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Alaska Board of Game  
Central/Southwest Region Meeting  
February 8-15, 2013

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Boards Support Section  
Board of Game

As a 42-year resident of Alaska and as one who has hunted and hiked extensively, I am deeply concerned about the lack of a Denali Wolf Buffer Zone as well as the moratorium emplaced on discussion of that issue.

The Buffer Zone was created to ensure a very valuable resource, the wolves of Denali Park, were given a biologically-justified safety zone which acknowledged that wildlife does not behave in accordance to geo-political boundaries. It was in place for several years with no negative impacts and a very quantifiable, large positive impact for tourism. Its removal was nothing short of a petulant slap at the federal presence and a totally indefensible, intentional ignorance of the Alaskan public's will as demonstrated by a large petition submitted to the Board. The removal was not the act of a mature, science-based entity and it's absence remains a glaring demonstration of that fact.

The moratorium itself is at best illegal for removing from public discussion at the whim of the Board a very significant topic affecting not only Alaskans but national and even international tourism in the area. Already substantial revenue from a national wolf viewing group has been lost as a result of the decreased viewing the lack of a buffer zone created. Further, the trapping incident this past spring in which a Grant Creek female wolf was taken (and allowed to die in the trap with subsequent loss of any pelt, thus a total waste) highlighted not only how poorly thought out was the decision to remove the buffer zone but how quickly negative results came about.

Much attention has been paid to this incident in particular and the decision in general in the statewide press as well as newspapers outside of Alaska, Internet venues, and radio programs. The result is a great deal of negative "press" for Alaska's wildlife management methods. This is wholly due to the decision to remove the Buffer Zone.

I would very strongly urge the Board reconsider their moratorium as well as their removal of the buffer zone as soon as possible and reverse both actions. To do otherwise is only to invite more bad press and possible federal action.

Additionally, I wish to express my support for proposals 18, 19, 104, 173, and 174. The very idea of snaring bears is reprehensible. It seems anymore the Board of Game is in the business of killing off wildlife in the most brutish ways possible and this is certainly one. It wipes out two generations at once. It is in no way discriminating. It creates a danger to others using the forest.

Sincerely,  
Art Greenwalt  
1620 Washington Dr., Apt.79  
Fairbanks, Ak. 99709



**MATANUSKA-SUSITNA BOROUGH  
FISH AND WILDLIFE COMMISSION**

350 East Dahlia Avenue  
Palmer, Alaska 99645



January 25, 2013

ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, Alaska 99811-5526

RE: BOG Proposal Numbers 93 and 96

Good Day:

The MSBFWC voted on January 16, 2013 to support BOG proposals 93, reauthorization of the antlerless moose permits in GMU 14A; and 96, the reauthorization of the "hot spot" hunt in GMU 14A with an extension of the program into GMU 14B.

Our thinking in supporting these hunt reauthorizations is that they provide another management tool for the department biologists to better regulate moose populations in GMU 14A and, to a lesser extent, 14B. The antlerless hunts allow the biologists to reduce local moose populations in specific areas by targeting the one subgroup of moose within the population which can best absorb a reduction in numbers – the cow moose fraction.

Preliminary population inventories show that the moose population in GMU 14A is almost 1000 animals over the upper limit of moose the management biologists have determined can be maintained in a healthy condition. Bull/cow ratios suggest the maximum number of bulls is already being harvested, so the only other subgroup to absorb the necessary population reduction is the cow portion of the population.

The "hot spot" hunt allows the managers to target nuisance moose and to reduce localized moose populations near our highway corridors, reducing potential moose/vehicle collisions. Both of these hunt types (antlerless and hot spot) provide additional opportunity for hunters who failed to harvest a moose earlier in the year to put meat in the freezer.

We see these proposals as providing a "win-win" situation for the managers to better manage healthy moose populations while providing opportunity for hunters to harvest meat which might otherwise be wasted.

Sincerely,

  
T. Bruce Knowles, Chairman



**MATANUSKA-SUSITNA BOROUGH  
FISH AND WILDLIFE COMMISSION**  
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Palmer, Alaska 99645

January 25, 2013

ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, Alaska 99811-5526

Re: Comments Unit 13 Community Harvest

Dear Board of Game:

The MSB Fish & Wildlife Commission met on January 16, 2013 and voted **unanimously to support continuance of the Community Harvest Subsistence Hunt (CHSH)** for moose in Unit 13, with a limit of one bull moose permit per household.

**Proposals 65 & 68:** The Commission opposes Proposals 65 and 68 because they limit the opportunity to participate in this traditional subsistence harvest for Alaskans who have traditionally and customarily hunted in Unit 13.

**Proposals 66 & 67:** The Commission opposes Proposal 66 and 67 which seek to eliminate the CHSH program.

**Proposal 69:** The Commission supports Proposal 69 to increase the harvest quota of any bull moose for CHSH to 100.

We see the Community Harvest Subsistence Hunt as a means to allow traditional and customary harvest opportunities for Alaskan residents who traditionally and customarily hunt in Unit 13. If limits need to be placed on the harvest quota of any bulls, limit the harvest to one per household or something similar.

Thank you for your consideration of our comments.

Sincerely,

T. Bruce Knowles, Chairman



**National Parks Conservation Association®**  
*Protecting Our National Parks for Future Generations®*

Alaska Regional Office . 750 W. 2nd Avenue . Suite 205 . Anchorage, AK 99501  
(907) 277.6722 . FAX 907.277.6723 . www.npca.org

January 25, 2013

Mr. Ted Spraker  
Chairman / Alaska Board of Game  
Board Support Section  
P.O. Box 115526  
Juneau, Alaska 99811-5526

**RECEIVED**

**JAN 25 2013**

**BOARDS  
ANCHORAGE**

RE:

Support Proposals: #45, #49, #52, #58, #60, #79, #86, #104, #105, #120, #121, and #122,  
Oppose Proposals: #50, #51, #54, #62, #64, #70, #75, #77, #84, #85, #87, #106, #107, and #119

Dear Chairman Spraker and Board,

The National Parks Conservation Association (NPCA) appreciates the opportunity to provide input on several proposals for the upcoming Central/Southwest Region Board of Game (Board) meeting in Wasilla from February 8 – 15, 2013.

NPCA is America's only private nonprofit advocacy organization dedicated solely to protecting, preserving, and enhancing the U.S. National Park System for present and future generations. Founded in 1919, NPCA has more than 740,000 members and supporters, of which nearly 2,000 reside in Alaska.

Both NPCA and the National Park Service (NPS) have repeatedly emphasized the fact that the mission and mandates of the Park Service differ from the State of Alaska and other federal agencies in regards to conserving wildlife resources. This divergence in management priorities may require different management approaches for lands managed by NPS, approaches which are consistent with NPS enabling legislation and the Alaska National Interest Lands Conservation Act (ANILCA). Both clearly affirm congressional intent that NPS must strive to preserve natural ecosystems & natural processes in Alaska.<sup>1</sup>

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<sup>1</sup> NPS Comment Letter to the BoG dated December 29, 2011.  
NPCA Comment Letter to the BoG dated December 30, 2011



The congressional record when adopting Title VIII of ANILCA reaffirmed congressional intent that NPS enabling legislation would have precedence to state management priorities:

—[t]he standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the park system shall be protected in perpetuity and shall not be jeopardized by human uses. These are very special lands and this standard must be set very high: the objective for park system lands must always be to maintain the health of the ecosystem and the yield of fish and wildlife for hunting and trapping must be consistent with this requirement.” *Congressional Record*

While both NPCA and NPS recognize and support the State of Alaska’s unique role in wildlife management on NPS managed lands in Alaska, the state has agreed to *co-manage* wildlife resources in a cooperative fashion, primarily through this Board. The State of Alaska formally agreed in its Master Memorandum of Understanding (MMOU) with the NPS to the following:

“To recognize the Service's responsibility to conserve fish and wildlife and their habitat and regulate the human use on Service lands in Alaska, in accordance with the National Park Service Organic Act, ANILCA, and other applicable laws.”  
*Emphasis added*

“To recognize that National Park areas were established, in part, to "assure continuation of the natural process of biological succession" and "to maintain the environmental integrity of the natural features found in them."” *Emphasis added* <sup>2</sup>

The State of Alaska formally acknowledges the divergent wildlife management mandates between the Park Service and the State of Alaska in the MMOU, yet previous Boards have consistently ignored NPS comments, concerns and formal requests for well over a decade. <sup>3</sup>

NPCA has documented well over 50 times that NPS has asked that its lands be exempt from BOG actions, only to have the Board ignore those requests. Actions taken in the 2013 compendium by the Park Service are a direct result of the state’s desire NOT to cooperate when proposed hunting regulations conflict with NPS enabling legislation and management policies.

NPCA acknowledges that the state may adopt regulations attempting to artificially manipulate natural wildlife population densities on state lands for the purpose of increasing human harvest opportunity of ungulates, but the Board has the responsibility to provide an exception for lands managed by the NPS when implementing regulations that are clearly inconsistent with NPS mandates, especially when the NPS formally petitions the Board to provide such an exemption.

NPS management direction for implementing the legal mandates of the Organic Act and ANILCA for harvesting wildlife in National Preserves in Alaska is found in 36 CFR 13.40(d) which states:

“Hunting and trapping are allowed in national preserves in accordance with applicable Federal or non-conflicting state law and regulations” *emphasis added*

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<sup>2</sup> Master Memorandum of Understanding adopted by the State of Alaska and the NPS (Appendix B)

<sup>3</sup> NPS Comment Letter to the BoG dated March 3, 2012.



In addition to the formal MMOU which acknowledges NPS management authority, the constitutional doctrine of preemption clearly dictates that when federal law and state law conflict, federal law must be followed.<sup>4</sup> Preemption requires the state to refrain from implementing regulations that involve NPS managed lands if such regulations are:

“inconsistent with park purposes and values; diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or those that unreasonably interfere with other appropriate uses”<sup>5</sup>

NPCA has a long history of interest and involvement in BOG regulatory actions, especially regulatory actions that have the potential to negatively impact wildlife on NPS managed lands – particularly predators such as wolves and bears. As such, NPCA offers the following comments.

## **NPCA Comments Central / Southwest BoG Meeting**

**Proposal 45 (Support)** – Adopt a registration hunt to manage the harvest of Mulchatna Caribou

For many years, the Park Service has expressed concerns regarding the declining population trend of the Mulchatna caribou herd and has regularly commented on proposals concerning the herd. Currently the state manages the MCH under intensive management. As such, it has always been NPCA’s opinion that effective management of human harvest is an essential component of a recovery effort. This proposal will enhance the state’s ability to document harvest effort and success rates. NPCA considers this a positive step in addressing the MCH recovery effort using recognized scientific principles.

**Proposal 49 (Support)** – Adopt a one brown bear per year harvest limit in GMU 17B

In 2011, the board liberalized the harvest regulations for brown bears in GMU 17B, which includes lands managed by NPS. The board extended the season, revoked tag fees, and increased the harvest of brown bears to two per year.

The justification for liberalizing the brown bear harvest regulations assumed that increasing brown bear harvest would reduce predation on moose and caribou. As noted in the ADF&G analysis and recommendations for this proposal, only 6 hunters took advantage of the two bear per year bag limit. In addition, the board revoked the tag fee requirement to harvest brown bears on NPS managed lands. Both of these actions were opposed by NPS in a formal comment letter dated February 11, 2011. NPCA requests that, at a minimum, the board adopt the proposal for lands managed by the NPS.

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<sup>4</sup> Julie Lurman and Sandy Rabinowitch, "[Preemption of State Wildlife Law in Alaska: Where, When, and Why](#)," 24 Alaska Law Review 145, 2007

<sup>5</sup> 2012 Lake Clark National Park and Preserve Compendium revoking State of Alaska wildlife harvest regulations. (Appendix A)



**Proposal 50 (Oppose) – Allow sale of brown bear parts**

The sale of bear parts is illegal on NPS managed lands.

The Regional Director of NPS has commented and informed this Board:

“NPS regulations prohibit the sale or commercial use of natural products taken from NPS areas (Title 36 Code of Federal Regulations, 2.1(c) (3) (v)”<sup>6</sup>

This proposed sale of brown bear parts is nothing more than another incentive to kill more brown bears in an ill-conceived effort to increase moose and caribou densities for human harvest opportunity.

Should the Board adopt this proposal, NPS lands must be exempted.

**Proposal 51 (Oppose) - Change hunting regulations for black bear in Unit 17 to a bag limit of three bears per year and no closed season**

This proposal was requested by the Board to reduce the black bear population in GMU 17 to the lowest possible density, a clear attempt to conduct intensive management black bears to artificially enhance ungulate population for harvest.

The ADFG state “there are few black bears in GMU 17, and they are rarely observed”.

It is not the management philosophy of NPS to decimate a small population of black bears with unnecessary liberal black bear harvest opportunity.

“ ... consistent with many past letters to the Board we [NPS] are asking that NPS areas be excluded from any regulations affecting black bears where the intent is to reduce the subject population for the benefit of other species.”<sup>7</sup>

As NPCA has noted multiple times in our comments, NPS management priority is for the conservation of wildlife species, not the decimation of one species for the assumed benefit of another. We remind the Board again of the states promise and obligation under the MMOU:

“To recognize that National Park areas were established, in part, to "assure continuation of the *natural process of biological succession*" and "*to maintain the environmental integrity of the natural features found in them.*" *Emphasis added*<sup>8</sup>

Since this is a Board requested proposal, it can only be assumed the Board is will adopt this proposal. In doing so, the Board must exempt NPS managed lands.

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<sup>6</sup> NPS comment letter to BoG dated January 15, 2010

<sup>7</sup> NPS comment letter to BoG dated September 29, 2010

<sup>8</sup> Master Memorandum of Understanding adopted by the State of Alaska and the NPS (Appendix A)





**Proposal 52 (Support) – Restrict nonresident moose hunting opportunity in GMU 9**

For lands managed by NPS, moose harvest is prioritized for federally recognized rural subsistence harvest opportunities. Since ADF&G does not provide the Park Service with harvest data specific to NPS lands, it is impossible to specifically evaluate local subsistence success rates for moose on NPS managed lands.

Yet, the Board has established an Amount Needed for Subsistence by residents at 100 – 140 moose in GMU 9, and the reported harvest by residents, *including non-local residents*, has averaged only 55 moose per year between RY07 – RY011, thus one can reliably predict that the subsistence harvest opportunity for local residents is being negatively impacted by nonresident harvest effort.

The NPS subsistence advisory committee for Aniakchak and federal regional advisory councils located in or near GMU 9 have all submitted proposals to the NPS and the federal subsistence board to limit nonresident hunting opportunity for moose on federal lands in GMU 9. In addition, the Northern Peninsula Caribou herd, an important subsistence resource in the area has been closed to subsistence harvest for many years.

Recognizing the need for conservative moose harvest levels in GMU 9, the Park Service has consistently over the years supported a conservative management approach for the low density moose population in GMU 9.

Moose harvest by nonresidents is primarily incidental harvest by hunters who travel to GMU 9 to harvest brown bear. Restricting an incidental harvest opportunity for nonresidents will not influence the primary focus of nonresident hunting effort in GMU 9, which as noted, is to hunt brown bears. The benefits to subsistence harvest opportunity far outweigh the minimal negative impacts to nonresident hunting opportunity. State law also clearly defines moose populations as being prioritized for resident harvest opportunity.

Due to significant historical requests and reported harvest rates by ADF&G for resident moose hunters at a success rate far below the amount the Board established as necessary for subsistence, NPCA requests that the Board adopt the proposal and revoke nonresident moose hunting opportunity on NPS managed lands in GMU 9, an action consistent with congressional intent found in ANILCA Title VIII to prioritize limited subsistence resources for federally qualified rural subsistence hunting opportunity.

**Proposal 54 (Oppose) – Proposal 58 (Support) – Establish a Katmai Preserve specific registration hunt for brown bear in GMU 9 – liberalize brown bear harvest in GMU 9 from 1 bear every four years to 1 bear/year.**

With brown bear harvest in Katmai Preserve being a very contentious public issue for many years, and total brown bear harvest has consistently increased in the last decade in GMU 9C, NPCA disagrees with ADF&G's recommendation to take no action on this proposal. For almost a decade, NPCA has actively encouraged the Board to reduce the brown bear harvest in Katmai Preserve. Now is NOT the time to liberalize that harvest to one bear/year.



NPCA considers public input and discussion on the state management strategy for brown bears in Katmai Preserve as a fundamental responsibility of the board. Because of the unique Congressional mandate found in ANILCA to manage Katmai for “high concentrations of brown bears,” we strongly encourage, in the spirit of cooperation as outlined in the MMOU, that the Board consider alternative strategies for the management of consumptive take of brown bears in Katmai Preserve to address both the Congressional mandate and its manifest public concern. As such we support proposal 58 and oppose proposal 54.

In 2007 and 2009, NPS supported a Katmai specific registration hunt with defined harvest guidelines. While the Board adopted a registration hunt for all of 9C, including bordering state lands, a harvest cap was not established for Katmai Preserve.

