

Petition to the Alaska Board of Game To repeal parts of regulatory changes for caribou in Game Management Unit 26B

Pursuant to Alaska Statute (AS) 44.62.220, we the undersigned petition the Alaska Board of Game (Board) to repeal the hunting regulations relating to the harvest of caribou in Game Management Unit (GMU) 26B adopted at the Board's Interior Region Meeting held in Fairbanks February 26 – March 7, 2010. More specifically, we request that the Board, pursuant to its authority under AS 16.05.255(2) and (4), repeal all or portions of the newly adopted season and bag limit expansion as described below.

Our request is based both on the substance of the newly adopted regulation, which we feel will likely result in an unsustainable harvest of the affected caribou herd, waste, and enforcement issues, and the process that led to the adoption of the regulation, which we feel was in violation of the letter and spirit of applicable law governing public and Board review of proposals.

Original Proposal 104 was submitted by the Alaska Department of Fish and Game (Department), to increase the caribou bag limit from 2 up to 5 for resident and non-resident hunters, and extend the harvest season from October 1 back to September 1 for cows, in GMU 26B. The proposal was published in the Proposal Book, distributed to, and discussed and commented upon by the Advisory Committees (ACs), Regional Advisory Councils (RACs), and the public during Advisory Committee and Regional Advisory Council meetings.

Proposal 104 was taken up by the Board of Game. The Koyukuk River AC and Western Interior RAC opposed the proposal as written. The North Slope AC modified the original proposed bag limit downward to 3 caribou. The Advisory bodies most directly affected by the proposal expressed the most concern that the proposed season extension and bag limit increase would exceed sustainability for the Central Arctic Caribou Herd (CAH). Concerns expressed included the following:

1. The Department's original proposal was premised on an increase in the CAH population from a 2002 level of 32,000 to 67,000 animals, as counted in 2008, and the underachievement of an allowable

harvest of 3000. Department harvest estimates are that 1400 hunters take approximately 1000 caribou annually, less than the intensive management target of 1400-1600 animals, and less than 2% of the herd population. Fecundity data shows the CAH to be healthy, and expanding beyond predator loads. No range assessment has been done.

2. During a presentation in support of its proposal, the Department of Fish and Game admitted that its harvest data is weak, that there is a significant margin of error in its estimates, and that harvest numbers may be as high as 1400-1600 caribou, or perhaps more than 50% higher than the number provided when the proposal was written. Data did not seriously consider or reflect the amounts taken by communities within the range of the CAH. Harvest data for non-local use is also very weak. No data was presented for wound-loss of caribou, preventing any calculation of total human induced mortality.
3. There was no consideration with the proposal of the Amounts Necessary for Subsistence (ANS), for Alaskan resident use. The Board did not in this case, as required by AS 16.05.258 “identify the game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence” in light of the proposed increased bag limit, and particularly the increase for non-resident hunters. Likewise, the Department did not provide, as required by the statute, “recommendations to the board concerning the stock and population identification”. The Board is charged with making the identification required only after receipt of the Department's recommendations. The current ANS of 250-450 is low given data presented that non-resident harvest is 25% of the take, and should have been increased to reflect current Alaskan dependence upon CAH caribou.
4. With increased bag limits and expanded seasons, a heavy harvest of cows could result during September when 40% of the harvest occurs. The productive segment of cows is not now exposed to high harvest during staging and migration. The cow:bull ratio would likely decline with a high attraction of hunters to the bag limit increase of 5, as was seen in the case of the Malchatna herd and its subsequent decline.
5. A lack of enforcement capability along the Dalton Highway and the across all of northeast Alaska, in conjunction with increased bag limits and an expanded harvest season, will likely result in an increase in waste and other game violations.

6. Great concern was expressed that with increased bag limits and an expanded harvest season, sustainability will be exceeded, and the CAH will suffer a significant decline. The sustained yield mandate and the Intensive Management Statute (AS 16.05.255 (j) 4) require the Board to not suppress a population of big game prey animals. The Board is required to manage an identified big game prey animal consistent with sustained yield principles through active management measures to enhance, extend and develop the population to maintain high levels, or provide for higher human harvest. Suppression of a prey population is not permitted if it is healthy.

Following closure of the public comment opportunity for Proposal 104, the Board took up an alternate proposal (RC 126) that was treated as an amendment to the original proposal, was not noticed, was not included in the Proposal Book, and was not available for review and comment by the Advisory Committees, Regional Advisory Councils, or the public. The alternate proposal was relabeled 104A (RC 126). It was substantially different from the original Proposal 104, and increased the season 2-1/2 additional months for cow caribou and 2 additional months for bulls in GMU 26B. Without further input, Proposal 104A was carried as amended by the Board.

It is our strong belief that the process which led to the adoption of the amended Proposal 104 was legally flawed, and that the adoption was in violation of the regulations of the Board (AS 16.05.255(a)), referencing and requiring compliance with the Administrative Procedure Act (AS 44.62). Specifically, AS 44.62.190 requires at least 30 days notice before adoption, amendment, or repeal of a regulation. Additionally, the Open Meetings Act at AS 44.62.312 enumerates the State policy with respect to meetings, and states in part that:

- (a) It is the policy of the state that
 - (1) the governmental units mentioned in AS 44.62.310 (a) exist to aid in the conduct of the people's business;
 - (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
 - (3) the people of this state do not yield their sovereignty to the agencies that serve them;
 - (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

AS 44.62.200, specifying the content of required notices, does provide that:

(b) A regulation that is adopted, amended, or repealed may vary in content from the (informative) summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject.

