

2006-161-BOG

**Finding of Emergency**

The Alaska Board of Game (board) finds that an emergency exists and that the attached regulations are necessary for the immediate preservation of public peace, health, safety or general welfare. The facts constituting the emergency include the following:

On January 17, 2006, in Anchorage, the Superior Court issued an Order on Motions for Summary Judgment in the case of Friends of Animals, et al., 3An-03-13489 CI, holding 5 AAC 92.125(1),(5),(6),(7), and (8) (predator control implementation plans for five areas in Alaska) invalid because they were overly broad in geographic scope in two cases, and because all had failed to comply with some of the requirements of 5 AAC 92.110(b). This ruling was issued in the middle of the Regulatory Year 2005/2006 predator control season for each area, while control operations were underway. As of the date of the order, a total of 157 permittees had been authorized to take wolves with the use of aircraft, in some fashion, under the five programs, and 24 wolves had already been taken during the current winter. The Alaska Department of Fish and Game staff had set the following area-specific goals for the taking of wolves during the 2005/2006 regulatory year, to be comprised of animals harvested by hunters and trappers as well as wolves to be taken under the predator control programs.

Wolf control permit area within:	Combined harvest and wolf control permit take
Unit 19(D) East	8-12 wolves
Unit 13	80-110 wolves
Unit 16(B) mainland	40-92 wolves
Unit 19(A)	85-135 wolves
Unit 12 & 20(E)	97-131 wolves

Each predator control program was initially set for a five-year term, which may be increased or decreased as the situations warrant and goals are met. The programs have been underway in each area for the following time spans:

Predation Control Implementation Plan	Period
Unit 19(D) East	December 2003-present
Unit 13	January 2004-present
Unit 16(B) mainland	December 2004-present
Unit 19(A)	December 2004-present
Unit 12 & 20(E)	January 2005-present

The programs were adopted pursuant to the statutory mandates of AS 16.05.255(e)-(g), and (j) to establish management goals that will achieve a high level of human harvest for identified populations that are important for high levels of human consumptive use, and to adopt regulations that provide for intensive management, including predator control, of those populations whenever they are depleted or reduced in productivity, or in situations where the Board has had to act to significantly reduce the harvest of those populations.

In each case, the subject moose populations were depleted or reduced in productivity and in each case the Board had acted to significantly reduce the taking of the subject moose populations. The Board's previous findings on point, for each area, are hereby incorporated by reference. (95-86-BOG, 96-101-BOG, 2001-135-BOG, 2003-140-BOG, 7/15/03 letter from Fleagle to Duffy, 92-62-BOG, 92-63-BOG, 95-84-BOG, 2003-141-BOG, 2003-143-BOG, 2003-144-BOG, 2004-150-BOG, 2004-148-BOG, 2004-147-BOG, and 2004-152-BOG)

In each case, the Board's actions to significantly reduce the taking of the subject moose populations had substantially reduced opportunities for subsistence hunting, in situations where subsistence harvests had already declined due to the moose population declines. In most cases, the Board had completely eliminated all forms of hunting other than subsistence hunting, due to the shortages of available moose, while increasing wolf seasons and bag limits. The Board has heard a great deal of testimony during previous meetings, and information on point was presented during the current

meeting, to the effect that rural residents in and near the areas covered by the control programs were suffering nutritionally, economically, culturally and even, in some cases, psychologically due to their inability to obtain traditional and necessary food supplies for themselves and their families by harvesting moose. The Board is informed that all of the covered areas are important sources of wild food for local residents because, in each case, unemployment is high and per capita income tends to be very low.

One program, that in Unit 19(D)-East, was designed as an experiment to see if a high level of intensive management within a relatively small area of important moose habitat, which was also heavily used by local residents, could result in moose population and human use benefits in the larger area frequented by the subject moose population. As a result, the Department has expended approximately \$1,700,000 in public funds in conducting this experiment. Lesser, but still substantial amounts have been expended for implementation of the other, more recent programs. The experiment in Unit 19(D)-East is likely to fail unless carried out for at least the term originally planned, as are the other programs. A 1997 National Academy of Sciences report titled "Wolves, Bears and their Prey in Alaska" concluded that "wolf control has resulted in prey increases only when wolves were seriously reduced over a large area for at least four years."