Again in 2011, the NPS reasserted their intentions:

“The NPS continues to support development of a comprehensive brown bear management plan for GMU 9C. A comprehensive planning process would bring together stakeholders to discuss the many issues surrounding brown bear management including seasons and harvest limits.”<sup>9</sup>

NPCA supports the development of a comprehensive brown bear management plan for GMU 9C which includes a total harvest limit for brown bears specific to Katmai Preserve, which would be implemented through a registration hunt as supported by this proposal. This comprehensive management plan must be done before any changes are made from the current regulation allowing only the harvest of one bear every four years. Should the Board move to adopt proposal 54, we would ask the NPS lands be exempt.

**Proposal 60 (Support) – Restrict wolf harvest in the summer when adults have dependent young**

In 2012, the NPS revoked state wolf harvest opportunity extending past April 30 by park specific Compendium for NPS managed lands in GMU 9. The Board should refer to the 2012 Lake Clark National Park and Preserve compendium for a detailed analysis of NPS authority and justification for the revocation of state harvest opportunity on NPS managed lands.

This proposal requests the Board amend state harvest regulations on NPS managed lands to concur with existing NPS regulations. The Board is encouraged to consider the MMOU between the state and the NPS and the historical requests by both NPCA and the Park Service to exempt wolf harvest during the denning season. In addition, it appears interest in harvesting a wolf during the month of June in RY11 did not attract a single reported harvest of a wolf.

Clearly this is an unnecessary regulation with no hunter effort or interest as well as being fundamentally inconsistent with NPS purposes and values.

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<sup>9</sup> NPS comment letter to the BoG dated February 18, 2011 \_ Proposal 42



**Proposal 62, 63, 70 (Oppose)** – Liberalize nonresident moose hunting opportunity, reauthorize cow moose hunts, and establish a cow moose hunt in Unit 13

NPCA has consistently opposed the Board liberalizing sport hunting harvest opportunities for brown bears on NPS managed lands and state lands bordering NPS managed lands in Unit 13. These unprecedented brown bear regulations were adopted to enhance state predator control efforts in GMU 13. ADF&G calls it a brown bear “experiment” conducted by the Board, yet this high risk experiment, which includes NPS managed lands, is inconsistent with NPS enabling legislation. As an example, the Board has refused to exempt NPS managed lands from brown bear tag fee revocations despite multiple requests by NPCA and the Park Service, while simultaneously exempting state park lands in GMU 13.

Our concern is the continued pressure to kill wolves and brown bears when there appears to be plenty of moose and caribou. In the fall of 2012, ADF&G implemented an emergency fall / winter caribou hunt due to an increasing Nelchina caribou population, a herd that has exceeded ADF&G’s estimated carrying capacity for its winter range. Cow moose hunts in the same area are justified to decrease moose populations that are near, or exceeding, the estimated carrying capacity of the environment as well. Yet, with what appears to be plenty of caribou and moose, the state has not amended the liberal harvest of wolves or brown bears in GMU 13.

Aggressive wolf and brown bear reduction policies in GMU 13 need to be relaxed. NPCA requests the Board return the management of wolves and bears on NPS managed lands in GMU 13 to a naturally regulated wolf and bear density priority.

**Proposal 75 & 77 (Oppose)** – Authorize brown bear baiting in Unit 13

Both of these proposals potentially impact NPS managed lands.

When the proposed 2013 Compendium for Wrangell-St. Elias is adopted in mid-February brown bear baiting will be illegal on NPS managed lands by federal regulation. If the Board should adopt some form of legal harvest of brown bears using bait, NPCA requests that NPS managed lands are exempted.

Historically, the Park Service has commented to the Board on liberalizing bear baiting on NPS managed lands stating:

“We [NPS] are also concerned about expansion of bear baiting, because NPS has a long history of trying to prevent habituation of bears to food rewards, both to protect bears and for visitor safety.”<sup>10</sup>

“We [NPS] have public safety concerns for the non hunting visitor as they may unknowingly be entering areas where bait is being liberally added to the

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<sup>10</sup> NPS comment letter to the BoG dated February 11, 2010 and February 18, 2011



environment with the goal of attracting bears.” referring to baiting in July / September / October<sup>11</sup>

“This would allow the baiting of brown bears and we do not support this new allowance ... At this time our concerns are several: habituating brown bears to bait, public safety concerns for visitors to NPS areas and the likely possibility of attracting non-targeted species into these newly authorized baiting stations. Should the Board support this proposal, we request that NPS lands be specifically excluded.”<sup>12</sup>

**Proposal 79 (Support)** – Exclude National Park Service lands from brown bear tag fee exemptions

This issue has long been a glaring example of the Boards unwillingness to address NPS comments and requests. The issue is all the more exacerbated by the fact that the Board continues to require tag fees in state parks, such as Denali State Park, while simultaneously refusing to require them in all National Preserves, despite a decade of repeated requests by the NPS.

The Board has a long track record of revoking resident brown bear tags to promote the “opportunistic” harvest of brown bears in an effort to reduce specific brown bear populations, based on the assumption, not scientific evidence, that in doing so, more moose or caribou will be available for harvest by humans.

But the fact remains that while brown bears can be a major source of mortality of moose and caribou.

*There have been no scientific studies designed, to date, to test whether reducing bear densities alone will result in increased prey density or harvest in Alaska.*

**Proposal 84 & 85 (Oppose)** – Establish a predator control program for wolves and bears in GMU 11 & 12 including Native in holdings within the boundaries of NPS managed lands

The decline of the Mentasta caribou herd population is a concern for both NPCA and the Park Service. Current population estimates are very low and the herd appears to be in a low density dynamic equilibrium. While predators may be one of several negative factors influencing this low population, calf production also remains very low, which suggest other environmental factors may be limiting the herd’s density more directly. NPCA cannot find any indication that predators were the primary influence in the herd’s population decline over time and question the effectiveness that any predator reduction campaign would have if environmental constraints are the primary limiting factor for the herd’s density.

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<sup>11</sup> NPS comment letter to the BoG dated August 29, 2010

<sup>12</sup> NPS comment letter to the BoG dated October 27, 2011



The Mentasta herd is classified as a sedentary and low density ecotype,<sup>13</sup> a small mountain herd which is likely limited in its ability to adapt to changing weather patterns or other environmental stressors within its “traditional” range. Of specific concern for NPCA is the dramatic increase in severe icing events in central Alaska over the last decade.<sup>14</sup>

At the 2012 Federal Subsistence Board meeting the USFWS office of subsistence management stated:

The chronic low calf productivity and recruitment for the Mentasta caribou could make random environmental events *a primary driver for a more severe population decline*. Increased winter mortality due to icing events may result in malnutrition and starvation for more susceptible calves and bulls with depleted energy reserves following the rut. Bull caribou die at a higher rate than cows due to greater energy demands during early winter rutting activities which greatly reduce their body reserves.”<sup>15</sup> *emphasis added*

The herds close proximity to the Nelchina herd, and the frequent mixing of the two herds during the yearly Nelchina herd migration between winter and summer range add to the difficulty in evaluating the Mentasta herd decline. There exists the distinct possibility that the Mentasta herd may have simply dispersed into the Nelchina herd over the last two decades due to declining favorable environmental conditions in the Mentasta herd’s traditional range.

Unfortunately, historical scientific inquiry devoted to the Mentasta herd appears to be insufficient in scope to answer the many questions that need to be asked prior to considering whether or not to authorize predator control for both wolves and bears on the checkerboard of private in holdings within the boundaries of the Wrangell St. Elias National Preserve to attempt increasing the Mentasta herds population. Another small mountain herd, the Chisana herd, also located in the Wrangell St Elias National Park and Preserve responded favorably to non lethal predator control methods, but has failed to produce a population increase that is capable of sustaining a harvest to date.

It is important to note that the Mentasta herd’s “home range” is located almost exclusively on federal lands where federally qualified rural subsistence harvest opportunity is the priority. In 1995, the Mentasta Caribou Herd Management Plan was developed which established a guideline for the management of consumptive take of the Mentasta herd. This management plan was developed in cooperation with the Park Service and should be considered the primary management strategy for the Mentasta herd.

NPCA supports the ADFG recommendation that a feasibility assessment of the potential effectiveness of a state authorized predator control management plan for the Mentasta herd is the appropriate next step prior to the Board considering further action on this issue. NPCA considers the newly developed Intensive Management Protocol documents developed by

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<sup>13</sup> Hinkes, M.T., G.H. Collins, L.J. Van Daele, S.D. Kovach, A.R. Aderman, J.D. Woolington, R.J. Seavoy. 2005. Influence of Population Growth on Caribou Herd Identity, Calving Ground Fidelity, and Behavior. *Journal of Wildlife Management* 69(3):1147–1162

<sup>14</sup> [Timing and Extent of Icing Events in Southwest Alaska during winters 2001 - 2008](#) / Note the map on page 12 indicating that the Mentasta home range is highly susceptible to icing events.

<sup>15</sup> [USFWS OSB Staff Analysis of WP 12-24](#)



ADF&G as a positive influence to promoting a more comprehensive scientific review of predator control proposals before the Board and in identifying shortfalls in historical scientific data.

**Proposal 86 (Support)** – Close an area near Denali National Park in Unit 13 to taking wolves

NPCA has been a consistent supporter of a conservative wolf management strategy on state lands to the north and east of Denali National Park. As such, we have signed onto several petitions to the BOG this year asking that an emergency regulation be considered given new information released by the National Park Service that wolf populations in Denali are at its lowest in 25 years. The preliminary NPS visitor data indicates the opportunity for the visiting public to view wolves within Denali has dropped from 45% in 2010, the last year the buffer was in place, to just 12% this past summer in 2012. That represents over 78,000 fewer park visitors that saw wolves in 2012 over 2010.

This is an economic issue – a couple trappers vs. tens of thousands of park visitors, including many residents and their visiting friends and family, along with the millions of dollars they bring to the state each year, partly due the opportunity to see wolves in Denali.

As such, NPCA supports this proposal and the opportunity to have a discussion about these new facts as they relate to the need for a restricting wolf harvest on state lands adjacent to the Denali Park and Preserve entrance.

**Proposal 87 (Oppose)** - Allow use of off-road vehicles for elderly and disabled to hunt caribou in Unit 13.

NPCA requests that if the Board adopts this proposal that NPS managed lands are exempted.

The NPS has a clearly defined policy on off road use within National Preserves that preempts state authority.

**Proposal 104 & 105 (Support):** Prohibit the snaring of bears in the Central/Southwest Region

The snaring of bears is currently not allowed on NPS managed lands due to significant human safety concerns, non-target harvest and ethical considerations regarding the harvest of bears.

The NPS has stated:

“The NPS opposes allowing the trapping of black bears. A host of problems can arise from this allowance including increased unintentional trapping of moose and caribou.”<sup>16</sup>

“This proposal would allow the use of traps to take black bears in GMU 16. This activity is inconsistent with NPS management regulations and policies. NPS is

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<sup>16</sup> NPS comment letter to BoG dated March 9,2006



also concerned about the human safety issues involved with the use of traps to take bears.”<sup>17</sup>

“This proposal would extend bear baiting seasons and locations, allow the use of snares to take black bears, and allow the taking of brown bears over bait ... NPS opposes implementation of this proposal on NPS lands and requests that consistent with 5 AAC92.115 (h) this proposal not be authorized on NPS lands.”<sup>18</sup>

NPCA supports the intent of these proposals as they pertain to lands managed by the NPS, and state lands bordering NPS managed lands, areas in which NPS wildlife resources that primarily reside in parks and preserves are subject to bear snaring activities on state managed lands.

**Proposals 106 (Oppose) - Open Unit 16 to brown bear baiting for residents and nonresidents in the spring and fall**

When the proposed 2013 Compendium for Denali is adopted in mid-February, brown bear baiting will be illegal on NPS managed lands be federal regulation.

If the Board should adopt some form of legal harvest of brown bears using bait, NPCA requests that NPS managed lands are exempted.

Historically, the NPS has commented to the Board on liberalizing bear baiting on NPS managed lands stating:

“We [NPS] are also concerned about expansion of bear baiting, because NPS has a long history of trying to prevent habituation of bears to food rewards, both to protect bears and for visitor safety.”<sup>19</sup>

“We [NPS] have public safety concerns for the non hunting visitor as they may unknowingly be entering areas where bait is being liberally added to the environment with the goal of attracting bears.” *referring to baiting in July / August / September*<sup>20</sup>

“This would allow the baiting of brown bears and we do not support this new allowance ... At this time our concerns are several: habituating brown bears to bait, public safety concerns for visitors to NPS areas and the likely possibility of attracting non-targeted species into these newly authorized baiting stations. Should the Board support this proposal, we request that NPS lands be specifically excluded.”<sup>21</sup>

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<sup>17</sup> NPS comment letter to the BoG dated February 11, 2009

<sup>18</sup> NPS comment letter to the BoG dated February 11, 2009

<sup>19</sup> NPS comment letter to the BoG dated February 11, 2010 and February 18, 2011

<sup>20</sup> NPS comment letter to the BoG dated August 29, 2010

<sup>21</sup> NPS comment letter to the BoG dated October 27, 2011



“This proposal would allow the use of traps to take black bears in GMU 16. This activity is inconsistent with NPS management regulations and policies.”<sup>22</sup>

“Bear trapping in some areas, like national park units, may lead to user conflicts where there is the potential for high use from non-hunters.”<sup>23</sup>

**Proposal 107 (Oppose)** - Retain the current no closed season for brown bear in the remainder of Unit 16B

The establishment of no closed season for brown bears creates a conservation concern for brown bears on NPS managed lands in Unit 16B. The rationale for adopting such a liberal brown bear harvest opportunity is to enhance the states predator control activities, which are inconsistent with NPS management mandates. If the board retains the no closed season for brown bears in Unit 16B, NPCA requests that NPS managed lands be exempted.

**Proposal 119 (Oppose)** - Open coyote hunting year round in the Central/Southwest Region Units

Allowing the harvest of coyotes during the summer months when adult dependent pups are in the den is inconsistent with NPS management purposes and values as well as presenting a conservation concern for the species. If the Board adopts a year round season NPCA requests that NPS managed lands be exempted.

**Proposal 120 (Support)** - Close the taking of coyotes on National Park Service lands during summer months and reduce the bag limit in the Central/Southwest Region.

The NPS considers the harvest of wolves and coyotes during the summer months when adult dependent pups are associated with the pack as inconsistent with NPS management purposes and values. Due to the Boards unwillingness to acknowledge this determination by the NPS, specific parks have been required to revoke the taking of wolves and pups in summer pupping months by park compendium.<sup>24</sup>

The NPS has commented on this issue in the past stating:

“This proposal would establish a year-round coyote hunting season with no limit on the number of animals that may be taken. The justification offered is for predator control to increase populations of Dall sheep, an activity which the NPS cannot support. Should the Board approve the measure, we request that NPS lands be specifically excluded.”<sup>25</sup>

“This proposal would establish a year-round coyote hunting season and increase the harvest limit to 10 coyotes per day. The author's justification is

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<sup>22</sup> NPS comment letter to BoG dated February 11, 2009

<sup>23</sup> NPS comment to the BoG dated February 10, 2011

<sup>24</sup> 2012 Lake Clark National Park and Preserve Compendium revoking State of Alaska wildlife harvest regulations. (Appendix B)

<sup>25</sup> NPS comment to the BoG dated February 16, 2007





for predator control to increase populations of Dall sheep. Should the Board support this proposal, we request that NPS lands be specifically excluded.”<sup>26</sup>

“This proposal would establish a year-round coyote hunting season with no limit on the number of animals that may be taken. We oppose extending the hunting season into months in which whelping occurs and when pelts are generally in less than prime condition. Should the Board support this proposal, we request that NPS lands be specifically excluded.”<sup>27</sup>

**Proposal 121 (Support)** - Prohibit the taking of wolves March through November in the Central/Southwest Region.

As previously noted, NPCA supports this proposal for all lands managed by the NPS.

**Proposal 122 (Support)** - Reauthorize the brown bear tag fees for the Central/Southwest Region.

For the reasons outlined in proposal 79, NPCA supports this proposal for lands managed by the NPS.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Jim Stratton".

Jim Stratton  
Alaska Regional Director

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<sup>26</sup> NPS comment to the BoG dated February 11, 2009

<sup>27</sup> NPS comment to the BoG dated February 11, 2009



**EXECUTIVE SUMMARY OF CHANGES  
SUPERINTENDENT'S PROPOSED COMPENDIUM  
2012  
LAKE CLARK NATIONAL PARK AND PRESERVE**

Lake Clark National Park and Preserve is seeking public comment on the park's proposed 2012 Superintendent's Compendium. The attached proposed compendium is a written compilation of designations, closures, permit requirements and other restrictions adopted under the Superintendent's discretionary authority. After review and consideration of the need for annual updates, the following changes are proposed.

**2.4(a)(2)(i) Carrying, using, or possessing weapons**

This section has been modified to clarify that public use cabins are not considered federal facilities where firearms are prohibited.

**2.10(d) Food storage: designated areas and methods**

The NPS received feedback suggesting this provision could be modified to provide the superintendent discretion to accommodate other appropriate food storage practices as well as the ability to make exceptions on a case by case basis when complying with the requirements would be overly burdensome or impossible and would not pose an undue risk of wildlife obtaining food from humans. The NPS is proposing to modify this provision to allow the superintendent to make exceptions or authorize other practices on a case by case basis.