It is the contention of the Petitioners that the alternate proposal introduced, considered by the Board alone, and ultimately carried was so substantially different from the original Proposal 104 for which proper notice was given that the public was not “reasonably notified” within the meaning of AS 44.62.200(b) above. Therefore, given that no further input on the alternate proposal was taken by the Board from ACs, RACs, or the public following the closure of public comment opportunity on the original Proposal 104, the adopted Proposal 104A cannot stand.

Once the public comment period for the original Proposal 104 was closed, and alternate proposal RC 126-104A was introduced by the Department, the Board deliberation process excludes any further input. The public’s right to participate in the Board’s consideration of the new proposal, as defined by the State policy described in AS 44.62.312 above was effectively eliminated. Further, the Joint Board Petition Policy at 5 AAC 96.625 stresses the importance of informed public participation in the process for changing fish and game regulations, stating in the following subsections that:

(d) The public has come to rely on this regularly scheduled participatory process as the basis for changing fish and game regulations. Commercial fishermen, processors, guides, trappers, hunters, sport fishermen, subsistence fishermen, and others plan business and recreational ventures around the outcome of these public meetings.

(e) The Boards of Fisheries and Game recognize the importance of public participation in developing management regulations, and recognize that public reliance on the predictability of the normal board process is a critical element in regulatory changes. The boards find that petitions can detrimentally circumvent this process and that an adequate and more

reasonable opportunity for public participation is provided by regularly scheduled meetings.

Had the appropriate and legally required reasonable notification of the existence and content of alternate Proposal 126 been provided, and the associated required opportunity for public review and comment been afforded, concerns likely to have been expressed include the following:

- 1) Cow caribou calve in the first week in June, so are lactating heavily on July 1. The meat, as with a milk cow, is in very poor condition for human consumption. They are often literally skin and bones. The calves are completely dependent on the cow, and will die if the mother is taken. There have been large aggregates of cow and calves observed crossing the Dalton Highway in early July, moving from the western CAH calving area to the Canning River area. This would expose a large number of the cows to harvest under the newly adopted regulation, with the result that many calves may perish. This would be a needless waste of Alaska's valuable caribou resource.
- 2) July 1 is approximately the middle of the tourist season, with typically 8,000 to 10,000 visitors traveling to north on the Dalton Highway. The last thing Alaska needs is bad press regarding the harvest and waste of caribou on the North Slope. Alaska's credibility as an responsible manager of our wildlife resources will be severely compromised. There has long been national public and media attention focused on these Arctic caribou herds and other wildlife resources. The response of visitors witnessing and photographing mother caribou killed along the highway, and their calves left starving would be strong and negative.
- 3) The allocation of 5 cow caribou to non-residents in the summer raises many legal and other questions and merits open discussion, given that there are thousands of Alaskans dependent upon and eager to harvest caribou. This high non-resident allocation must be reconsidered.
- 4) In typical July and August temperatures, it is challenging under the best of circumstances to keep meat from spoiling. With many hunters new to the region facing hot and intensely buggy conditions will be challenged by handling and transporting several caribou in that are vastly different than they have experienced elsewhere, the challenges of handling, preserving, and transporting the product of up to five harvested caribou will be magnified. Significant waste will likely occur.

In conclusion, the Alaska Department of Fish and Game and the Board of Game violated the legal rights of Alaskans by adopting RC126-104A in its entirety. The BOG is under strict regulation to give 30-day notice to the Alaskan public regarding any action to be considered by the Board. The extreme divergence from the original Proposal 104 did not allow the State Advisory Committees, RACs, or the public to review and provide valuable input at any time to the Board for consideration during its deliberations on Proposal 104A.

We therefore petition and request that the Board stay and repeal the caribou regulation changes in their entirety, or to the extent that they are divergent from the published Proposal 104 that received comment. Specifically, at a minimum, the following components of 104A must be repealed:

- The cow caribou harvest July 1 to September 1, and hard antlered cow harvest from May 1 to June 30.

In addition, the Board is legally required to reassess the ANS amounts for the expanded CAH population and the harvests by Alaskan residents of those caribou that are currently occurring. The adopted high non-resident allocation is unwarranted in light of growing Alaskan ANS needs and interest in harvesting caribou. It seems apparent that the Department and Board did not meet their legal responsibility to consider Alaskan ANS interests with respect to the adoption of Proposal 104A. It would be reasonable to adjust the ANS to an appropriate range of 1500-2000 animals or higher. Pursuant to applicable State subsistence law, the Board has a responsibility to direct the Department to bring forward current data sets that reflect current ANS needs and to make decisions based on those data sets.

We petition the Alaska Board of Game in good faith and in the firm belief that in this case legal requirements have not been met, and that sound public policy has not been exercised, with the result that there is uncertainty with respect to the responsible stewardship of CAH caribou for sustainability and use by Alaskans.

We, the undersigned, thank you for your thoughtful consideration of this petition:

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