

Note: Proposal 166 was accepted by the Board of Game as an Agenda Change Request for consideration at the Central/Southwest Region meeting in February 2018. The proposal references ACR 2, which was not accepted by the board as a separate proposal for the Dillingham meeting because it did not meet the ACR criteria in 5 AAC 92.005. However, the board approved adding the issues raised for discussion in conjunction with its consideration of Proposal 166.

PROPOSAL 166 – 5 AAC 85.025. Hunting seasons and bag limits for caribou; 99.025. Customary and traditional uses of game populations; and 92.052. Discretionary permit hunt conditions and procedures. Modify the hunt structure for the Fortymile caribou herd in Units 20 and 25 as follows:

The season is set in regulation for different zones within the Fortymile harvest area. (Several Units or portions thereof.) The board should consider the option of opening all zones as early as August 10. The board should consider keeping the season open until the fall quota has been achieved. Also, the board should change the opening date for the winter hunt to November 1 and keep it open until the winter quota has been met.

Per the board’s action at its January 5, 2018 teleconference, when considering this Proposal 166, the board may also consider issues raised in ACR 2, attached to this proposal.

What is the issue you would like the board to address and why? The November 2017 population estimate was significantly higher than expected; high enough to "trigger" a higher harvest quota. Changes to season, area(s) and bag limit are necessary if Alaska hunters are going to harvest the higher quota. At 75,000 plus animals and a high growth rate it is an important opportunity to change now in order to reach the quota(s) and possibly slow the herd growth rate.

If the regulations are not changed, limiting harvest to the below 70,000 population quota(s) will eliminate nearly a doubling of the overall Alaska harvest quota. Hunters have been very patient for the 30 years of this herd's recovery from low population. There are habitat concerns that are being studied. Continued artificially low harvest will not decrease the growth rate.

The changes are necessary because of new population data which became available considerably after the proposal deadline. Not changing could cause a significant loss of opportunity.

The Fortymile Caribou Herd Harvest Coalition meets in late January (2018) and can provide their perspective on these issues.

PROPOSED BY: Mike Tinker (HQ-2018-ACR3)

ACR 2 – Modify the hunt structure for the Fortymile caribou herd in Units 20 and 25.

SUBMITTED BY: Al Barrette

CITE THE REGULATION THAT WILL BE CHANGED IF THIS ACR IS HEARD.

5 AAC 85.025, Fortymile caribou, Units 20B, 20D, 20E, and 25C, December hunt opportunity, and 5 AAC 99.025(4) Customary & Traditional uses of game populations.

WHAT IS THE PROBLEM YOU WOULD LIKE THE BOARD TO ADDRESS? STATE IN DETAIL THE NATURE OF THE CURRENT PROBLEM.

I believe the harvest opportunity of Fortymile caribou in the December residents only, one caribou bag limit, Tier I registration hunt within the Fairbanks Nonsubsistence Area (Unit 20B and portions of Units 25C, 20D) and in that portion of Unit 20F is not in compliance with subsistence law and regulations, AS 16.05.258(a), AS 16.05.258(c), 5 AAC 99.016(b), and 5 AAC 99.025(a), (4).

Currently the Board of Game (BOG) has adopted a positive finding of C&T for Fortymile caribou (FMC) in Units 12, 20D, 20E, and 25C. There is no finding of C&T for FMC in Unit 20B nor 20F. (5 AAC 99.025(4))

1. The BOG has adopted the winter subsistence opportunity (1 December- 31 March) (Fortymile management plan) for the FMC and has eliminated nonresident participation and has a 1 caribou bag limit. Within their statutory authority AS 16.05.258(3)A, B Tier I. With the action the BOG has taken with the FMC, 5 AAC 92.071(a) applies; “If the board has directed that a hunt be administered under a Tier I subsistence permit, permits will be distributed in the same manner as other registration permits, under the same conditions applicable under 5 AAC 92.050 and 5 AAC 92.052”. “Tier I” means the circumstance where the board has identified a game population that is customarily and traditionally used for subsistence and where it is anticipated that a reasonable opportunity can be provided to all residents who desire to engage in that subsistence use; (5 AAC 92.990(78)). This means the department issues a “Tier I subsistence registration permit” (5 AAC 92.071) via the department’s discretionary authority found in 5 AAC 92.050 and 5 AAC 92.052. Note: 5 AAC 92.050 and 5 AAC 92.052 are also used for the department to issue “general season” registration permits. The department should note on the permit, what type of permit they are issuing to alleviate any confusion on how the BOG has determined the hunt be administered.
2. The BOG has also enacted a positive finding for C&T in all of Units 20D and 25C for FMC. Yet the vast majority of Unit 20D lays within the Fairbanks Nonsubsistence Area and approximately half of Unit 25C lays within the Fairbanks Nonsubsistence Area. The BOG has no finding of C&T for FMC in Unit 20F.
3. It would appear the winter harvest opportunity for FMC is directed by the BOG as a Tier I subsistence hunt. AS 16.05.258 states the BOG cannot have a positive finding of C&T within nonsubsistence areas AS 16.05.258(c) states: The boards may not permit subsistence hunting or fishing in a nonsubsistence area. 5 AAC 99.025 also states: (a) The Board of Game has examined whether the game populations in the units set out in