The reasons for this change include:

- A public safety and resource conservation concern exists when wildlife obtain food from people or associate humans with any form of nutritional reward. The intent of the regulations is prevent wildlife from obtaining food from humans or associating humans with food.
- The NPS recognizes that other storage practices may be appropriate and deviations from this policy may be warranted in certain circumstances.

**2.14(a)(9) Sanitation: designated areas for disposal of human waste in undeveloped areas**

This section has been modified to reflect appropriate practices for disposal of human waste during winter months.

**3.14(a) Conditions for removing sunken, grounded, or disabled vessels**

This section was modified to make clear that a permit is not required for vessels that can be safely bailed out, ungrounded, or repaired on site safely by the operator if there is no potential for damage to resources.



### 13.40(e) Temporary closures to the taking of fish and wildlife

State of Alaska general (sport) wolf hunting and trapping seasons for Game Management Unit (GMU) 9 were extended by the Board of Game (BOG) to June 30, when wolves are denning and raising vulnerable offspring and their pelts have little to no trophy or economic value. The state changes apply to portions of Aniakchak, Katmai, and Lake Clark National Preserves.

The NPS proposes to restrict Aniakchak, Katmai, and Lake Clark Preserves to the take of wolves under the state sport hunting and trapping regulations during the timeframe wolves are denning. This change aligns hunting and trapping closure dates with the federal subsistence hunting season for GMU9, protecting wolves during vulnerable denning periods and while pelts are of poor quality. These season dates also align with neighboring GMU 17b State general (sport) and GMUs 17b and 19b federal subsistence hunting seasons, simplifying enforcement in the preserve. This compendia action strikes a balance and maintains current bag limits which have not resulted in excessive harvests by the public. Trapping bag limits remain unchanged from as early as 1993.

Public meetings were held in Port Alsworth and Nondalton in December 2011 where support for this proposed restriction was unanimous. Specific concerns expressed included that taking wolves during the summer could result in harvests with no tangible purpose. This has the potential to remove wolves that can and are taken later when furs are prime, providing local people with an essential cash crop where few other economic opportunities are presented. Public meetings are planned for King Salmon and Naknek in January 2012. Additional information specifying dates, times, and locations will be announced and available at NPS headquarters in King Salmon.

#### Proposed language for Aniakchak, Katmai and Lake Clark Compendia:

##### Wolf Hunting:

Units 9

Aniakchak, Katmai and Lake Clark wolves/day National Preserves	Aug. 10 – April 30	10
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##### Wolf Trapping

Units 9

Aniakchak, Katmai and Lake Clark National Preserves	Oct. 1 – April 30	No Bag limit
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*Within these NPS Preserves, a person may not take a wolf by hunting between May 1 and Aug 9.*

*Within these NPS Preserves, a person may not take a wolf by trapping between May 1 and Sep 30.*



Pursuant to Title 36 of the Code of Federal Regulations, Sections 13.40(e) and 13.50, the Superintendents of Aniakchak National Preserve, Katmai National Park & Preserve and Lake Clark National Park & Preserve have determined that temporary restrictions on the take of wolves during these hunting and trapping season extensions in these preserves is necessary to protect fundamental National Park Service (NPS) values associated with wildlife inhabiting NPS lands.

The reasons for these restrictions are:

The Alaska Board of Game (BOG), the public commission empowered to establish sport (general) hunting regulations in Alaska, voted in March 2011, to extend wolf (*Canis lupus*) hunting and trapping seasons in game management units (GMUs) 9 and 10 to June 30. These season liberalizations were implemented pursuant to the state's intensive management law (Alaska Statute, 16.05.255, 1994) and submitted for expedited approval. The Alaska Department of Fish and Game (ADF&G) issued an emergency order (EO) on April 1, 2011, to implement the extended seasons immediately, avoiding any delay to increased spring wolf harvests in 2011.

This EO followed an Intensive Management Plan (5AAC 92.125) approved by the BOG for GMU 10 to reduce wolf predation on caribou, specifically to restore the Unimak Island herd. This action was earlier blocked by the US Fish and Wildlife Service (USFWS) after they determined that the implementation of the aerial wolf control component of the plan was incompatible with refuge purposes. In the justification for the EO, ADF&G tied the liberalization directly to their unsuccessful efforts to implement predator control on refuge lands.

The Alaska Board of Game adopted Intensive Management Plans to reduce wolf predation on caribou and restore the herds, but the US Fish and Wildlife Service (USFWS) has deemed that the implementation of the aerial wolf control component of the plans is incompatible with refuge purposes on Unimak Island in Unit 10 and has not been approved by federal land managers in Unit 9....

In recognition of the need to reduce wolf predation on caribou in Units 9 and 10, this emergency order uses the Commissioner's authority to extend wolf hunting and trapping seasons until June 30 and eliminates the delay in the implementation of the Board's regulations (ADF&G Emergency Order, April, 2011).

Federal law provides that the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wildlife therein and prohibits impairment of park resources or values. Under NPS management policies, activities that may result in impairment include those that impact a "resource or value whose conservation is . . . key to the natural . . . integrity of the park or to provide opportunities for enjoyment of the park." Because the impact threshold at which impairment occurs is not readily apparent, the NPS policies require managers to avoid unacceptable impacts to park resources and values. Unacceptable impacts are



those that are inconsistent with park purposes and values; diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values; or those that unreasonably interfere with other appropriate uses.

In addition to above, the legislated purposes of Katmai and Lake Clark include the protection of habitat for and populations of fish and wildlife. Congress directed the NPS to manage national preserves in the same manner as national parks with the exception that sport hunting and trapping are authorized. National park areas are closed to the taking of wildlife except as specifically authorized by Congress. Congress authorized taking of wildlife in NPS preserves for Title VIII subsistence uses, trapping, and sport hunting. The legislative history provides that “[t]he standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the park system shall be protected in perpetuity and shall not be jeopardized by human uses. These are very special lands and this standard must be set very high: the objective for park system lands must always be to maintain the health of the ecosystem and the yield of fish and wildlife for hunting and trapping must be consistent with this requirement.” The state’s general hunting program applies in NPS preserves to the extent that it is consistent with NPS laws and regulations. The NPS may close or restrict the take of wildlife in preserves pursuant to ANILCA section 1313 and federal regulations at 36 CFR 13.50.

State justifications for these season extensions are founded on intensive management predator control objectives and create unacceptable impacts to the preserves’ purposes and values. The practice of hunting or trapping wolves into summer has long been prohibited. Consistent with sound management principles and conservation of wildlife, practices that disturb animals when they are in a vulnerable state—in their dens, when reproducing, injured, or very young—are usually avoided. Accordingly, these practices have generally been prohibited under federal subsistence and the state’s general hunting regulations.

Continuation of the natural process is expected in park areas except as specifically authorized by Congress. The take of denning wolves sanction practices that have the potential to impact the natural integrity of a native species. The practical effect of these allowances, open to all hunters and trappers, is increased efficiency for taking predator species and has potential to create pressures on the natural abundance, behavior, distribution, and ecological integrity of these native wildlife species. State laws or actions that seek to manipulate natural wildlife populations for human consumption, or have that practical effect, are inconsistent with NPS statutes, regulations, and policies and exceed Congress’s authorization of sport hunting in ANILCA.

The NPS recognizes and supports subsistence and sport hunting, and trapping. These activities are important heritage activities in NPS preserves in Alaska. However, introducing NPS preserves to these liberalized wolf harvest opportunities, to include pups, when pelts are of poor quality and offspring are vulnerable, for the purpose of reducing predator populations, are unacceptable impacts which exceed the authorization of sport hunting. This compendium provision recognizes that state and federal mandates differ in this case and adopts a federal restriction for NPS preserves to comply with



federal law and policy in park areas. The NPS remains committed to managing park resources and values in a way that minimizes interference with state management of resident wildlife resources.

The reasons less restrictive measures will not be effective are as follows:

- The NPS has consulted with the State of Alaska and has requested the state exempt NPS preserves from the authorization as has been done in other cases where federal and state objectives differ (i.e., intensive management and predator control). Should the State of Alaska modify state regulations and provide an exception for NPS areas, this restriction would not be necessary to protect park resources and values and would not be implemented. If the state authorization is unchanged, these restrictions will remain in place pending promulgation of a federal rule/regulation.



## LAKE CLARK NATIONAL PARK AND PRESERVE PROPOSED COMPENDIUM 2012

National Park Service (NPS) regulations applicable to the protection and equitable public use of units of the National Park System grant specified authorities to a park superintendent to allow or restrict certain activities. NPS regulations are found in Titles 36 and 43 of the Code of Federal Regulations (CFR) and created under authority and responsibility granted the Secretary of Interior in Titles 16 and 18 of the United States Code. The following compendium comprises a listing of NPS regulations that provide the Superintendent with discretionary authority to make designations or impose public use restrictions or conditions in park areas. The applicability and scope of the compendium is articulated in 36 CFR Sections 1.2 and 13.2, and 43 CFR Section 36.1.

The larger body of NPS regulations that do not provide discretionary authority to the Superintendent is not cited in this compendium. A complete and accurate picture of regulations governing use and protection of the unit can only be gained by viewing this compendium in context with the full body of applicable regulations found in Titles 36 and 43 CFR. *Please contact Lake Clark National Park and Preserve, Port Alsworth, Alaska at (907) 781-2218 for questions relating to information provided in this compendium.*

### TITLE 36 CODE OF FEDERAL REGULATIONS

#### PART 1. GENERAL PROVISIONS

##### 1.5 Closures and public use limits

###### (a)(1) Visiting hours, public use limits, closures

A permit is required for group sizes exceeding 15 individuals.

From May 1 through August 31, meadow north of the slough in Chinitna Bay as shown on the attached map is closed.

See specific sections in this document for additional information regarding visiting hours, public use limits, and closures.

###### (a)(2) Designated areas for specific use or activity or conditions

See specific sections in this document for additional information regarding designated areas and conditions for engaging in certain activities.

##### 1.6(f) Compilation of activities requiring a permit

- Scientific research, 1.5
- Group sizes exceeding 15 individuals, 1.5
- Collecting research specimens, 2.5
- Operating a power saw in developed areas, 2.12(a)(2)
- Operating a portable motor or engine in undeveloped areas, 2.12(a)(3)



- Operating a public address system, 2.12(a)(4)
- Air delivery, 2.17(a)(3)
- Noncommercial soliciting, 2.37
- Using, possessing, storing, or transporting explosives, blasting agents, or explosive materials, 2.38(a)
- Using or possessing fireworks and firecrackers, 2.38(b)
- Special events, 2.50(a)
- Demonstrations involving 26 or more persons, 2.51
- Sale and distribution of printed matter for First Amendment purposes by groups of 26 or more persons, 2.52
- Grazing, 2.60(a)(1), (2)
- Residing on federal lands, 2.61(a)
- Installing a monument or other commemorative installation, 2.62(a)
- Towing a person using a parasail, hang glider, or other airborne device, 3.12(b)
- Removing sunken, grounded, or disabled vessels, 3.14(a)
- Operating a submersible, 3.19
- Commercial notices or advertisements, 5.1
- Commercial operations, 5.3
- Commercial photography or filming, 5.5
- Construction or repair of any building, structure, facility, road, trail, or airstrip on federal lands, 5.7
- Mining operations (9.9(a)) or an approved Plan of Operations (in lieu of permit)
- Cabins on federal lands, 13.100-13.188
- Subsistence use in the Park by person who does not live within the Park boundary or a resident zone community, 13.440(a)
- Using aircraft access for subsistence activities in the Park, 13.450(a), 13.450(b)(1)
- Cutting of live standing timber greater than 3 inches in diameter for non-commercial subsistence uses, 13.85(a)(1)
- Access to inholdings where access is not made by aircraft, snowmachine, motorboat or non-motorized surface transportation, 43 CFR 36.10(b)
- Salvaging, removing, possessing aircraft, 43 CFR 36.11 (f)(3)(ii)
- Helicopter landings, 43 CFR 36.11(f)(4)
- Off-road vehicle (ORV) use, 43 CFR 36.11(g)(2)
- Temporary access across federal land for survey, geophysical or exploratory work, 43 CFR 36.12(c)

## **PART 2. RESOURCE PROTECTION, PUBLIC USE AND RECREATION**

**2.1(a)(4) Designated areas for collection of dead wood on the ground for firewood**  
Superseded by 13.35(c)(4), 13.35(d), and 13.485(b).

**2.1(a)(5) Designated areas and conditions for walking on, climbing, entering, ascending, descending, or traversing an archeological or cultural resource, monument, or statue**





No designated areas or conditions.

**2.1(b) Designated trails**

No restrictions on walking or hiking.

**2.1(c)(1)-(3) Designated fruits, nuts, berries, and unoccupied seashells to harvest by hand and collection restrictions**

Superseded by 13.35(c) and 13.485(b).

**2.2(d) Established conditions and procedures for transporting lawfully taken wildlife through park areas**

See also 13.40(d)(5).

**2.2(e) Designated areas for wildlife viewing with artificial light**

No areas designated for closure.

**2.3(d)(2) Fresh waters designated as open to bait fishing with live or dead minnows or other bait fish, amphibians, nonpreserved fish eggs or fish roe**

No waters are designated as open to fishing with the types of bait identified above. Other types of bait may be used in accordance with state law. Subsistence fishing by federally qualified rural residents is allowed in accordance with 36 CFR part 13 and 50 CFR part 100.

**2.3(d)(8) Designated areas open for fishing from motor road bridges and public boat docks**

All areas are designated as open for fishing from motor road bridges and boat docks.

**2.4(a)(2)(i) Carrying, using, or possessing weapons**

Individuals are authorized to possess firearms in NPS areas in accordance with applicable state and federal law. With the exception of public use cabins, possession of firearms is prohibited in Federally owned or leased buildings. The laws regarding discharge of firearms remain unchanged.

**2.10(a) Camping: conditions and permits**

Superseded in part by 13.25.

**2.10(d) Food storage: designated areas and methods**

(1) Definition: A *bear resistant container* (BRC) means an item constructed to prevent access by a bear. BRC's include—

- Items approved by the Department of Interior and Agriculture's Interagency Grizzly Bear Committee ( <http://www.igbconline.org/html/safety.html>);
- Any additional items listed by the State of Alaska, Department of Fish and Game, Division of Wildlife Conservation (<http://www.wildlife.alaska.gov/index.cfm?adfg=bears.containers> ), with the concurrence of the Superintendent;



- Items or methods approved by the Superintendent.
- (2) In designated areas - within ½ mile of the coast line of Cook Inlet and within ½ mile of the shore line of Telaquana Lake, Crescent Lake, Turquoise Lake, Upper Twin Lake and Lower Twin Lake – food and beverages, food and beverage containers, garbage and harvested fish must be stored in a bear resistant container (BRC) or secured—
- Within a hard sided building;
  - Within lockable and hard sided section of a vehicle, vessel, or aircraft; or
  - By caching a minimum of 100 feet from camp and suspending at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk or other object on a line or branch that will not support a bear’s weight.
  - The Superintendent may, upon request, waive or modify food storage requirements in circumstances where compliance with these requirements is not possible, overly burdensome, and is not inconsistent with public safety and wildlife conservation interests.
- (3) This provision does not apply to—
- Areas not designated in paragraph (2);
  - Food that is being transported, consumed or prepared for consumption; and
  - Clean dishes and cooking equipment free of food orders.
  - Bait being used for trapping and hunting under the provisions of state and federal law.

*The intent of these designations is to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike. We strongly recommend that dishes and cooking equipment be securely stored; but clean and odor free items are not required to be stored in secure containers. We also recommend using BRC’s in all areas of the park, but do not require it. Ice chests and coolers, tents, dry bags or stuff sacks, plastic packing boxes (Totes, Action Packers, etc) and unmodified kayaks are not generally approved as BRC. The park offers bear resistant containers for temporary use to the public. The containers are free of charge and can be picked up at the park’s visitor center in Port Alsworth.*

**2.11 Picnicking: designated areas**

Superseded by 13.26.

**2.13(a)(1) Fires: designated areas and conditions**

Campfires are authorized in all areas without a permit. All trash (foil, burnt food, glass, and cans) must be removed from the fire site after use.

**2.14(a)(2) Sanitation and refuse: conditions using government receptacles**

Dumping of refuse brought into the park in the NPS landfill or trash receptacles is prohibited unless otherwise authorized by the Superintendent.



*This requirement is intended to ensure the refuse handled by the park is generated by activities occurring within the park.*

**2.14(a)(5) Sanitation: designated areas for bathing and washing**

No designated areas. Unless otherwise allowed by the Superintendent, bathing and washing of cooking utensils, food and other property at all public water outlets, fixtures, or pools is prohibited.

**2.14(a)(7) Sanitation: designated areas for disposal of fish remains**

Silver Salmon Creek: all fish must be gutted and cleaned on the ocean beach.

In all other areas, fish remains may not be disposed on land, or in waters within 200 feet of public boat docks, designated swimming beaches, or within developed areas for reasons of public health and safety.

