose numbers as projected, noting a low 50% chance to provide for constitutionally protected ceremonial uses.

The only time the law allows ceremonial moose to be limited is if the moose population is so low, the practice of religion would be a detriment to the population-that is if there is moose population problem. And if there is a problem, every kind of take should be limited before ceremonial. When ceremonial cows were limited last year, subsistence and non-subsistence uses were allowed to continue "to keep within population objectives". Again, for the Department's actions to pass constitutional muster, every kind of hunt should be ended before ceremonial is ended. Managing ceremonial religious uses of moose by a harvest quota is not a compelling state interest to prohibit or curtail religious expression and activities outside subsistence and sports hunting seasons and management framework. If ceremonial harvests lead to exceeding the Department's subsistence and sports hunting harvest quotas, then those quotas can be decreased the following year for the regular hunting seasons to accommodate the constitutionally protected ceremonial harvests out of hunting seasons.

For the record, the use of moose in funeral potlatch is necessary to Native religion and spirituality. We reaffirm our religion every day. Our children are taught about the spiritual connection to the land and animals. The religious practice of providing our loved ones a final moose after their death, is vital to the fabric of our communities and our individual well-being. Without a funeral moose we are unable to properly grieve and heal. Native people have withstood all odds to survive as tribes, quite possibly divine intervention, made possible because of our religious practices has kept us on this Earth, as a people, striving for well-being.

We see from the Board's record from February 2017, the department testified there is an unreported ceremonial harvest problem. TCC seeks to supplement that testimony

today to provide more accurate information for the Board. After looking into this allegation, there has been no evidence that documentation of ceremonial harvest is lacking. There has been no effort by the department or law enforcement to improve the records. Whereas, subsistence hunters are provided letters to remind to report, those families in grief are not given the same reminder letter. The lack of effort by the department to obtain records is indicative there is no actual problem, but one that was created in order to undermine our ceremonial practices.

Another false conclusion we have heard is that Native people use ceremonial for subsistence use. This is a disrespectful sentiment which goes against our religious practices, this would bring bad luck. This is not our practice and in fact it can be found that subsistence moose are often used for ceremonial purposes. Many times our memorial potlatches are during moose hunting season, when you can find hunters providing the grieving or celebrating families the ceremonial parts of the moose. Our hunters are compelled to provide their subsistence moose to potlatch because our hunters are genuine in their religious belief that the moose is a necessary component of their religion and spirituality.

The Tribes officially request consultation with the Department. We envision a tribal consultation process which would result in more accurate moose population counts in the Minto Flats. This consultation would inform the Department and justify the end of cow moose hunts in order for the population to increase. Consultation with tribes and local residents will give the department the opportunity to verify and improve data, and address this ongoing concern so we do not end up here in another three years.

In Closing

TCC offers an invitation for Board members to coordinate village visits to better be able to understand the impacts of your decisions on the people of the interior. TCC urges the Board and the Department to implement your adopted Tribal Consultation Policy which would allow us to address many of our long standing issues that continually come before you here. Together, in respectful consultation, we are more likely to develop solutions that we all can advance.