the following table, excluding those units or portions of those units within nonsubsistence areas established by the Joint Board of Fisheries and Game (5 AAC 99.015), are customarily and traditionally taken or used for subsistence and make the following finding. The BOG has also determined what actives are allowed in a nonsubsistence area. Found in 5 AAC 99.016; (a) A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area of community. In a nonsubsistence area, the following activities will be permitted if so provided by the appropriate board by regulation:

- (1) general hunting, including drawing and registration permit hunts;
- (2) personal use, sport, guided sport, commercial fishing, and other fishing authorized by permit.
- (b) Subsistence hunting and subsistence fishing regulations will not be adopted by a board for a nonsubsistence area and the subsistence priority does not apply in a nonsubsistence area.

With the actions the BOG has enacted, the law and regulations do not allow a Tier I subsistence harvest of FMC in Unit 20B or in that portion of Units 20D or 25C that is within the Fairbanks Nonsubsistence Area (5 AAC 99.015(4)). Nor does the BOG have the authority to enact a positive finding of C&T with in a nonsubsistence area.

WHAT SOLUTION DO YOU PREFER?

1. Not allow the harvest of FMC in the winter Tier I subsistence hunt within the Fairbanks Nonsubsistence Area, nor the area of Unit 20F that does not have a positive C&T finding for FMC.
2. When the BOG has directed a Tier I subsistence hunt. The department should clarify on the registration permit, that the permit being issued is a Tier I subsistence permit. Also the department should advertise the Tier I hunt in the Tier I and Tier II subsistence supplement.
3. Amend 5 AAC 99.025(4) Units 12, 20D, 20E and 25C. (Fortymile caribou) EXCEPT FOR THOSE PROTIONS THAT ARE WITH IN THE FAIRBANKS NONSUBSISTENCE AREA.
4. Not allow a subsistence harvest in that portion of Unit 20F for FMC. The BOG has no C&T findings for FMC in Unit 20F.

STATE IN DETAIL HOW THIS ACR MEETS THE CRITERIA STATED ABOVE.

a) for a conservation purpose or reason: Is not for a conservation concern.

b) to correct an error in regulation: I am trying to point out that the actions of the BOG through the laws and regulations that dictated their actions. That the winter subsistence harvest of FMC within the Fairbanks Nonsubsistence Area and in that portion of Unit 20F are not in compliance with the current laws and regulations.

c) to correct an effect of a regulation that was unforeseen when the regulation was adopted:

1. Is the clarification of what type of opportunity the FMC winter hunt is.
2. What type of registration permit is being issued. Tier I subsistence or general season registration permit?
3. Allowing a Tier I subsistence opportunity in a portion of Unit 20F, that does not have a positive finding of C&T for FMC.
4. Amend the language in 5 AAC 99.025(4) to exclude the positive finding of C&T within the Fairbanks Nonsubsistence Area.
5. Allowing a Tier I subsistence opportunity with in a nonsubsistence area.

WHAT WILL HAPPEN IF THIS PROBLEM IS NOT SOLVED PRIOR TO THE REGULAR CYCLE? Regulations will not be in compliance with statute.

STATE WHY YOUR ACR IS NOT PREDOMINANTLY ALLOCATIVE. No, just regulatory.

IF THIS REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE.

STATE YOUR INVOLVEMENT IN THE ISSUE THAT IS THE SUBJECT OF THIS ACR. Subsistence user.

STATE WHETHER THIS ACR HAS BEEN CONSIDERED BEFORE, EITHER AS A PROPOSAL OR AS AN ACR, AND IF SO, DURING WHICH BOARD OF GAME MEETING.