*Fish remains may not be disposed of on either land or water within 200 feet of public boat docks or designated swimming beaches, or within developed areas for reasons of public health and safety.*

**2.14(a)(9) Sanitation: designated areas for disposal of human waste in undeveloped areas**

When the ground is not frozen, human feces must be either packed out or deposited in a "cathole" dug 6-8 inches deep in soil at least 100 feet from any water source, shoreline, campsite or trail. When the ground is frozen, human feces must be disposed over at least 100 feet from any water source and covered with snow or packed out.

Tissue paper and sanitary items should be buried, burned or packed out.

*The intent of these conditions is to provide for healthy, sanitary and visually aesthetic environments as well as to protect natural resources.*

**2.14(b) Sanitation: conditions concerning disposal, carrying out of human waste**

Toilet paper will be burned or removed as trash.

**2.15(a)(1) Areas designated as closed to pets**

No designated areas. Pets must be leashed or physically restrained at all times.

**2.15(a)(3) Conditions for leaving pets unattended and tied to an object**

No conditions at present.

*Leaving pets unattended and tied to an object is prohibited.*

**2.15(a)(5) Pet excrement disposal conditions**

No conditions at present.



**2.15(b) Conditions for using dogs in support of hunting activities**

No conditions at present.

**2.16 (a)-(c) Horses and pack animals**

Superseded by 43 CFR 36.11(e).

Access for subsistence purposes under 36 CFR 13.460(a) supersedes this section.

**2.17(a)(1) Aircraft operation**

Superseded by 43 CFR 36.11(f)(1).

Use of aircraft in the Park for subsistence purposes is prohibited under 36 CFR 13.450.

**2.17(a)(2) Aircraft operation near docks, piers, swimming beaches and other designated areas**

No areas prohibited.

**2.17(c)(1) Conditions for removing downed aircraft**

Superseded by 43 CFR 36.11(f)(3)(ii).

**2.18(c) Snowmobiles: designated areas for use**

No areas designated for snowmachine use.

Superseded in part by 43 CFR 36.11(c).

Superseded by 36 CFR 13.460 for subsistence uses.

**2.19(a) Winter activities on roads and in parking areas: designated areas**

Roads and parking areas open to vehicle traffic in the winter are designated as open to winter activities.

**2.19(b) The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes**

No designated areas or routes.

**2.20 Skating and skateboards**

Superseded by 43 CFR 36.11(e).

**2.21 Smoking**

All public buildings are closed to smoking unless specifically permitted and signed as a designated smoking area. Smoking is prohibited within 100 feet of the park fuel and aviation gas storage facility.

*These restrictions are intended to protect public safety from fire or explosion around fuel storage and dispensing facilities.*

**2.22 Property: leaving property unattended for longer than 24 hours**

Superseded by 13.45.



**2.35(a)(3)(i) Alcoholic beverages: areas designated as closed to consumption**

No areas designated as closed.

**2.38(b) Fireworks: permits, designated areas, and conditions**

No areas designated for use of fireworks.

**2.51 First Amendment Demonstrations**

The area depicted on the attached map titled “Designated Area for First Amendment Activities” is open to public demonstrations by groups that involve 25 or fewer persons without a permit. Demonstrations involving twenty-six or more individuals must have a permit issued by the superintendent.

**2.52 Designated areas for sale and distribution of printed matter for First Amendment purposes**

The area depicted on the attached map titled “Designated Area for First Amendment Activities” is open to sale or distribution of printed matter by groups that involve 25 or fewer persons without a permit. Printed matter is limited to message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, provided that it is not solely commercial advertising. Groups involving twenty-six or more individuals must have a permit issued by the superintendent.

**2.60(a)(3) Designated areas for grazing**

Grazing of pack or saddle animals by private parties, not to exceed 14 days, is authorized without a permit. Any feed brought in must be “weed-free.” Grazing in support of commercial operations is only allowed under permit from the superintendent.

*These restrictions seek to lessen the impact of extended camps on vegetation.*

**2.62(b) Memorialization: designation of areas for scattering ashes**

All areas are open to scattering of ashes without a permit.

**PART 3. BOATING AND WATER USE ACTIVITIES**

**3.3 Permits**

No permits required at present.

**3.7 Personal Flotation Devices: designated times and/or activities**

No designated times or activities. PFDs must be worn in accordance with 33 CFR part 175.

**3.8(a)(2) Boating, prohibited operations: designated launching areas**

All areas are open to launching of boats.



**3.8(a)(4) Operating a vessel in excess of designated length, width, or horsepower**  
No designations at present.

**3.8(b)(3) Operating a vessel in excess of flat wake speed in designated areas**  
No designated areas.

**3.12(a) Water skiing: designated waters**  
All areas designated open.

**3.14(a) Conditions for removing sunken, grounded, or disabled vessels**  
A permit is required from the Superintendent before sunken, grounded, or disabled vessels may be removed from waters within NPS administered areas except when the operator is able to remove or repair the vessel on site safely and without potential for damage to resources.

*This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources and provide for public safety.*

**3.16 Swimming and wading: areas designated as closed**  
All areas are open to swimming and wading.

**3.17(a) Designated swimming areas and beaches**  
No designated areas.

**3.17(c) Use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or beaches**  
No restrictions at present.

**3.18(a) SCUBA and underwater diving: closures and restrictions**  
No closures or restrictions at present.

#### **PART 4. VEHICLES AND TRAFFIC SAFETY**

**4.10 Routes or areas designated for off-road motor vehicle use in Preserves**  
No routes or areas designated.  
See also 43 CFR 36.11(g).

**4.11(a) Load weight and size limits: permit requirements and restrictive conditions**  
No restrictions at present.

**4.21(b)-(c) Speed limits: designation of a different speed limit**  
No designations; therefore park area speed limits of 15 miles per hour apply in the business and residential areas.



*All vehicles should operate at a safe speed, especially in the Port Alsworth headquarters/residential areas.*

**4.30(a) Routes designated as open to bicycles**

Superseded by 43 CFR 36.11(e).

**4.30(d)(1) Wilderness closed to bicycle use**

Superseded by 43 CFR 36.11(e).

**4.31 Hitchhiking: designated areas**

All areas are open to hitchhiking.

**PART 5. COMMERCIAL AND PRIVATE OPERATIONS**

**5.7 Construction of buildings, roads, trails, airstrips, or other facilities**

Maintenance of established landing strips utilizing non-motorized hand tools is not considered construction or repair and no permit is required.

**PART 13. ALASKA REGULATIONS**

**13.25(a) Temporary closures and restrictions to camping**

No closures or restrictions at present.

**13.25(b) Site time limits: authorization to exceed 14 day limit at one location**

No general exceptions at present.

**13.25(c) Designated campgrounds: restrictions, terms, and conditions**

No designated campgrounds.

**13.26 Picnicking-areas where prohibited or otherwise restricted**

Chinitna Bay bear viewing area - Picnicking in Chinitna Bay from Glacier spit to the NPS Ranger Cabin (2 miles east) is prohibited above the beach from June 1 thru August 30.

*This restriction is intended to minimize the risk of negative human/bear interactions and prevent bears from associating food with the bear viewing area.*

**13.30(b) Temporary closures or restrictions to carrying, possessing, or using firearms**

There are no additional restrictions.

**13.35(d) Collection of dead standing wood: areas designated as open and conditions for collection**

No designated areas.



**13.35(f)(1) Natural features: size and quantity restrictions for collection**

No restrictions at present.

**13.35(f)(2) Natural features: closures or restrictions due to adverse impacts**

No closures or restrictions at present.

**13.40(e) Temporary closures or restrictions to the taking of fish and wildlife**

Wolf Hunting:

Units 9

Aniakchak, Katmai and Lake Clark wolves/day National Preserves	Aug. 10 – April 30	10
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Wolf Trapping

Units 9

Aniakchak, Katmai and Lake Clark National Preserves	Oct. 1 – April 30	No Bag limit
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*Within these NPS Preserves, a person may not take a wolf by hunting between May 1 and Aug 9.*

*Within these NPS Preserves, a person may not take a wolf by trapping between May 1 and Sep 30.*

**13.45(b)(1)-(6) Exceptions to unattended or abandoned property**

Superintendent authorizations for exceptions for unattended or abandoned property are made on a case by case basis. Contact park headquarters for more information.

**13.45(c) Designated areas where personal property may not be left unattended for any time period, limits on amounts and types, manner in which property is stored**

No designated areas.

**13.50(h) Facility closures and restrictions**

No restrictions at present.

**13.122 Established conditions for removal of cabin for which a cabin permit has been denied, expired, or revoked**

No conditions established at present (may require access permit).

**13.160 Designated existing cabins, shelters or temporary facilities that may be shared for subsistence uses without a permit**

No designations at present. All subsistence use requires permit from superintendent.





**13.166 Established conditions and standards governing the use and construction of temporary structures and facilities for subsistence purposes, published annually**

No conditions or standards established at present.

**13.170 Designated cabins or other structures for general public use**

No designations; however, all NPS cabins, not otherwise under NPS permit, are open for short-term public use (up to 14 days per year). NPS ranger station cabins are excluded.

**13.172 Established conditions and allocation system to manage the use of designated public** Not applicable.

**13.188(b) Established conditions for removal of temporary facility used in excess of 14 days**

Individuals must remove facility, all personal property, and return the site to its natural condition.

*These conditions are intended to protect the park from impacts to vegetation and soil and to ensure that personal items are not left in the park.*

**13.460 Closures or restrictions to the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses**

See also 36 CFR 2.16, 2.17, 2.18, 3.6, 4.10, 4.30; 43 CFR 36.11(c)-(e).

**13.485(a)(1) Permit specifications for harvesting standing timber greater than 3" diameter for subsistence purposes (house logs & firewood)**

The superintendent may allow subsistence harvest of trees greater than 3" subject to the terms and conditions of a permit issued by the superintendent.

*The above restriction serves to minimize impact to park resources and protect against overharvest.*

**13.485(a)(2) Restrictions on cutting of timber less than 3" in diameter for subsistence purposes**

Stumps shall be 8 inches or less above the ground.

*The above restriction is intended to make cut stumps visually blend in with the surroundings while minimizing safety hazards associated with timber harvest.*

**43 CFR, PART 36 TRANSPORTATION AND UTILITY SYSTEMS (Access Regulations)**

**36.11(c) Temporary closures to the use of snowmachines for traditional activities**



No closures at present.  
See also 2.18.

**36.11(d) Temporary closures to the use of motorboats**

No closures at present.  
See also 3.3, 3.6.

**36.11(e) Temporary closures to the use of non-motorized surface transportation**

No closures at present.  
See also 2.16, 3.3, 3.6.

**36.11(f)(1) Temporary closures to landing fixed-wing aircraft**

No closures at present.

**36.11(f)(3)(ii) Established procedure for salvaging and removing downed aircraft**


A permit is required from the superintendent before downed aircraft may be salvaged and removed from the NPS lands; violation of the terms and conditions of the permit is prohibited.

*This requirement allows the superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.*

**36.11(g)(2) Use of off-road vehicles (ORV) on existing trails**

No designated trails. See also 4.10.

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**Superintendent**  **Date** 1/13/12

- Attachment:
- 2.10 Food Storage Determination
  - 3.20 Water skiing Determination
  - 3.14(a) Conditions for removing sunken, grounded, or disabled vessels
  - 1.5 Closures and public use limits at Chinitna Bay
  - Designated areas for First Amendment Activities



## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Food Storage

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(c) and 2.10(d), the Superintendent of Lake Clark National Park and Preserve has determined that in order to protect public safety and prevent adverse impacts to wildlife, conditions are placed on storage of food, garbage, harvested fish, and equipment used to cook or store food throughout the park.

The reasons for this restriction are as follows:

1. Wildlife in a natural ecosystem are adapted to subsist on natural foods. Obtaining human food may adversely affect behavior of individuals and the health of wildlife populations. Because natural processes are expected within NPS areas, wildlife should not obtain food from people.
2. Both black and brown bears are common throughout parklands and are readily attracted to even small quantities of human food. They are very curious and intelligent, and will commonly open or enter containers, tents, and structures.
3. Bears are extremely susceptible to conditioning to human food sources. Once they have learned to associate a site or item (e.g. tent, kayak, boat, etc.) with acquisition of food, they may return to that source repeatedly for further food rewards.
4. It does not matter whether the material is fresh, dry, powdered, canned, etc. Once a curious bear has obtained a positive food reward, it will return and / or continue to seek out further rewards in similar situations.
5. Due to the transfer of knowledge from sows to cubs and the long life span of individual bears, young bears exposed to human foods may display unnatural and unacceptable behavior for decades.
6. Bears which become conditioned to human food are likely to be killed by humans in defense of life or property inside the parklands or on adjacent lands.
7. Humans are at risk of injury or death when bears attempt to obtain food from tents, packs, vessels, or other similar areas.

The reasons less restrictive measures will not be effective are as follows:

1. Educational efforts regarding proper food storage and disposal of food and garbage have been undertaken by state and federal agencies in Alaska and in other western states for many years. These efforts have undoubtedly reduced food conditioning and wildlife/ human conflicts.
2. Recognizing that variations in the environment and recreational activities require multiple food storage options, NPS managers have undertaken the following to assist visitors and make these conditions less onerous by making bear resistant containers (BRCs) available at NPS headquarters.
3. Despite these efforts, NPS managers repeatedly encounter situations in which food or garbage is improperly stored throughout the parklands.



4. The food storage conditions under this section allow for a wide variety of storage options, including free loans of portable BRC units, to make compliance less onerous.
5. We have considered the use of the State of Alaska regulations which prohibit intentionally or negligently feeding wildlife or leaving human food, pet food, or garbage in a manner that attracts wildlife. While NPS officers cannot enforce this state regulation directly, the NPS considered this language for the compendium. Given the NPS mandate to protect wildlife, the NPS prefers a proactive approach designed to prevent wildlife from obtaining food from humans, intentionally or unintentionally.
6. Given the lack of complete compliance with educational efforts, the flexibility in compliance options, and the effort made by park managers to provide free equipment to promote compliance, these conditions are the least restrictive required to fulfill the parklands mission of protecting wildlife and human safety.



## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Water Skiing

Pursuant to Title 36 of the Code of Federal Regulations, 3.20(a), the Superintendent of Lake Clark National Park and Preserve has determined that it is reasonable to allow water skiing especially considering the very small scale at which this activity currently exists.

The reasons for this opening are as follows:

1. Pursuant to Title 43 of the Code of Federal Regulations 36.11(d) motor boats may be operated on all area waters, except where such use is prohibited or otherwise restricted. At present there are no restrictions on motorboats.
2. The minimal amount of water skiing that currently occurs is limited to Lake Clark and more specifically Hardenburg Bay near the village of Port Alsworth.
3. Presently water skiing is limited by the cold water temperatures of Lake Clark to a few hot sunny days mostly in June or July.
4. The most likely adverse effects of water skiing would be visitor use conflict or possible adverse impacts on nesting waterfowl. At present the NPS has no data on negative impacts to nesting birds nor has the NPS received any comments on negative impacts to other user groups.

## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Conditions for removing sunken, grounded, or disabled vessels

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(c) and 3.14(a), the Superintendent of Lake Clark National Park and Preserve is requiring a permit before sunken, grounded, or disabled vessels may be removed from the park.

The reasons for this restriction are as follows:

- This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

The reasons less restrictive measures will not be effective are as follows:

- How to protect park resources, public safety, and minimize visitor impact when removing a disabled vessel needs to be addressed on a case by case basis since the circumstances involved in each incident is unique. A permit allows the park and the boater maximum flexibility to address the specific circumstances at hand when removing disabled vessels.



## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Conditions for removing sunken, grounded, or disabled vessels

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(c) and 3.14(a), the Superintendent of Lake Clark National Park and Preserve is requiring a permit before sunken, grounded, or disabled vessels may be removed from the preserve if the operator is unable to do so without risking damage to resources or endangering public safety.

The reasons for this restriction are as follows:

- This requirement allows the Superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.

The reasons less restrictive measures will not be effective are as follows:

- How to protect resources, public safety, and minimize visitor impact when removing a disabled vessel needs to be addressed on a case by case basis since the circumstances involved in each incident is unique. A permit allows the NPS and the boater maximum flexibility to address the specific circumstances at hand when removing disabled, grounded or sunken vessels.



Subject: Closures and public use limits

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(a)(1) the Superintendent of Lake Clark National Park and Preserve has determined:

A permit is required for group sizes exceeding 15 individuals.

The reasons for this restriction are as follows:

1. Remote areas that have not been naturally hardened are susceptible to accelerated degradation from large groups.
2. Large groups visiting the park has resulted in impacts to pristine environments from trampling vegetation, compacting soils, improper human waste disposal, and gathering downed and dead wood.
3. Requiring a permit will enable large groups to enjoy the park in a manner consistent the protecting park resources. This process will help groups select appropriate locations for their activities, ensure groups receive information on Leave-No-Trace techniques and NPS regulations, and allow for conditions to minimize impacts to park resources.

The reasons less restrictive measures will not be effective are as follows:

1. Unregulated large groups tend to have unacceptable impact to park resources.
2. Educational efforts regarding Leave No Trace and techniques to minimize group impacts in sensitive habitats have not been fully successful. In some sensitive habitats degradation continues to expand with large group size.



