

ACR 11 – Remove the statewide bag limit restrictions for resident relatives accompanying nonresident second degree of kindred.

SUBMITTED BY: Resident Hunters of Alaska

CITE THE REGULATION THAT WILL BE CHANGED IF THIS ACR IS HEARD: Alaska Administrative Code Number 5 AAC: 5 AAC 92.130 – We seek reconsideration and repeal of the provision added to this regulation that brown bears, mountain goats, and sheep taken by nonresidents that are personally accompanied by resident relatives within the second-degree of kindred will count toward the bag limit of both the resident relative and the nonresident.

WHAT IS THE PROBLEM YOU WOULD LIKE THE BOARD TO ADDRESS? STATE IN DETAIL THE NATURE OF THE CURRENT PROBLEM: A court is likely to hold that AS 16.05.255 does not provide general authority to require that a harvested animal count towards the bag limit of someone other than the person who harvests the animal, and that in order to do so the legislature must expressly so authorize, as it has for “youth hunts” under AS 16.05.255(i) which provides that a harvested big game animal “must be counted against the bag limits of both the child and the adult . . . who accompanies the child.” Two principles of statutory interpretation support such an interpretation of AS 16.05.255. The first that specific language controls general language. That is to say: the general provision of AS 16.05.255(a)(10) that the board may adopt regulations “as needed for the conservation, development, and utilization of game” does not include authority to adopt regulations that count an animal towards the bag limit of someone other than the person who harvests the animal because in order to do so requires specific language, as in the case of youth hunts under AS 16.05.255(i). This must be so because otherwise the legislature would not have needed to enact AS 16.05.255(i) to double count a harvested animal against the bag limit of someone other than the person who harvests the animal. The second principle of statutory interpretation that supports such an interpretation of AS 16.05.255 is that when one or more things of a class are expressly mentioned by a statute, then others of the same class are excluded. (Your lawyers will know this principle by its Latin: “*expressio unius est exclusio alterius*,” meaning that the explicit mention of one thing by a statute implies the exclusion of what is not mentioned.) In this case, the fact that the Alaska Legislature has expressly authorized in AS 16.05.255(i) the double counting of an animal harvested in a youth hunt (against the bag limit of both the child and the accompanying adult) implies the exclusion of other instances of double counting being authorized by the statute. Again, this must be so because otherwise the legislature would not have needed to enact AS 16.05.255(i) to double count a harvested animal against the bag limit of someone other than the person who harvests the animal.

WHAT SOLUTION DO YOU PREFER? We seek reconsideration and repeal of the provision added to 5 AAC 92.130 that brown bears, mountain goats, and sheep taken by nonresidents that are personally accompanied by resident relatives within the second-degree of kindred will count towards the bag limit of both the resident relative and the nonresident.

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

a) for a conservation purpose or reason:

b) to correct an error in regulation: As stated above, the Board erred in adopting this regulatory change because AS 16.05.255 does not provide general authority to require that a harvested animal count towards the bag limit of someone other than the person who harvests the animal. The legislature must expressly so authorize, as it has for “youth hunts” under AS 16.05.255(i).

c) to correct an effect on a hunt that was unforeseen when a regulation was adopted:

WHAT WILL HAPPEN IF THIS PROBLEM IS NOT SOLVED PRIOR TO THE REGULAR CYCLE? This new regulation will still be scheduled for implementation in 2018 and continue to affect the planning of family hunts for residents and their nonresident relatives, particularly with respect to drawing permit hunts, and especially brown bear hunts where a person can harvest an animal only once in four years.

STATE WHY YOUR ACR IS NOT PREDOMINANTLY ALLOCATIVE: This ACR asks the Board to address the legal question of whether it has general authority to adopt regulations that double count a harvested animal and therefore is not primarily allocative.

IF THIS REQUEST IS ALLOCATIVE, STATE THE NEW INFORMATION THAT COMPELS THE BOARD TO CONSIDER AN ALLOCATIVE PROPOSAL OUTSIDE OF THE REGULAR CYCLE. Resident Hunters of Alaska is a non-profit NGO involved in Alaska hunting and wildlife management issues.

STATE YOUR INVOLVEMENT IN THE ISSUE THAT IS THE SUBJECT OF THIS ACR: Resident Hunters of Alaska is a non-profit NGO involved in Alaska hunting and wildlife management issues.

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. N/A