

2008-178-BOG

Finding of Emergency

The Alaska Board of Game 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 are as follows:

On March 13, 2008, in Anchorage, the Superior Court issued an Order on Motions for Summary Judgment in the case of Defenders of Wildlife, et al., 3AN-06-13087 CI, holding 5AAC 92.125(b),(g), and (i), (predator control implementation plans for five areas in Alaska) invalid because the Board made the requisite findings for some, but not all portions of the Game Management Units and subunits wherein predator control program were authorized by 5 AAC 92.125. The court also found that Board did not make the requisite section AS 16.05.783 (a)(1) findings for subunits 16(a), 20(A) – (D), and 25(C). Therefore, the court found that the authorization for airborne or same day airborne shooting of wolves in these respective subunits is invalid. This ruling was issued in the middle of the Regulatory Year 2007/2008 predator control season for each area, while control operations were underway. As of March 18, 2008, a total of 86 and 51 permittees have been authorized to take wolves with the use of aircraft, in the Unit 16 predation control area and the Upper Yukon/Tanana predation control area in Units 12, 20, 20(B), 20(D), 20(E), and 25(C), respectively. As of March 18, 2008 a total of 16 and 5 wolves have been taken in the Unit 16 and upper Yukon/Tanana control areas, respectively, as part of the aerial control programs during the current winter. These values do not include wolves taken as part of hunting and trapping. In the fall of 2007, Department staff set the following control area-specific goals for the taking of wolves during the 2007/2008 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 16 Predation Control Area	46-113 wolves
Upper Yukon/Tanana Predation Control Area	263-295 wolves

Total wolf take (control plus hunting and trapping) in Unit 16 is estimated at 20 (16 control plus 4 hunting/trapping) wolves as of March 18, 2008, which is below the fall 2007 estimated harvest necessary to meet the program goal for this control area. Total wolf take in the Upper Yukon/Tanana is estimated at 35 wolves (5 control plus 30 hunting/trapping) as of March 18, 2008, which is below the fall 2007 estimated harvest necessary to meet the program goal for this control area.

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 16	December 2004-present
Upper Yukon/Tanana	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 subject caribou population covered by the Upper Yukon/Tanana plan in recent years has failed to increase in population size towards meeting intensive management objectives. The Board's previous findings on point, for each area, are hereby incorporated by reference. (7/15/03 letter from Fleagle to Duffy, 92-65-BOG, 2004-147-BOG, 2004-148-BOG, 2004-152-BOG, 2006-161-BOG, 2006-164-BOG, 2006-165-BOG and 2006-167-BOG.

In each case, the Board's actions to significantly reduce the taking of the subject moose or caribou populations had substantially reduced opportunities for subsistence hunting, in situations where harvests had already declined due to the moose and caribou population declines. 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.

Of the many factors that can impact the survival and productivity of moose and caribou 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 both moose and caribou. 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 and caribou 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 three 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 and caribou 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.

Regarding the harvest of black and brown bears associated with the control programs, permits are issued in early April and bears emerge from their dens in mid-April. There is a need to have the program available for the bear part of the program when the success is likely to be most effective, both in terms of bear harvest efficiency and concurrent reduction of predation on newborn ungulates. This occurs in the spring.

The attached emergency regulations are essentially the same plans that have been in existence since the inception of the respective predator control programs. These plans have been variously modified to include new biological information as it becomes available on a regular basis. Portions of these plans for some subunits were declared to be invalid by the court for lack of findings that related to all of the subunits for the overall plan. These plans 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 are in reference to the findings only. 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, supplement the findings to encompass the entire control area, 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 March 21, 2008, meeting the attached 40 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).

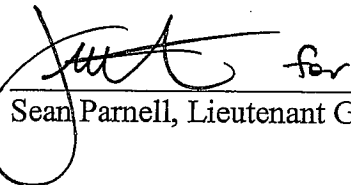
This action is not expected to require an increased appropriation.

DATE: March 21, 2008
Juneau, Alaska


Denby Lloyd, Commissioner
Alaska Department of Fish and Game

FILING CERTIFICATION

Jason Hooley for
I, Sean Parnell, Lieutenant Governor for the State of Alaska, certify that on March 21,
2008, _____, at 3:59 p.m., I filed the attached regulations according to the provisions
of AS 44.62.040 – 44.62.120.


Sean Parnell, Lieutenant Governor

Effective: March 21, 2008

Register: 186, July 2008

Expires 7/11/2008
unless made "permanent"
by the adopting agency.