## Determination of Need for a Restriction, Condition, Public Use Limit, or Closure

Subject: Food Storage: designated areas and methods

Pursuant to Title 36 of the Code of Federal Regulations, 2.10(d) the Superintendent of Lake Clark National Park and Preserve has determined:

In order to protect public safety and prevent adverse impacts on wildlife, Crescent Lake will be added to the list of lake shores and areas requiring the use of bear resistant food containers in Lake Clark National Park. Crescent Lake is located on the southwest flank of Mount Redoubt. Historically this area has seen limited camping activity due to high density bear populations and dense vegetation. Recently the area has experienced increased camping activity and a corresponding increase in the number of incidents that bears have been exposed to human food sources. The required use of Bear Resistant Food Containers in this area is intended to reduce the number of incidents in which bears may gain access to human food sources.





**Subject: Closures and public use limits**

Pursuant to Title 36 of the Code of Federal Regulations, 1.5(a)(1) the Superintendent of Lake Clark National Park and Preserve has determined:

From May 1 through August 31, the meadow north of the slough in Chinitna Bay as shown on the attached map is closed.

The reasons for this restriction are as follows:

- The NPS is concerned over bear-human conflicts and critical bear habitat in Chinitna Bay. Between May and August, this area is critical habitat for bear feeding and mating activity.
- Bears congregate in this meadow and move freely between the forested area to the north and the slough. In 2009, over 60 individual bears reportedly occupied this area.
- Most bear viewing activity occurs in two prominent locations along the south side of the slough. One area is on private property. The other is a long recognized NPS viewing area north east of the private property. The NPS is considering the identification of a third viewing location to provide additional bear viewing opportunities. Human movement between these viewing areas should be limited to travel below the vegetation line along the Chinitna Bay beach. This route of travel provides the best visibility for visitors to minimize surprise bear /human encounters in tall grass or dense spruce vegetation and will help minimize inadvertent trespass on private property. Unregulated travel along the south bank of the slough inadvertently pushes bears back into the meadow interferes with visitors occupying bear viewing locations by pushing bears out of sight.

The reasons less restrictive measures will not be effective are as follows:

Commercial operators are already subject to this restriction and generally compliance among commercial operators is good. However, in recent years, unguided visitors have entered this area during this critical time period, jeopardizing public safety by increasing the likelihood of bear-human conflicts and also potentially impacting bears.





APPENDIX B: NPS/ADF&G MASTER MEMORANDUM OF UNDERSTANDING

BETWEEN  
THE ALASKA DEPARTMENT OF FISH AND GAME  
JUNEAU, ALASKA  
AND  
THE U.S. NATIONAL PARK SERVICE  
DEPARTMENT OF THE INTERIOR  
ANCHORAGE, ALASKA

This Master Memorandum of Understanding between the State of Alaska, Department of Fish and Game, hereinafter referred to as the Department and the U.S. Department of the Interior, National Park Service, hereinafter referred to as the Service, reflects the general policy guidelines within which the two agencies agree to operate.

WHEREAS, the Department, under the Constitution, laws, and regulations of the State of Alaska, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State on the sustained yield principle, subject to preferences among beneficial uses; and

WHEREAS, the Service, by authority of the Constitution, laws of Congress, executive orders, and regulations of the U.S. Department of the Interior is responsible for the management of Service lands in Alaska and the conservation of resources on these lands, including conservation of healthy populations of fish and wildlife within National Preserves and natural and healthy populations within National Parks and Monuments; and

WHEREAS, the Department and the Service share a mutual concern for fish and wildlife resources and their habitats and desire to develop and maintain a cooperative relationship which will be in the best interests of both parties, the fish and wildlife resources and their habitats, and produce the greatest public benefit; and

WHEREAS, the Alaska National Interest Lands Conservation Act (ANILCA) and subsequent implementing Federal regulations recognize that the resources and uses of Service lands in Alaska are substantially different than those of similar lands in other states and mandate continued subsistence uses in designated National Parks, plus sport hunting and fishing, subsistence, and trapping uses in National Preserves under applicable State and Federal laws and regulations; and



(copy)

WHEREAS, the Department and the Service recognize the increasing need to coordinate resource planning and policy development;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

THE DEPARTMENT OF FISH AND GAME AGREES:

1. To recognize the Service's responsibility to conserve fish and wildlife and their habitat and regulate the human use on Service lands in Alaska, in accordance with the National Park Service Organic Act, ANILCA, and other applicable laws.
2. To manage fish and resident wildlife populations in their natural species diversity on Service lands, recognizing that nonconsumptive use and appreciation by the visiting public is a primary use and appreciation by the visiting public is a primary consideration.
3. To consult with the Regional Director or his representative in a timely manner and comply with applicable Federal laws and regulations before embarking on management activities on Service lands.
4. To act as the primary agency responsible for management of subsistence uses of fish and wildlife on State and Service lands, pursuant to applicable State and Federal laws.
5. To recognize that National Park areas were established, in part, to "assure continuation of the natural process of biological succession" and "to maintain the environmental integrity of the natural features found in them."

THE NATIONAL PARK SERVICE AGREES:

1. To recognize the Department as the agency with the primary responsibility to manage fish and resident wildlife within the State of Alaska.
2. To recognize the right of the Department to enter onto Service lands after timely notification to conduct routine management activities which do not involve construction, disturbance to the land, or alterations of ecosystems.
3. To manage the fish and wildlife habitat on Service lands so as to ensure conservation of fish and wildlife populations and their habitats in their natural diversity.



(copy)

4. To cooperate with the Department in planning for management activities on Service lands which require permits, environmental assessments, compatibility assessments, or similar regulatory documents by responding to the Department in a timely manner.
5. To consider carefully the impact on the State of Alaska of proposed treaties or international agreements relating to fish and wildlife resources which could diminish the jurisdictional authority of the State, and to consult freely with the State when such treaties or agreements have a significant impact on the State.
6. To review Service policies in consultation with the Department to determine if modified or special policies are needed for Alaska.
7. To adopt Park and Preserve management plans whose provisions are in substantial agreement with the Department's fish and wildlife management plans, unless such plans are determined formally to be incompatible with the purposes for which the respective Parks and Preserves were established.
8. To utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska.
9. To recognize the Department as the primary agency responsible for policy development and management direction relating to subsistence uses of fish and wildlife resources on State and Service lands, pursuant to applicable State and Federal laws.
10. To consult and cooperate with the Department in the design and conduct of Service research or management studies pertaining to fish and wildlife.
11. To consult with the Department prior to entering into any cooperative land management agreements.
12. To allow under special use permit the erection and maintenance of facilities or structures needed to further fish and wildlife management activities of the Department on Service lands, provided their intended use is not in conflict with the purposes for which affected Parks or Preserves were established.



(copy)

THE DEPARTMENT OF FISH AND GAME AND THE NATIONAL PARK SERVICE  
MUTUALLY AGREE:

1. To coordinate planning for management of fish and wildlife resources on Service lands so that conflicts arising from differing legal mandates, objectives, and policies either do not arise or are minimized.
2. To consult with each other when developing policy, legislation, and regulations which affect the attainment of wildlife resource management goals and objectives of the other agency.
3. To provide to each other upon request fish and wildlife data, information, and recommendations for consideration in the formulation of policies, plans, and management programs regarding fish and wildlife resources on Service lands.
4. To recognize that the taking of fish and wildlife by hunting, trapping, or fishing on certain Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Park or Preserve goals, objectives or management plans.
5. To recognize for maintenance, rehabilitation, and enhancement purposes, that under extraordinary circumstances the manipulation of habitat or animal populations may be an important tool of fish and wildlife management to be used cooperatively on Service lands and waters in Alaska by the Service or the Department when judged by the Service, on a case by case basis, to be consistent with applicable law and Park Service policy.
6. That implementation by the Secretary of the Interior of subsistence program recommendations developed by Park and Park Monument Subsistence Resource Commissions pursuant to ANILCA Section 808(b) will take into account existing State regulations and will use the State's regulatory process as the primary means of developing Park subsistence use regulations.
7. To neither make, nor sanction any introduction or transplant any fish or wildlife species on Service lands without first consulting with the other party and complying with applicable Federal and State laws and regulations.
8. To cooperate in the development of fire management plans which may include establishment of priorities for the control of wildfires and use of prescribed fires.



(copy)

9. To consult on studies for additional wilderness designations and in development of regulations for management of wilderness areas on Service lands.
10. To resolve, at field office levels, all disagreements pertaining to the cooperative work of the two agencies which arise in the field and to refer all matters of disagreement that cannot be resolved at equivalent field levels to the Regional Director and to the Commissioner for resolution before either agency expresses its position in public.
11. To meet annually to discuss matters relating to the management of fish and wildlife resources on, or affected by, Service lands.
12. To develop such supplemental memoranda of understanding between the Commissioner and the Regional Director as may be required to implement the policies contained herein.
13. That the Master Memorandum of Understanding is subject to the availability of appropriated State and Federal funds.
14. That this Master Memorandum of Understanding establishes procedural guidelines by which the parties shall cooperate, but does not create legally enforceable obligations or rights.
15. That this Master Memorandum of Understanding shall become effective when signed by the Commissioner of the Alaska Department of Fish and Game and the Alaska Regional Director of the National Park Service and shall continue in force until terminated by either party by providing notice in writing 120 days in advance of the intended date of termination.
16. That amendments to this Master Memorandum of Understanding may be proposed by either party and shall become effective upon approval by both parties.



(copy)

STATE OF ALASKA  
Department of Fish and Game

U.S. DEPARTMENT OF THE INTERIOR  
National Park Service

By /s/ Ronald O. Skoog  
Ronald O. Skoog  
Commissioner

By John E. Cook  
John E. Cook  
Regional Director, Alaska

Date 14 October 1982

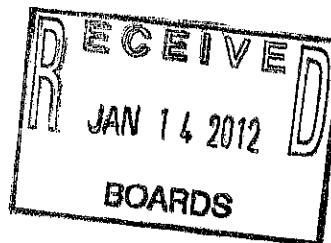
Date October 5, 1982





Jesse Gallagher – Assistant Guide  
2024 Stonegate Circle  
Anchorage, Alaska 99515

ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section



RE: 2013 Board of Game Meeting: UNIT 9

**I would like to submit my opposition to proposal 52-5 AAC 85.045  
Hunting season and bag limit for moose in Unit 9.**

Field experience has shown me no evidence supporting low moose numbers in Unit 9, our own management surveys have seen a steady rise in moose the population since the late 80's. In response to the proposals statement "Residents may be denied traditional or prime hunting locations by the commercial guiding industry". I would like to point out that residents have every opportunity to harvest a moose in Unit 9 including the ability to hunt both state, federal, and in some cases native land.

In response to the proposals statement "residents, both local and nonlocal, had just a 29% success rate". Plain and simple, I see zero effort in the field, which supports the fact that 99% of moose taken by guided Nonresidents are nowhere near the villages, or lands generally accessible to rural residents thus not affecting the subsistence harvest. In my experience 80% of the meat taken by guided Nonresidents is delivered to the villages by the outfitters. In all the years I've been in Unit 9, I've yet to see an unguided Nonresident. Consequently, Further restrictions on Nonresident moose hunting in Unit 9 would deprive elders, single mothers and villages of large quantizes of meat.



**I would like to submit my opposition to Proposal 54-5 AAC85.020.  
(as written) Hunting seasons and bag limits for brown bear.**

Destroying the population of the largest brown bears in the world (Unit 9) will not bring back the North Peninsula Caribou Herd. I do agree with the proposition to lengthen the spring bear and wolf season until May 31, as this will increase the success of the spring bear/wolf hunts due to more days in the field. It is my experience in Unit 9E, that the second half of the current May 10 to 25 season, consonantly produces more bear movement. However, I do not agree with hunting Unit 9 before May 10, as the first week of May is historically too cold for reliable bear movement. Severe wintery conditions in the recent decade have hampered the Peninsula outfitters' ability to provide a successful quality hunts in the early season. Opening May 1 would only exasperate this situation. Extending to May 31 is the only logical option.

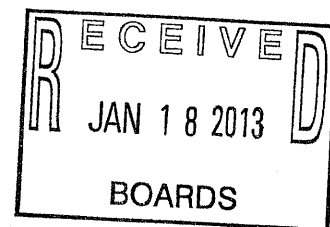
In regard to the proposition for the fall bear season to open September 1st, I'm in opposition to this. A Brown bear is considered a "Trophy Animal" by hunters around the world, and needs to be managed as such. The quality of the trophy, ie: hide quality, the first 3 weeks of September is questionable at best. September 20-October 21 for the Unit 9 bear season is much more logical if you expect the guide-outfitters to continue to be responsible for this highest success rate in harvesting trophy bear. By adding one more 10 day period, prior to the current October 1 opening, guide-outfitters could easily add one more group of hunters, while they are already mobilized in the field. As guide-outfitters are harvesting the vast majority of the Peninsula bears, this will increase the numbers of bear and wolf taken in the fall season, while staying within sustainable harvest numbers.

Best regards, Assistant Guide, Jesse Gallagher

A handwritten signature in black ink that reads "Jesse Gallagher".



***Alaska Trappers Association  
PO Box 82177  
Fairbanks, AK 99708***



**ATTN: BOG COMMENTS  
Alaska Department of Fish & Game  
Boards Support Section  
PO Box 115526  
Juneau, AK 99811**

**January 17, 2013**

**Dear Chairman & Members of the Board:**

**On behalf of the more than 900 members of the Alaska Trappers Association, we wish to share our opinions on several proposals which you will be considering during your February 2013 Central/Southwest Region meeting in Wasilla.**

**Proposal #60 – The ATA OPPOSES the proposal of game management on National Parks Land to be any different that surrounding lands. The Federal government manages the land; the State of Alaska manages the wildlife.**

**Proposal #86 – The ATA OPPOSES the proposal to close an area near Denali National Park for wolf trapping. There IS a moratorium on the discuseion of this issue, which was enacted to allow for time to understand how the current management practices impact wolf populations on Denali National Park & Preserve's 6 million acres.**

**Proposal #104 & #105 – The ATA OPPOSES these proposals, and defers to previous studies and decisions of the Board. There does not seem to be any management purpose behind Region wide bans.**

**Proposal #121 – The ATA OPPOSES the proposal to prohibit the wolf harvest between the dates of March 1 and November 1. No management or biological reasoning to shorten wolf trapping during March and April, or wolf hunting during traditional big game season in August and September. These Seasons have been consistent for generations without creating management concerns for wolf populations.**

**We appreciate the opportunity to participate in the regulatory process.**

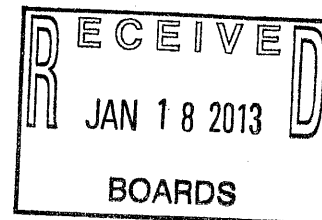
**Sincerely,**

**Joe Letarte, president**

**Testimony concerning Proposal #99, by Wayne Kubat - Jan. 2<sup>nd</sup>, 2013**

Attention: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
PO Box 115526  
Juneau, Alaska 99811-5526  
Fax:907-465-6094

From: Wayne Kubat  
PO Box 874867  
Wasilla, Alaska 99687  
907-376-9568



I **support** proposal #99 as is. If I were to offer an amendment, I would propose an "Aug. 25<sup>th</sup> – Sept. 25<sup>th</sup> resident and non resident moose season in 16 A and the remainder of 16B.

Proposal #99 asks to align the remainder of 16B NR moose season with the current resident season of 8-20 to 9-25. The current NR season is 8-25 to 9-15. I think 8-25 to 9-25 for both resident and non resident, so it aligns with 14 A & 14 B, might be even better.

Under current regulation, NR moose hunting opportunity is provided when there are more than 240 moose available for harvest. Based on the latest data, the department believes that the harvestable surplus of bulls in 16B is well above the minimum required to have a NR season (see department comments for proposal #99). When the BOG re established a NR season for 16B in 2011, they started out cautiously because of no recent data on NR participation and perhaps in part to political pressure because of having a predator control program in the unit.

The latest data shows that 16B has reached its minimum population objective of 6500 animals, has bull cow ratios above 50 bulls per hundred cows in many areas, and in 2011, was still 112 short of meeting the minimum harvest objective. *[In 2011, a total of 198 moose were harvested, and only 9 of those by NR. 90 of the total were taken under tier 2. The harvest objective for 16B is 310 - 600 moose.]*

I talked to Tim Peltier on Jan. 2<sup>nd</sup>, 2013. He said the latest tabulation shows only 46 moose harvested during the 2012 general season and only 6 of those by NR. The tier 2 hunt just opened in mid December, but I'm guessing that even with good conditions, the total 2012 harvest will most likely fall below the 198 total taken in 2011. This is most likely weather related.

