

Note: The following proposal is an updated submission for Proposal 66. It was submitted by the proposal deadline for the 2020/2021 proposal book to replace the original submission, but was inadvertently omitted.

PROPOSAL 212

5 AAC 92.050(a)(4)(I). Required permit hunt conditions and procedures.

Clarify the Unit 13 Tier I subsistence caribou permit condition that members of a household may not hunt caribou or moose in any other state hunts in other locations as follows:

The regulatory condition of the Unit 13 Tier I subsistence caribou permit should read:

“No more than one Unit 13 Tier I subsistence permit for caribou may be issued per household every regulatory year, the head of the household, as defined in 5 AAC 92.071 (b), and any member of the household obtaining a Unit 13 Tier I subsistence permit in a regulatory year for caribou may not hunt caribou or moose in **any state authorized hunt** in any other location in the state during that regulatory year.”

What is the issue you would like the board to address and why? There is ambiguity in regulatory wording that leads to a lack of agreement and understanding of the regulation. The current interpretation by the Department of Fish and Game (as found in their Subsistence Permit Hunt Supplement) seems to exceed the rule making authority of the board.

A regulatory condition of the Unit 13 Tier I subsistence caribou permit states, in part: “any member of the household obtaining a Unit 13 Tier I subsistence permit in a regulatory year for caribou may not hunt caribou or moose in any other location in the state during that regulatory year.” This condition should only apply to state hunts, which are under the authority of the board.

The department has interpreted this to include limitations on federal subsistence hunts. Their hunt supplement states: “If you apply for this hunt, you and your household cannot participate in federal hunts for caribou or moose outside of Unit 13”. As the board’s regulatory authority covers state authorized hunts, there is questionable legal validity for the board to place limits on federal subsistence hunt opportunities for which they have no legal control. It would be beyond “the scope of authority conferred” (Chapter 62. Administrative Procedures Act, Sec. 44.62.020, Authority to adopt, administer, or enforce regulations). For the department’s interpretation to be valid and enforceable, it seems that the board would need the authority to regulate federal subsistence hunt opportunities; this authority would need to be delegated by the Federal Subsistence Board.

The current interpretation by the department leads to confusion, may lead to unwarranted citations, legal liability, and future lawsuits, and also seems arbitrary in nature. The purpose of the regulation was to reduce overcrowding and excessive pressure on the resources. Currently, a limited number of federal subsistence hunters do not apply for the Unit 13 Tier I subsistence caribou hunt because they may want to hunt moose outside of Unit 13, perhaps to avoid the crowds that still persist. This relatively low number of additional federal subsistence hunters that could participate in the Unit 13 Tier I hunt would likely have no significant impact to the purpose of reducing excessive crowding and pressure. It is not “reasonably necessary to carry out the purpose of the statute” (Chapter 62. Administrative Procedures Act, Sec. 44.62.030, Consistency between regulation and statute.).

In addition, there is inconsistent application by the department of regulations between game and fish. In a very similar manner of regulatory language, 5 AAC 77.591 Copper River Personal Use Dip Net Salmon Fishery Management Plan states, in part: “A household may not be issued both a Copper River subsistence salmon fishing permit and a Chitina Subdistrict personal use salmon permit.” Historically, the department has not interpreted this to mean that if one gets a state Chitina Subdistrict personal use salmon fishing permit, then that person would be ineligible for a federal subsistence fishing permit in the Copper River. It is implicit that this condition applies only to the fisheries under the authority of the department.

PROPOSED BY: Copper Basin Advisory Committee

(HQ-F21-007)
