

PROPOSAL 55

5 AAC 92.085(8). Unlawful methods of taking big game; exceptions.

Remove the restriction on the use of aircraft for spotting Dall sheep in Units 7 and 14 as follows:

Amend 5 AAC 92.085(8) by deleting the language set forth below, commonly referred to as Proposal 207:

[(8) ... from August 10 through September 20 aircraft may not be used by or for any person to locate Dall sheep for hunting or direct hunters to Dall sheep during the open sheep hunting season, however, aircraft other than helicopters may be used by and for sheep hunters to place and remove hunters and camps, maintain existing camps, and salvage harvested sheep. The Board of Game finding 2016-213-BOG, dated March 17, 2016, is adopted by reference.]

What is the issue you would like the board to address and why? The pertinent part of 5 AAC 92.085(8) states as follows:

(8) ... from August 10 through September 20 aircraft may not be used by or for any person to locate Dall sheep for hunting or direct hunters to Dall sheep during the open sheep hunting season, however, aircraft other than helicopters may be used by and for sheep hunters to place and remove hunters and camps, maintain existing camps, and salvage harvested sheep. The Board of Game finding 2016-213-BOG, dated March 17, 2016, is adopted by reference.

I ask that the Board of Game (board) address the following issues:

1. Federal preemption regarding the limitation it placed upon flying aircraft between August 10 and September 20. Federal law governs the use and operation of aircraft. The Alaska Board of Game does not have the authority to regulate the use and operation of aircraft because federal law preempts state law and its regulations.
2. Enforceability and false reporting problems. There exists a significant danger of false reporting, causing the unnecessary increase in law enforcement time and money. It also costs law abiding pilots time and money to defend false accusations. It is extremely difficult for law enforcement to enforce this regulation. This regulation unnecessarily wastes law enforcement resources on an issue that has no connection with conservation of the resources.

Law enforcement is unable to know whether a pilot hunted, or attempted to hunt, after circling sheep from an airplane. Is a pilot flying with moose, caribou and sheep harvest tags violating the regulation if he spots a sheep from the air then lands and hunts any other lawful species of game? How does law enforcement enforce the regulation if the pilot denies that he was hunting for sheep? Non-hunter pilots, commercial operators and others are subject to unwarranted harassment without any way to determine whether the operator of the aircraft or any passengers actually hunted.

3. Equal protection. This regulation illegally penalizes all pilots, whether private resident pilots, guides with planes, transporters or Part 135 operators. In addition, the resident private pilots are particularly penalized without any rational basis for the restriction. This regulation has a disparate impact on resident private pilots. Hunters using an airboat, Argo, 4-wheeler, river

boats, rafts, etc.... are not penalized at all. Businesses such as transporters, guides and FAR Part 135 operators have more established landing spots and locations to bring their clients. These businesses are subject to false accusations but are less likely to be falsely accused of spotting for sheep than the private pilot. Private pilots explore the mountains for sheep, for places to land and for places to hunt. It is the resident private pilot that feels the impact perhaps more than any other user group.

4. Safety issues. This regulation places yet one more concern on the pilot. There exists a lot of responsibility associated with flying. Since the passage of this regulation, pilots are afraid to circle and make multiple passes over multiple areas in the mountains out of fear that they will be accused of violating Proposition 207. Pilots are forced to balance the safe operation of their aircraft with the possibility of criminal prosecution and confiscation of their airplane. Separately, pilots are forced to fly pre-season instead of during the season, increasing the likelihood of a mid-air collision in the mountains. This pre-season flying also causes the extra stress on pilots to fly on August 7, 8 or 9. If the weather is marginal, a pilot is forced to balance flying in marginal weather and being able to spot for sheep against waiting a few days for good weather but not begin able to spot for sheep during the remainder of the season. This is an unacceptable burden placed upon a pilot who already has enough pressures associated with flying.

Non-hunter pilots are also affected by this regulation as this regulation directly impacts the decision-making process of a pilot while flying in the mountains between August 10 and September 20.

5. "Fair chase" is a red herring. It is legal to spot a sheep from the air on August 9, land on the evening of August 9, and then shoot that sheep on the morning of August 10. It is illegal to spot a sheep from the air on August 10, land on August 10, and then hike for 10 days through the mountains, stalk that sheep, and then shoot that sheep on August 20. In fact, is it illegal to spot the sheep on August 10, be on the ground for 39 days, and then shoot a sheep on the last day of the season. "Fair chase" is a red herring to justify penalizing pilots that utilize airplanes for sheep hunting.

6. Widely unpopular. Proposal 207 was a board-generated proposal created behind closed doors. When it came to the public's attention it was overwhelmingly unpopular. The Board of Game ignored the troopers, local advisory committees, the overwhelming majority of the public testimony, and objections by other hunting and flying organizations.

PROPOSED BY: Robert Stone

(EG-F18-066)