*[A further break down showed 125 resident hunters harvesting 23 moose, and 12 NR hunters harvesting 6 moose. In addition to that, there were 23 unsuccessful and 11 successful reports that didn't specify whether they were resident or non resident. If you guesstimate that there were 10 times the number of resident hunters as NR and that NR had a 50% harvest rate, NR hunters probably killed only 2-3 additional moose or about 9 total moose in 2012.]*

**Testimony concerning Proposal #99, by Wayne Kubat - Jan. 2<sup>nd</sup>, 2013**

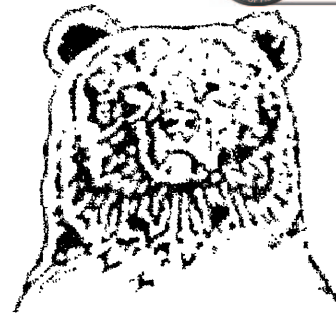
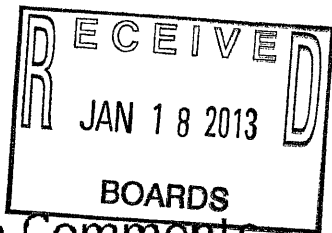
**I think the above data supports increasing non resident seasons in 16B to align with the longer resident season. In fact, concerning proposal 103, the department even recommends liberalizing 16B moose seasons. Also, 16A and 14B are still considerably below population objectives and only have bull/cow ratios in the mid 20s, yet both of these subunits have aligning resident and NR seasons.**

I don't think the low levels of NR harvest and participation justifies the fears of some of not being political correct or jeopardizing our predator control programs by having a NR season in a predator control area. Many NR moose hunters also kill bears, and a lot of guides have been active participants in predator control. Most guides are also residents. Predator control is about increasing moose populations and killing surplus bulls does not take away from that effort. I heard Bob Toby testify a few years back in front of the Mat - Su Advisory committee that he had 39 bulls per hundred cows in some portions of unit 13 and he didn't want all those extra bulls competing with cows for browse in the winter. Most of 16B has even higher bull cow ratios. With the high bull/cow ratios we have unit wide and with spike fork/50 regulations in place, I just don't see any threat at all of over harvest in 16B, by offering the same season to non residents as to residents. I hope you will support this proposal.

Wayne Kubat  
PO Box 874867  
Wasilla, Alaska 99687



From  
Gus Lamoureux



ATTN: Board of Game Comments

P.O. Box 90444  
Anchorage, AK 99509-0444  
USA  
Phone: 907-248-3230  
Fax: 907-245-7338  
Email: info@alaskafishandhunt.com  
www.alaskafishandhunt.com

# Fax Cover Sheet

Send to:	Alaska Department of Fish and Game	From:	Gus Lamoureux
Attention:	Boards Support Section	Date:	Jan 17, 2013
Fax number:	907-465-6094	Ph. number:	907-248-3230

URGENT   
 REPLY ASAP   
 PLEASE COMMENT   
 PLEASE REVIEW   
 FOR YOUR INFORMATION

Total pages, including cover: 4

Please find following my comments on the 2012/2013 changes to regulations for the Southeast, Southcentral, and Central/Southwest Regions. I am faxing these in and they will also be mailed so if one method gets lost the other one will be on hand. I have had a few things of import go missing lately so I thought I should cover my bases.

Thank you  
Gus Lamoureux



January 17, 2013

## Comments to the Proposed Changes to Regulation for the Southeast, Southcentral, and Central/Southwest Regions.

Dear Board Members:

I do not envy you your job, and do realize it is an important part of the big game regulation process. Please accept my comments on the 2012 / 2013 big game proposals. I will be out of State conducting business at one of the hunting shows I regularly attend this time of year in PA, attempting to bring revenue to our state by means of non resident hunters.

Since so many of the proposals I am commenting on pertain to limiting non resident participation in Alaskan Hunting and because this has been my livelihood for almost forty years and that this has been a family business for at least sixty years, I feel compelled to, at a minimum, expound on a small part of what my business contributes to our community. As you are probably aware, I, like most hunting guides have to employ assistant guides. In my case that number is about nine per season. Most of these guys are Alaskan residents and in some cases Native American Alaskan residents. Some of these people do nothing else besides hunt or fish guide. Because I have base camps in the areas we guide in, I have a plethora of expenses every season maintaining these facilities and equipment in a professional and clean condition. I won't elaborate here but these annual expenses generally exceed \$75,000. Other expenses including wages are normally \$30,000 to \$50,000 per season. Multiply these numbers by a minimum of 400 (the estimated number of registered and master guides with operating businesses) and you come up with a rough idea of our contribution. Most of, if not all of this is bought from or contributed to our Alaskan economy. This does not even go into what the non residents contribute by means of their purchases. I have lived here in our State since birth and consider myself an Alaskan in every sense of the word and have made exceptions in many cases for "resident hunters" that have elected to move their camp right on top of mine. Seeking a quality experience for my clients I usually hunt elsewhere if possible. I have in several cases rescued ill prepared resident campers and have let them overnight in my camp facility when there is room and the emergency dictates such. *In one case I saved a persons life.*

I urge the board to very carefully consider the proposals before you, as our country is at a time where we cannot afford to reduce the work force and should be doing everything to enhance opportunity. The ramifications of some of the proposals could make a huge hole in our local economy and that of many rural economies as well as my pocket book. In many of the proposals the comment of "no one will suffer" is not anywhere near accurate. In the classification of "who will suffer" many of these proposals over look the "Alaskan Resident" because without non resident participation the Department of Fish and Game would be forced to pass their operation costs on to us... **ALASKAN RESIDENTS!** This would raise the fees for all resident licenses and all big game tags, sometimes adding a big game tag free where there currently is no fee.



January 17, 2013

Moving on to the proposals:

**Proposal # 52 OPPOSE** and would like to add the first word under the comment section, I take exception to: "Unjustified" If forty years of conservative harvest is not justified I am not sure what is. My dictionary defines this word as "not shown to be right or reasonable" This proposal is unjustified. I, and many of my peers have scaled moose harvest down. In my case, one or two moose clients per season from an allowable six for the past ten years and have made every effort to give non resident meat from the harvest to local people whenever I can. I have made a positive difference in the ungulate population in the small part of GMU 9 that I operate in. Keep in mind, this is in an area that used to allow two moose, three caribou and a brown bear per person per year with no distinction of residency. Prior to the Caribou meltdown, rural Alaskans seldom harvested moose in this area as the Caribou herd passed by their village. Nowhere in the "who is likely to suffer" section does it mention the guide industry nor does it mention the rural economies that the guide industry contributes to.

**Proposal # 54 SUPPORT AS AMENDED** (May 10 thru May 31 even numbered years, (September 25 thru October 10 odd numbered years) as I believe the proposal as written it is too liberal in it's intent and the brown bear harvest will be far to high. The spring weather in this area has changed in the past four years making it very difficult to harvest bear. Biological data shows the harvest for the spring of 2012 down over 100 animals. I had to suspend my operation as I am float plane based and the area lakes did not open until more than half of the bear season was over. This is the first time I have had to deal with this in over forty years. The amount of bear harvested by guides on Federal land is a given number and changing the spring dates as the proposal suggests from May 01 thru the 31 is a good idea. Resident hunters will enjoy better hunting and camping toward the end of the May season. Being allowed to hunt a little later during the spring season would be beneficial to almost all guides and hunters included. No one would suffer from hunting in a more friendly environment. The fall season could be opened earlier as well to increase bear harvest from September 25 thru October 10, these amended dates would be a much more conservative approach to the dates the proposal requests. These are the only parts of the proposal I would agree upon being amended or changed. I do not agree that we should liberalize the season to include harvesting one bear per season. The suggested amended dates above will reduce the impact that predators have on the ungulate population by increasing the predator harvest. Bristol Bay has been managed for the Brown Bear for years. Ungulate population levels prove that minor changes should be implemented. Changes that are not too radical are changes that all hunters can live with. Most importantly changes that can be quickly reversed if a noted over harvest becomes apparent.

**Proposals # 55, 56, and 57 OPPOSE** which are amendments to RB525.

**Proposals # 109, 110, 111, 112, 113, 114, 115, 116, and 117 OPPOSE** for obvious reasons which I stated above in my opening paragraphs. Any limit or advantage from one group to another is not constitutional.





January 17, 2013

### **Proposal # 118 SUPPORT**

**Proposal #140 SUPPORT AS AMENDED** to include everyone. Setting up two classifications of hunters reminds me of the airlines. Not everyone has or ever will have a Gold card or MVP status. Another option to consider would be to close the entire season, hope for a couple of good winters in succession and re open the season when the animal numbers rebound.

**Proposal #141 OPPOSE.** There is no reason that anyone needs two goat in one season. The meat is palatable but not the best table fare. Regardless of how the proposal is written there will be many cases of one hunter killing both of his "permitted goat" on the same mountain side on the same hunt. This will increase the potential for want and waste. The overpopulation is being worked on by local and non resident hunters. The length of horn size has already gone down in the area I operate in suggesting that harvest objectives are being met. Nannies are already allowed, but discouraged by ADF&G which contradicts wording in this proposal. In my area of operation, in response to a request from ADFG and USFWS, we have taken a very aggressive approach to goat harvest. Outfitters in other heavily populated areas are also doing the same and capitalizing on mountain goat in this GMU. I predict it to be just a matter of time before the numbers roll down. The length of the goat season is already very liberal which encompasses several months accommodating just about every group of people. A season into March would probably put them on the beach where they can be slaughtered like the deer which are now nonexistent.

**Proposal # 142 SUPPORT.** My comment would be a wounded animal of any specie should count as a harvest. That is usually one of the rules explained in the contract of a guided hunt. With the exception of Brown Bear on Kodiak, the resident hunter has been able to take advantage of being a poor shot.

**Proposals # 162, 163, 164, 165, 166, 167, 168, 169, and 170 OPPOSE** for the obvious reasons I expounded on in my opening paragraph

Thank you board members for your consideration to my comments.

Sincerely,

Gus Lamoureux

Owner/Operator: Ugashik Lake and Kodiak Bear Camps



# The Alaskan Bowhunters Association, Inc.

P. O. Box 220047  
Anchorage, AK 99522  
907-929-3600 Fax 907-334-9691  
www.akbowhunters.com  
akbowhunters@gci.net



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peskadot@clearwire.net

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## Kenai Director

Vacant

## South Eastern Director

Mike Collins  
Juneau, AK  
907-789-5246  
oldboar99@hotmail.com

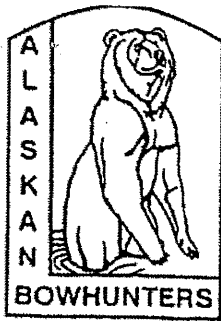
## Kodiak Director

Vacant

Attn: Board of Game Comments  
Alaska Department of Fish and Game  
Board Support Section  
PO Box 115526  
Juneau AK 99811-5526  
Fax 907-465-6094  
January 21, 2013

Please accept the following comments of the Alaskan Bowhunters Association for the Central/Southwest Board of Game meetings to be held in Wasilla, AK February 8-15, 2013

**Proposals 74-78 & 106 Support.** The general concept of allowing the taking of Brown Bear at a bait site, especially in an area in which the Department is trying to reduce the population of Brown Bear, is a good one. There would seem to be no valid reason to prohibit taking Brown Bear at a bait site when other methods such as snaring are being considered and allowed. Brown Bears frequently destroy a black bear bait site by simply moving in on it. If hunters were allowed to shoot brown bear as well as black bear at bait sites it would reduce that problem. If taking Brown Bear at bait sites is approved any method normally allowed for harvesting Bear should be allowed. Specifically, archery tackle should be allowed. There is extensive evidence that a broadhead tipped arrow is equally lethal to a firearm in killing Brown Bear. A baited set up where a hunter is typically in a tree stand and can choose the best time and angle for a shot is ideal for maximizing the effectiveness of either rifle or bow.



# The Alaskan Bowhunters Association, Inc.

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## Page 2

**Proposal 89 Do Not Support.** The idea of allowing increased hunter opportunity and simultaneous reduced impact on the resource by limiting the method of take is a good one. However we would not like to see “muzzleloaders” lumped in with archery gear as “primitive weapons”. Even with all of the refinements of modern compound bows, they do not compare to the distance effectiveness of modern scope sighted, in line muzzleloaders. We do have very good long term statistics regarding the effectiveness of archery gear for harvesting sheep. However we do not have long term statistics of the effectiveness of muzzleloaders for harvesting sheep. If the Board of Game believes that it is necessary in this (or any other) subunit, to limit the harvest of a species while simultaneously providing maximum hunter opportunity then we would suggest an archery only season. There is nothing that stops most hunters from learning to hunt with archery gear so a bowhunting only season does not restrict participation. Please note that the Alaskan Bowhunters Association is NOT requesting that you provide an archery only hunt in this area. We are only commenting on this proposal because it mentions Bowhunting.

**Proposal 121 Do Not Support.** There is no evidence that the number of wolves taken during the months of April, May, August, September or October are in any way biologically limiting to the population. For many hunters a wolf represents a once in a lifetime trophy, even if its fur is less than prime. The simple opportunity for a spring bear hunter or a fall moose, caribou or sheep hunter to take an incidental wolf makes an Alaskan hunt more wild and exciting. This is evidenced by the large number of nonresident hunters who purchase a wolf tag. In reality very few wolves are actually harvested as incidental to other species hunts. But again the value of the opportunity is high.



# The Alaskan Bowhunters Association, Inc.

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Page 3

So the State of Alaska has some income from sales of NR wolf tags and has very few wolves taken. Please note that this is the same proposal as Proposal #20 considered by the Board at their recent Sitka meeting. At the time that this is written we do not know what your action was on that proposal. We are hopeful that you failed that one for the same reasons.

Thank you for your consideration of our comments.

Sincerely,

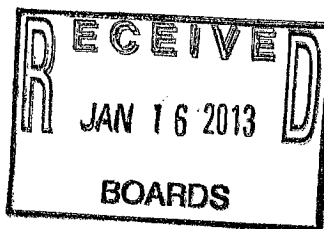
A handwritten signature in black ink, appearing to read "John D. Frost", with a stylized flourish at the end.

John D. Frost — Legislative VP of The Alaskan Bowhunters



1/9/2013

ATTN: Board of Game Comments  
Boards Support Selection  
P O Box 115526  
Juneau, AK 99811-5526  
Fax: 907-465-6094



**In Response to Proposal 52 – 5 AAC 85.045 Hunting season and bag limit for moose.**

Restrict nonresident moose hunting opportunity in Unit 9.

I would like to start by stating my **OPPOSITION** to Proposal 52. The Issue as stated in the proposal claims ***“unjustified nonresident hunting opportunity in Game management Unit 9 during a time of depressed moose populations.”*** I disagree. I spend nearly 6 months a year in Unit 9 E, living and flying in that country. We are able to keep a close eye on these moose daily and because we are the only ones around, we are able manage our own “herd.” In my time on the peninsula, (2009 to present) I have seen **zero** resident or unguided nonresident effort.

The Proposal further states ***“there is no justification to assume nonresident hunter’s harvest moose that resident hunters would never harvest,”*** and also ***“residents may be denied traditional or prime hunting locations by the commercial guiding industry.”*** Our spike camps seem to be well beyond the logistical ability of subsistence and resident hunters from the villages in our area. The areas our lodge hunts are in absolutely no conflict with traditional Native, community or subsistence hunting areas. The only impact we have on these communities is a positive one.

The guide-outfitters I have worked with deliver around 90 percent of harvested moose meat to the surrounding villages such as Port Heiden, Nelson Lagoon, Pilot Point, Chignik Lake, Chignik Lagoon and Perryville. This is clean, well-cared for meat ready for the freezer. From our base camp at Wildman Lake Lodge we have no reason to fly over, by, or near any of the villages in our area except to deliver meat or purchase fuel and supplies.

What will happen if we restrict nonresident moose hunting? The fact of the matter is that the harvest rate for residents will remain the same due to current effort in the field and the many logistical problems of hunting in Unit 9. Also now you will be depriving many villages of the large amount moose meat that are provided by guide-outfitters, to help with elders, disabled, and single mothers. Donating this moose meat must certainly qualify as subsistence for these villages.

Who is likely to benefit if we restrict nonresident moose hunting? No one. The residents are already benefiting greatly with large quantities of moose meat. Not to mention the revenue generated by hunters travelling to and from the lodge’s, and the many purchases the lodges makes in the local communities for supplies and fuel.

On the southern Alaska Peninsula there is a strong and healthy population of moose unfettered by either local resident or nonlocal resident pressure. We only take 4 mature bull moose per year. And every year there are many more large bulls to take their place. Nearly every cow encountered had a strong and healthy calf. The moose are doing fine. The number of moose residents harvest isn’t going to change whether we have guided hunters in the field or not. I don’t think we should let narrow sighted and extreme restrictions deprive local communities of the supplemental moose meat we provide to their current harvest.



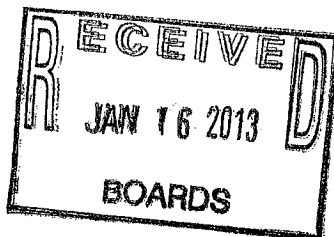
Sincerely,

A handwritten signature in black ink, appearing to read "AGL".

Logan Canton  
Lodge Manager  
Wildman Lake Lodge  
2024 Stonegate Circle  
Anchorage AK 99515  
830-640-3536



ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
P O Box 115526  
Juneau AK 99811-5526  
Fax: 907-465-6094



**In response to Proposal 54 – 5 AAC 85.020. Hunting seasons and bag limits for brown bear.** Modify the brown bear hunting regulations for Unit 9.

I would like to start by stating my **OPPOSITION** to proposal 54. Unit 9 has  $\frac{1}{4}$  of all the brown bears in the State because it is managed to be a trophy brown bear area. The Peninsula is the greatest brown bear destination in the world for quality and quantity.