Of the many factors that can impact the survival and productivity of moose populations, these programs are designed to reduce one specific influence—predation.

Each of the predator control programs is designed as a multi-year effort to reduce predator-caused mortality of moose. Inherent in the design and required for success is a continued reduction in predator numbers over several years to reduce the adverse impact of predation on moose survival. This allows an increased number of calves and yearlings from several year classes to be incorporated into the moose population and enhances the survival of already-productive adult cows. In the areas where predator control has already been underway for two or more years, the Department has informed the Board that some early signs of improvement in moose population characteristics have occurred; however, it is not expected that the full beneficial effects of the programs will be evident immediately. Increased calf and yearling survival is an investment that will pay dividends throughout the lives of cows that are recruited into the population as a result. If predator reductions are not conducted in a continuous manner over several years and followed by a period of relatively stable, but low, predator numbers, the expected benefits to moose populations will be greatly reduced and much of the effort will have been in vain. Any interruption to predator reduction efforts is expected to significantly reduce or eliminate the likelihood that these programs will be successful, management objectives will be reached, and more moose will be available for human consumption in the covered areas at any time in the foreseeable future. Thus, a halt to the programs would be likely to cause further nutritional, cultural, economic, and psychological harm to Alaskans. Also, the state risks losing both its monetary investments and the scientific and program values it has already obtained, and will continue to obtain, through implementation of the predator control programs.

The period beginning in February and extending through March and into April represents the most important time of year for wolf control efforts. Due to weather, light and snow conditions, pilots are able to spot wolves and land their aircraft more easily and greater effort can be put forth than at any other time. The bulk of wolves harvested during control efforts have been and are expected to be harvested primarily during this time period. Unless control efforts can be conducted throughout February, March and April of this year, the desired level of wolf removal will not be achieved and the goals of calf and adult moose protection will have been substantially or completely thwarted. The result of losing these months is likely to be a significant loss of potential benefits from the programs, as described above.

The attached emergency regulations are essentially updates to the plans that have been in existence since the inception of the respective predator control programs but were declared to be invalid by the court for lack of required detail and, in two cases overly-broad geographic scope. They are, in essence and in all important respects, the same plans that have been subjected to repeated Board meetings and volumes of public comment and testimony. The changes add the details the court found to be lacking, and narrow the geographic scope, as ordered. The formats have also been changed to present more uniform regulations. There is likely to be little that additional public comment could add to the debate at this point, but there will be an opportunity to submit additional public comment in the near future, as the Board intends to schedule a time, during a

regular meeting, to address making these emergency regulations permanent as quickly as possible.


There is insufficient time to follow the normal regulatory process for permanent regulations in the time between issuance of the court's summary judgment order and the time period most critical to successful predator control efforts. For all the reasons given above, the Board finds it necessary to adopt emergency regulations to immediately repeal the regulations the court has declared to be invalid, correct the errors and omissions in the predator control implementation plans identified by the court, and then readopt those plans. Preventing any significant delay in, or halt of, these predator control programs is necessary for the immediate preservation of public peace, health, safety, and general welfare.

ORDER CERTIFYING ADOPTION

I certify that the Board of Game, under the authority of AS 16.05.255 and AS 16.05.258, adopted at its Jan. 25, 2006, meeting the attached 77 pages of regulation changes as emergency regulations to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: 1/26/06  
Juneau, Alaska

  
McKie Campbell, Commissioner  
Alaska Department of Fish and Game

FILING CERTIFICATION

I, Loren Leman, Lieutenant Governor for the State of Alaska, certify that on \_\_\_\_\_, 2006, \_\_\_\_\_, at \_\_\_\_\_ .m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

\_\_\_\_\_  
Loren Leman, Lieutenant Governor

Effective: \_\_\_\_\_

Register: \_\_\_\_\_