From a guiding standpoint, opening the season the first of May is a flaw. This is just too early to begin hunting. Bear movement is at a minimum as there are very few bears out of the dens yet and with the string of late winters/cold springs, a guide cannot provide a high quality or consistent guiding service this early. Extending the spring bear **AND** wolf season until the 31<sup>st</sup> will result in more bears out of the dens and more/better hunting opportunities. As a result more bears will be taken and because there will be longer hunter effort in the field, more wolves taken.

In regards to opening the fall season September first I disagree. Hair quality this time of year is sub-par. The trophy of course is the hide. Most hunters, resident and nonresident alike, view brown bears as a trophy animal. Many come from the world over to hunt these large trophy bears, infusing large amounts of revenue into the local economy. By opening the brown bear season the 20<sup>th</sup> of September, this will allow guide-outfitters to put more hunter effort in the field. It is the guide-outfitter who takes the vast majority of bears in the State as it is. Many already have their guides and equipment in the field. This again would increase hunter effort and time in the field resulting more bears and wolves taken.

Unit 9 should remain a one bear per 4 year area and keep the alternating spring/fall seasons. In lieu of this, by extending the spring/fall seasons slightly, we can reach a goal of taking a few more bears and wolves each year **WITHOUT** hurting the trophy quality of these bears. For residents and guided nonresidents alike, it is important that the bear hunting be sustainable for large, well haired bears in good huntable numbers.

In closing, we need to remember that the bears are not the only ones to blame for a lack of ungulate recruitment. Bears have a very diverse diet and once the salmon come, tend to forget about chasing moose and caribou around. Wolves however are always on the hunt. By allowing a more liberal wolf season to end the 31<sup>st</sup> with the proposed bear season, or even extend it more, we can limit the ungulate predation further.

Sincerely,  
  
Logan Canton  
Lodge Manager  
Wildman Lake Lodge  
P O Box 1742  
Petersburg AK 99833



Kenneth H. Manning  
P.O. Box 775  
Kasilof, AK 99610

Attn: Board of Game Comments  
Alaska Dept. of Fish & Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526

Nov. 14, 2012

Re: Comments on the Proposed 2012-2013 BOG Regulation  
Changes

Proposal No. 64 OPPOSE.

Any hunting preference based on age, sex, race, location of residency in the state, or racial customs and traditions, violates the equal protection guarantees and the Public Trust Doctrine. Also see comments on Proposal No. 65 submitted separately.

Proposal No. 66 SUPPORT, IN FAVOR.

Proposal No. 67 Partial Opposition

Omit the Community harvest/subsistence permit system, and re-instate the Tier-11 level of protection for subsistence dependency as required by the Alaska Subsistence Law AS 16.05.258(b)(4)(B). Also see Kenneth Manning's comments with exhibits A, B, and C for Proposal No. 65. The BOG has NO statutory enabling authority to put eligibility criteria on any of the Tier-1 level hunts, including the community permits. See my Exhibit D attached, referencing the case State v. Morry, 836 P.2d 358 (Alaska 1992), directly on point in this matter.

Proposal No. 68 STRONG OPPOSITION!

See Manning's comments with exhibits A, B, and C for Proposal No. 65 and 67.

Proposal No. 69 STRONG OPPOSITION!

See Kenneth Manning's comments with exhibits A, B, and C for Proposal No. 65, and Exhibit D attached hereto.

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Proposal No. 70 OPPOSE.

Proposal No. 71 OPPOSE.

Proposal No. 72 SUPPORT, IN FAVOR.





Proposal No. 73 SUPPORT, IN FAVOR.

Proposal No. 74 SUPPORT, IN FAVOR.

Proposal No. 75 SUPPORT, IN FAVOR.

Proposal No. 76 SUPPORT, IN FAVOR.

Proposal No. 77 SUPPORT, IN FAVOR.

Proposal No. 78 PARTIAL SUPPORT, EXCEPT:  
Do not require salvage of all brown bear meat; keep it optional.

Proposal No. 79 OPPOSE.

Proposal No. 80 SUPPORT, IN FAVOR.

Proposal No. 81 SUPPORT, IN FAVOR.

Proposal No. 82 SUPPORT, IN FAVOR.

Proposal No. 83 SUPPORT, IN FAVOR.

Proposal No. 84 OPPOSE.

Proposal No. 85 OPPOSE.

Proposal No. 86 OPPOSE.

Proposal No. 87 OPPOSE.  
Any granting of special hunting preference for race, location of residency in the state, age, sex, or racial customs and traditions, violates the equal protection guarantees and the Public Trust Doctrine. See Manning's comments for Proposal No. 65.

Proposal No. 88 SUPPORT, IN FAVOR.

Proposal No. 89 SUPPORT, IN FAVOR.

Proposal No. 90 SUPPORT, IN FAVOR.

Proposal No. 91 SUPPORT, IN FAVOR.

Proposal No. 92 SUPPORT, IN FAVOR.

. . .

Proposal No. 104 OPPOSE.



Proposal No. 105 OPPOSE.

Proposal No. 106 SUPPORT, IN FAVOR.

Proposal No. 107 SUPPORT, IN FAVOR.

Proposal No. 108 OPPOSE.

Proposal No. 109 OPPOSE.

Proposals No. 110, 111, 112, 113, 114: SUPPORT, IN FAVOR.

Proposal No. 115 OPPOSE.

Proposal No. 116 SUPPORT, IN FAVOR.

Proposal No. 117, 118, 119 SUPPORT, IN FAVOR.

Proposal No. 120, 121 OPPOSE.

Proposal No. 122 SUPPORT, IN FAVOR.

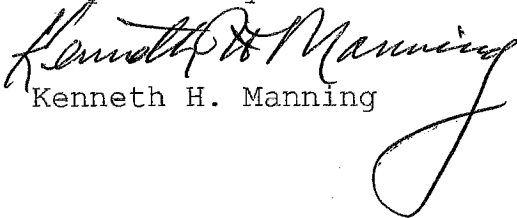
Proposal No. 124 SUPPORT, IN FAVOR.

Proposal NO. 125 OPPOSE.

Any hunting preference based on race, sex, age, location of residency in the state, or racial customs and traditions violates equal protection guarantees and the Public Trust Doctrine. See comments to Proposal No. 65.

Thank you for the opportunity to comment.

Respectfully submitted:

  
Kenneth H. Manning



Kenneth H. Manning  
P.O. Box 775  
Kasilof, AK 99610  
907-394-4377

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT KENAI

Kenneth H. Manning,	)	
Plaintiff,	)	
Vs.	)	
ALASKA DEPARTMENT OF FISH & GAME,	)	Case No. 3KN-11-367Ci
and	)	
Kevin M. Saxby,	)	
Defendants,	)	<b>SURREBUTTAL</b>
and Ahtna Tene Nene,	)	TO STATE'S POST
Defendant-Intervenor	)	HEARING SUPPLEMENTAL BRIEF
_____	)	

I, Kenneth H. Manning, submit a surrebuttal reply to the State's post hearing supplemental brief, where the State is intentionally misleading this Court with blatantly false statements.

The State incorrectly states that the ADFG/Board of Game ("BOG") did include all "railbelt" and urban subsistence users for consideration in determining the "amount necessary for subsistence" ("ANS") of 600-1,000 caribou for subsistence users. The BOG's own Findings<sup>1</sup> even without the "railbelt" and urban users state that there are "2,000 subsistence users." Then why set the ANS at only 600-1,000? The math doesn't make sense. For the greater areas of Anchorage, Wasilla, Glennallen, and Fairbanks, with a total population of about 500,000 people, to say there are only 2,000 "real" subsistence

<sup>1</sup>Board of Game Findings, 2006, as modified and re-certified by the BOG Emergency meeting in response to Judge Bauman's decision and in direct violation thereof, in case no. 3KN-09-178CI.



users who "walk the walk" like "Ahtna" is arbitrary and unreasonable. Where the ADFG/BOG has acted with clearly unreasonable actions, the Court MUST over rule such incompetent, and here - intentionally collusive and corrupt acts to blatantly violate the Alaska Subsistence Law AS 16.05.258(b)(4)(B) that unlawfully eliminate the statutory mandates of Tier-11 level protection of subsistence dependency, and where the ADFG/BOG betrayed thousands of long-time Alaskan subsistence users.<sup>2</sup>

The State erroneously says the ANS was appropriate and reasonable, where the BOG clearly eliminated all "railbelt" and urban users contrary to State v. Morry, 836 P.2d 358 (Alaska 392), which held that all Alaskans are eligible to be subsistence users:

II. DID THE SUPERIOR COURT ERR IN USING THE "LEAST INTRUSIVE" STANDARD?

[3] The superior court noted that the "least intrusive" standard must be implied as a rule of construction for the "reasonable opportunity" language of the 1986 state subsistence law.

The State and Wilson argue that the written words of the subsistence law only mention "reasonable opportunity" in two places, and in neither location does the text mention "least intrusive." The State also points to the relevant legislative history, and submits that, as the subsistence law was being developed, "reasonable opportunity" was explained twice. (See Memorandum from Senate Resources Committee Staff to Senate Resources Committee Members (March 12, 1986); Address by Senator Vic Fischer to the Alaska State Senate (May 9, 1986)). However, on neither occasion was the "least intrusive" standard mentioned. The State further argues that the

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<sup>2</sup> See Exhibit A to Plaintiff Manning's Consolidated Reply To State and Ahtna Opposition To Motion For Summary Judgment, the Audio and brief explaining the BOG 2009 meeting and decision to eliminate the Alaska Subsistence Law Tier-11 level of protection for subsistence dependency, hereby incorporated by reference.



"least intrusive" standard is absent in the three logical places in the statute where the fish and game laws deal with the regulations of subsistence hunting and fishing.

The State contends that the superior court's reliance on ANILCA is flawed. It bases this contention on the proposition that although the subsistence law was enacted in part to comply with ANILCA, "each law is a separate piece of legislation with its own legislative history and distinct provisions." The State argues "[t]he term that the superior court says is modified by the 'least intrusive standard'--the 'term reasonable opportunity'-- does not even appear in the federal law.'" See 16 U.S.C.A. § 3111-3126 (1985).

The State next argues that since state law is now out of compliance with ANILCA, the state is no longer implementing federal policy on federal "public lands." Hence, the purpose statement of ANILCA (from which the superior court derived the "least intrusive" standard) should not affect \*365 the state's implementation of its own law on its own lands. The State further argues that the "least intrusive" standard applies to the use of land, and the use of land is addressed in a section of ANILCA (§ 3120) that is entirely separate from the sections of ANILCA that deal with the use of subsistence fish and game--16 U.S.C.A. §§ 3113-3117 (1985).

The State's final argument is that the "least intrusive" standard would require a significant change in the method the boards use to adopt regulations. In this regard the State submits that since the boards are not required to provide for a certain style of hunting and fishing, there is nothing that can be intruded upon. Morry and Kwethluk argue that the "least intrusive" standard is the appropriate one for insuring board compliance with the law. They support this position by stressing that the subsistence law does more than merely direct the boards to take subsistence into account in the course of making regulations. The law mandates that those uses be given preference over all others.

Morry and Kwethluk also assert that the State errs in looking to the statute for the words "least intrusive", because the key word in the statute is "preference". They submit that the question before the superior court, and the one presented here, is what standard the courts insist upon to insure that the mandatory preference is in fact being accorded.



Morry and Kwethluk contend that the superior court drew the least intrusive standard from the overall structure and intent of the statute, from the judicial construction of the comparable provisions of ANILCA, and from analogous areas of law in which hunting and fishing rights are accorded a priority in law. They emphasize that the "reasonable opportunity" that the legislature requires is not merely some abstract opportunity; it is, rather, a priority opportunity.

We find the State's arguments persuasive. The least intrusive standard is not explicitly mentioned in the text of our subsistence preference laws nor can such a standard be reasonably implied from the fact that the subsistence law accords a "preference" to subsistence users. As the State notes:

The subsistence law, however, provides a preference only by giving subsistence users 'reasonable opportunity' to harvest the resource. If this 'reasonable opportunity' defined according to customary and traditional harvest levels, reasonable expectations, and access--cannot be furnished because of the demands of other user groups, then these other groups must be cut out. This is how the priority arises, not through Morry's elusive standard of judicial review.

III. DID THE SUPERIOR COURT ERR IN INVALIDATING THE STATE'S INTERPRETATION, FOLLOWING McDOWELL, THAT AS 16.05.258 PROVIDES NO STATUTORY GROUNDS FOR DISTINGUISHING BETWEEN BENEFICIAL USERS AT THE FIRST TIER LEVEL?

[4] The State and Wilson contend that the state subsistence law does not authorize or give guidance to the boards of fish and game on how to determine which individuals may engage in "first tier" subsistence hunting and fishing. The State first advances an historical argument based on the legislative evolution of the subsistence statute. The State asserts that under the original 1978 subsistence law, when there was enough fish and game for all subsistence uses, i.e., at the "first tier" of abundance, there was no authority for the boards of fish and game to decide that some Alaskans could be subsistence harvesters, but others could not. Only at the second tier level, when resources declined below a level where all subsistence uses could be satisfied, did the board have authority to establish

Page 4 of 8



criteria for differentiating between users. The State notes that the board's attempt to differentiate between first tier users through the imposition of a rural/nonrural distinction failed upon review by this court. Citing \*366 Madison v. Alaska Dept. of Fish and Game, 696 P.2d 168, 174 (Alaska 1985). The board had argued that it had statutory authority under the "customary and traditional" phrase of AS 16.05.940(31) (formerly AS 16.05.940(23)) to define first tier subsistence users by their area of residence. Id. In Madison we rejected the board's contention and held:

First, the argument ignores the two-tier structure of AS 16.05.251(b) that defines only the second-tier subsistence users in terms of residency. If the legislature had intended to define the class of first-tier general subsistence users by area of residence, it would not have expressed that factor with respect to only the second tier of preferred subsistence users. Moreover, the phrase 'customary and traditional' modifies the word 'uses' in AS 16.05.940(23). It does not refer to users. The 1978 subsistence law refers to 'customary users' at only one point, when it defines the preferred subsistence users of the second tier with the three statutory criteria in AS 16.05.251(b).

....  
The legislative history indicates that the legislature intended to protect subsistence use, not limit it. The words "customary and traditional" serve as a guideline to recognize historical subsistence use by individuals, both [N]ative and non-[N]ative Alaskans. In addition, subsistence use is not strictly limited to rural communities. For these reasons, the board's interpretation of 'customary and traditional' as a restrictive term conflicts squarely with the legislative intent. [FN9]

FN9. Madison, 696 P.2d at 174, 176

When the legislature thereafter attempted to amend the 1978 subsistence law to add statutory authorization for distinctions between individuals at the first tier this court invalidated the rural/urban distinction as violative of sections 3, 15 and 17 of article VIII of the Alaska Constitution. [FN10]

FN10. McDowell v. State, 785 P.2d 1, 9 (Alaska 1989). In



...

On the basis of the parties' arguments, our relevant decisions, and upon consideration of the applicable statutory provisions, we conclude that the superior court erred in its determination as to who is eligible to participate in subsistence hunting and fishing at the first tier. Simply stated, after *McDowell* there are no statutory standards for determining those individuals who are ineligible to participate in subsistence hunting and fishing.

Prior to our decision in *McDowell* only rural Alaskans were eligible to participate in subsistence hunting and fishing. Post *McDowell*, and under the current subsistence statute as impacted by *McDowell*, all Alaskans are eligible to participate in subsistence hunting and fishing. Under the holding of *Madison*, the board lacks the authority to adopt eligibility criteria for first tier subsistence users absent specific statutory authorization. As the subsistence statute presently stands (post *McDowell*) there are no legislatively enacted standards of eligibility for first tier subsistence users. Given this absence of specific authorization, we hold that the board lacks the authority to adopt eligibility criteria for first tier subsistence users.

In reaching the above conclusions we have in essence adopted the State's analysis of this issue. More particularly, in part we adopt the following reasoning advanced by the State: By virtue of the legislature's enactment of chapter 151 SLA 1978 (the predecessor to the current subsistence statute) two tiers of subsistence users were created. At the first stage, if sufficient wild resources exist, then all Alaskans were eligible to engage in the subsistence harvests of fish and game. In the event of a species or resource insufficiency, the board was empowered to establish eligibility criteria based on customary dependence, local residency and unavailability of alternative resources. In 1980 the board adopted ten criteria in an attempt to eliminate some Alaskans from the first tier of subsistence users. In 1985 in *Madison* (as noted above) this court rejected the board's contention that it possessed the statutory authority under the "customary and traditional" phrase of AS 16.05.940(31) (formerly AS 16.05.940(23)) to define first tier subsistence users by area of residence. 696 P.2d at 174.

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In so doing it was stated that "the phrase 'customary and traditional' modifies the word 'uses' in AS 16.05.940(23). It does not refer to users." *Id.* After *Madison* all Alaskans were eligible to participate in subsistence harvests and uses of fish and game. In response to *Madison* the legislature amended the 1978 subsistence law to restrict subsistence harvests and uses at the first tier to rural residents. Given *McDowell's* holding that this rural criterion was unconstitutional, all Alaskans are once again eligible to participate in first tier subsistence harvests and uses. In brief, *Madison* contradicts any implication that the board has statutory authority to adopt eligibility standards for first tier subsistence users.

Here, based on *Morry, id.*, and *Madison, id.*, the ADFG/BOG cannot limit who is a subsistence user based on Game Management Unit 13 local resident hunters OR based on Ahtna racial customs and traditions. The present Tier-1 "community" harvest permits ("CHP") unlawfully use residency and Ahtna racial customs and traditions for group eligibility,<sup>3</sup> and therefore violate the statutory intent and authority, and are unconstitutional as per Judge Bauman's decision<sup>4</sup> and the Public Trust Doctrine.

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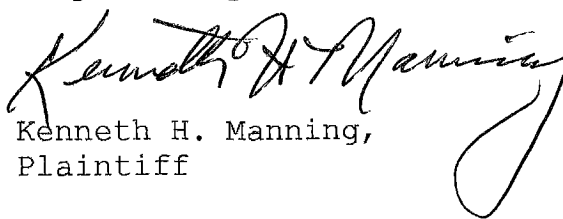
<sup>3</sup> The State further misleads this Court when it states that anyone can apply for a "community" group permit, yet fails to state that groups have been denied eligibility based on not being local residency unit 13 hunters AND not meeting the Ahtna racial customs and traditions, in clear violation of *Morry* and *Madison, id.*, the Alaska Subsistence Law, and the Public Trust Doctrine, *Owsichek v. State* 763 P.2d 488 (Alaska 1988).

<sup>4</sup> Plaintiff Manning's oral motion made at the Oct. 2, 2012 hearing, to clarify the status of Judge Bauman's decision in case no. 3KN-09-178CI is still pending before this Court. Ahtna's appeal of that decision to the Alaska Supreme Court (case no. S-13968) was recently decided as "Moot" on Nov. 9, 2012, thus further warranting a decision on the oral motion from this Court, especially where Ahtna has again submitted a new proposal to the BOG for additional regulations that grant



Date: November 13, 2012

Respectfully submitted:

  
Kenneth H. Manning,  
Plaintiff

---

special eligibility preference based on local residency AND  
Ahtna's racial customs and traditions. The ADFG/BOG and Ahtna  
badly need legal clarification and direction on these issues.

Page 8 of 8

SURREBUTTAL TO STATE'S POST HEARING

SUPPLEMENTAL BRIEF

Manning v. State ADFG, Ahtna

Case No. 3KN-11-367CI



Kenneth H. Manning  
P.O. Box 775  
Kasilof, AK 99610

Attn: Board of Game Comments  
Alaska Dept. of Fish & Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526

Nov. 7, 2012

Re: Comments on the Proposed 2012-2013 Regulation Changes

**Proposal No. 65** - 5 AAC 92.072 Community subsistence harvest hunt area and permit conditions, and 92.974(d) Community subsistent harvest hunt areas. Modify the Copper Basin community subsistence harvest hunt in Unit 11, 12, and 13 . . . , as submitted by Ahtne Tene Nene' Customary and Traditional Use Committee.

**STRONG OPPOSITION:** Notice of intent to file law suit if passed.

The Ahtna<sup>1</sup> proposal seeks an unconstitutional preference for subsistence eligibility based on residency requirements, and racial customs and traditions, that violate constitutional equal protection guarantees and the Public Trust Doctrine (see Exhibit A attached - Motion For Declaratory Relief by Public Trust Doctrine,<sup>2</sup> and Exhibit B - Judge Bauman's final Summary Decision (29 page decision attached) from case Manning v. ADFG, Ahtna, 3KN-09-178CI). Additionally, there are pending challenges to the CHP residency<sup>3</sup> and racial based preferences; the on-going unlawful BOG 2009 "Experiment" elimination of Tier-11 level hunt for Unit 13 Nelchina caribou herd was betrayal to

<sup>1</sup> In blatant violation of Alaska Native Claims Settlement Act 43 U.S.C. 1601, Sect 2b, Sect 4b, the Alaska National Interest Lands Conservation Act 16 U.S.C. 3101 *et seq* Section 804, terminating all future claims to native aboriginal preferences for hunting and fishing rights.

<sup>2</sup> ~~Alaska Constitution Article VIII Section 3 "common use,"~~ the Public Trust Doctrine. See Owsichek v. State, 763 P.2d 488 (1988).

<sup>3</sup> Residency based eligibility was struck down by the Alaska Supreme Court in State v. Kenaitze Indian Tribe, 894 P.2d 632, 638 (Alaska 1995); McDowell v. State, 785 P.2d 1 (Alaska 1989).



thousands of long-time Tier-11 subsistence hunters. The 2009 BOG "findings"<sup>4</sup> failed (intentionally eliminated) to recognize the long-time "rail belt" and urban hunters as "subsistence users" based on their location of residency and Ahtna racial customs and traditions, and must be re-instated as a Tier-11 level hunt pursuant to Alaska Subsistence Law AS 16.05.258(b)(4)(B), Judge Bauman's decision in 3KN-09-178CI, and the Public Trust Doctrine.

There are three on-going law suits challenging the preferences of the Community Harvest Permits ("CHP"), including two pending in the Alaska Supreme Court. Similar proposal CHP residency and racial based preference conditions were already declared unconstitutional in Manning v. ADFG, Ahtna, case no. 3KN-09-178CI (still pending Ahtna's appeal in the Alaska Supreme Court case no. S-13968), the Fairbanks case by Alaska Wildlife Conservation Fund v. State ADFG, case 3FA-11-1474CI also still pending in the Alaska Supreme Court, and the pending Superior court case Manning v. ADFG, Ahtna, still pending in Kenai Superior Court, case no. 3KN-11-367CI (pending ruling on motions for summary judgment).

The BOG should heed previous Attorney General recommendations to wait until the Courts ruling on these cases before reviewing and passing the same challenged conditions instead of continuing irreparable harms to thousands of long-time subsistence hunters.

The BOG, as Trustee of the State wildlife resources, must be more cognizant in passing proposals that contain violations of granting special hunting preferences including increased bag limits, earlier and longer seasons, relaxed antler restrictions, location of residency, "community" preference rights that an "individual" no longer enjoys, as well as preference for racial customs and traditions, that grant preferences to special interests groups which constitute denial of equal protections for hunting opportunities in violation of the equal protections of the Public Trust Doctrine.

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<sup>4</sup> The BOG 2009 "findings" as justification for denying subsistence use eligibility based on residency and racial customs and traditions, have been challenged in three law suits, and will again be struck down as unconstitutional actions, and should be revoked or rescinded by the BOG to avoid additional law suits against the ADFG BOG.



NOTICE OF INTENT TO FILE SUIT:

If this proposal no. 65 is passed, I hereby give notice of intent to file law suit against the ADFG Board of Game for blatant violations of constitutional equal protections for preferences granted to "communities" and not to "individual" subsistence hunters, violations of residency-based requirements, violations of preferences for racial-based customs and traditions, violations of Alaska Subsistence Law AS 16.05.258(b)(4)(B), and violation of the Public Trust Doctrine (see Exhibit C: Plaintiff Manning's Post Hearing Supplemental Brief, pending in case 3KN-11-367CI, copy attached).

Thank you for the opportunity to comment.

Respectfully submitted:

A handwritten signature in cursive script that reads "Kenneth H. Manning".

Kenneth H. Manning



EXHIBIT NO. A  
PAGE 1 OF 8

Kenneth Manning, J.D.  
P.O. Box 775  
Kasilof, AK 99610  
907-262-4377

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT KENAI

Kenneth Manning,	)	
Plaintiff,	)	
and	)	
Alaska Fish And Wildlife	)	
Conservation Fund,	)	
Intervenor,	)	
Vs.	)	
	)	
STATE OF ALASKA DEPARTMENT	)	
OF FISH & GAME,	)	
Defendant,	)	Case No. 3KN-09-178 CI
and	)	
AHTNA Tene Nene'	)	<b>MOTON FOR DECLARATORY RELIEF</b>
Intervenor.	)	<b>BY PUBLIC TRUST DOCTRINE</b>
	)	

I, Plaintiff Manning, in accordance with Civil Rule 77, hereby move this court for an order granting declaratory relief under the Public Trust Doctrine in favor of plaintiffs, based on the following.

Neither this court nor the defendants have presented any argument or lawful justification for the State Alaska Dept. of Fish & Game (ADFG) or this Court's violation and betrayal of the sovereign state police powers under the Public Trust Doctrine obligations and duties as Trustee of the state's wildlife resources. As public Trustee of state wildlife resources, the state ADFG is constitutionally mandated to



manage the resource for the benefit of the people.<sup>1</sup> The ADFG and Judge Bauman have both unconstitutionally abdicated and transferred the state trustee obligations to a non-governmental third party under the Ahtna community harvest permit (CHP), then to a permit hunt administrator (HA) to determine subsistence hunting rights, eligibility criteria, and power to deny the right to hunt to other hunters. Such power belongs only to the sovereign state under the Public Trust Doctrine to determine an individual's rights to hunt wildlife on the hoof ("game" in its natural state), and cannot give away the State's un-captured wildlife resources to a private party nor for a CHP HA to determine eligibility for all other residents of the state.<sup>2</sup>

Plaintiff's amended complaint at Count II and V states:<sup>3</sup>

COUNT II

Implementation as regulations for enforcement of a native village priority and rural preference by Community Subsistence Harvest Hunt (5 AAC 92.072) and designation of Community Harvest Hunt areas (5 AAC 92.074) [Exhibit D], **violates the State's Constitutional obligations as Trustee of the State's resources** under authority of the Alaska Constitution Article 1 Section 1, Article VIII Section 3.

. . . .

COUNT V

The Community Harvest regulations under 5 AAC 92.052, 5 AAC 92.072, 5 AAC 92.074, [Exhibit D] are unlawful where 1) exceeding all statutory authority AS 16.05.258, **unlawfully delegate ADFG hunting permit issuing authority**

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<sup>1</sup> Alaska Constitution Article VIII Section 3, "**Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people** for common use."

<sup>2</sup> ADFG regulation 5 AAC 85.025; and Judge Bauman's order of June 29, 2009, ordered "sharing opportunity" conditions determined by Ahtna CHP HA, at page 28 and 29.

<sup>3</sup> Plaintiff has further claimed "unconstitutional grant" about 100 times now.



to a private party as private hunt administrator to administer State issued hunting permits; [bold underline emphasis added]

The Alaska Supreme Court in Owsichek v. State, 763 P.2d 488 (Alaska 1988) clarified the state's duties and obligations under the common law Public Trust Doctrine, and as mandated by Alaska Constitution Article VIII Section 3: "Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

[fn10]Similarly, it has been stated:

The common use clause necessarily contemplates that resources will remain in the public domain and will not be ceded to private ownership."

Referenceing State v. Ostrosky, 667 P.2d 1184, 1196 (Alaska 1983).

By granting 300 caribou to Ahtna CHP, the ADFG has unlawfully abdicated and transferred the state's trustee obligations to maintain ownership and game management of a public resource, to a private party. And this court has further abdicated and betrayed the state Public Trust Doctrine trustee obligations and duties by Ordering that a private party (CHP HA) determine eligibility criteria and authority to share or deny all other hunters eligibility. This is a clear betrayal of the sovereign state Police Power by Public Trust Doctrine to manage the state's wildlife resource as "game" in its natural state for the benefit of all people, and thus violates the constitutional mandate that public wildlife resources "will not be ceded to private ownership." *Id.*, at 1196.

Thus the State ADFG nor Judge Bauman cannot give 300 caribou to the Ahtna community harvest permit, nor abdicate to the permit hunt administrator the Trustee authority to





determine who hunts and who does not; i.e., determine eligibility for all other Tier-I hunters as ordered by Judge Bauman's "sharing opportunity" Decision and Order of June 29, 2009, and Ruling dated July 14, 2009.

The grant to Ahtna of 300 caribou, and the ordered authority for the Ahtna CHP HA to determine eligibility of others, are extreme violations of the Public Trust Doctrine and contrary to the intent of the framers of the Alaska Constitution:

B. We begin by examining constitutional history to determine the framers' intent in enacting the common use clause. This was a unique provision, not modeled on any other state constitution. Its purpose was anti-monopoly. This purpose was achieved by constitutionalizing common law principles imposing upon the state a public trust duty with regard to the management of fish, wildlife and waters. n11

n11 Responding to a question about this provision on the floor of the convention, a member of the Resources Committee explained, "The language here has a lot of history behind it . . . . The language in this section harks back to the old tradition whereby wildlife in its natural state was in the presumed ownership of the sovereign until reduced to possession." 4 Proceedings of the Alaska Constitutional Convention 2492 (Jan.18, 1956).

[\*\*15] The framers' reliance on historic principles regarding state management of wildlife and water resources is evident from a written explanation in the committee materials for the term "reserved to the people for common use." This discussion also highlights an intent to prohibit "exclusive grants or special privilege[s]."

Ancient traditions in property rights have never recognized that a private right and title can be acquired by a private person to wildlife in their natural state or to water in general. The title remained with the sovereign, and in the American system of government with its concept of popular sovereignty this title is reserved to the people or the state on behalf of the people. The expression "for common use" implies that these resources are



not to be subject to exclusive grants or special privilege as was so frequently the case in ancient royal tradition. Rather rights to use are secured by the general laws of the state. In all English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that [\*\*16] the wildlife was captured in conformity with provisions of law.

Alaska Constitutional Convention Papers, Folder 210, paper prepared by Committee on Resources entitled "Terms" (emphasis added, except to "use").

Owsichek v. State, 763 P.2d 488, 493, B (Alaska 1988).

Here, the grant of 300 caribou occurring in their natural state ("game") is clearly in violation of the constitutional intent of "reserved for the people" by the Public Trust Doctrine per Article VIII Section 3. The public must retain broad access to fish, wildlife and water resources, and these resources not be the subject of private grants. Owsichek, id at 494; McDowell v. State, 785 P.2d 1 (Alaska 1989). The ownership of the wildlife resource must remain with the State until the individual hunter has taken the game.

The drafters of the common use clause intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife and water resources. *Id* at 495. They traced the history of wildlife law noting the leading precedent of the U.S. Supreme Court in Geer v. Connecticut, 161 U.S. 6519 (1896), reviewing its roots from ancient Rome through the English common law



and transfer to the early colonies of the United States, recognizing:

Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power or control lodged in the state, resulting from this common ownership, is to be exercised like all other powers of government as a trust for the benefit of the people, and not as a prerogative for the advantage of the government as distinct from the people, or for the benefit of private individuals as distinguished from the public good. [emphasis added] Owsichik, id at 494.

The Alaska Supreme Court in Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 915 (Alaska 1961), similarly stated:

These migrating [\*\*22] schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state. (Emphasis added.) Similarly, in Herscher v. State, Department of Commerce, 568 P.2d 996, 1003 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

Referenced in Owsichik, id at 495.

The Owsichik court further noted it has twice reviewed and held<sup>4</sup> that the common use clause is intended to provide independent protection of the public's access to natural resources. *Id* at 495.

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<sup>4</sup> Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 915 (Alaska 1961), *aff'd*, 369 U.S. 45, 7 L. Ed. 2d 562, 82 S. Ct. 552 (1962); Herscher v. State, Department of Commerce, 568 P.2d 996, 1003 (Alaska 1977).



Finally, Owsichek summarized cases applying the public trust doctrine:

A good example is the lodestar of American public trust law, *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387, 36 L. Ed. 1018, 13 S. Ct. 110 (1892). In that case, the Illinois legislature purported to grant to a railroad more than [\*\*25] 1,000 acres of land underlying Lake Michigan in the harbor of Chicago. The Court applied the doctrine of the public trust in navigable waters to uphold the legislature's later revocation of the grant:

A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.

*Id.* at 453, 36 L. Ed. at 1043.

In light of this historical review we conclude that the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state. The proceedings of the Constitutional Convention, together with the common law tradition on which the delegates built, convince us that a minimum requirement of this duty is a prohibition against any monopolistic grants or special privileges. Accordingly, we are compelled to strike down any statutes [\*\*26] or regulations that violate this principle.

*Id.* at 497.

WHEREFORE, the ADFG regulations that grant a special priority privilege of the state's game resource of 300 caribou to the Ahtna CHP, and this court's order that the CHP hunt administrator has authority to determine eligibility of all other hunters, violate the constitutionally protected



Public Trust Doctrine, and are thus unconstitutional<sup>5</sup> and must be immediately stayed and struck down as unconstitutional.

Date: August 1, 2009

Respectfully submitted:

A handwritten signature in cursive script that reads "Kenneth H. Manning".

Kenneth H. Manning, J.D.  
Plaintiff

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<sup>5</sup> Plaintiff's claim that the grant of special priority hunting privileges to a "community" cannot take lawful priority of all other individuals, is pending in the Rule 402 Petition For Review challenging Judge Bauman's order of June 29, 2009 and July 14, 2009, now before the Alaska Supreme Court, in addition to the obvious violations of Subsistence Law AS 16.05.258(b) (3), (4) [Tier-I and Tier-II], and the Administrative Procedures Act AS 44.060 et seq.



EXHIBIT NO. B  
PAGE 1 OF 29

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT KENAI

KENNETH MANNING,	)
Plaintiff,	)
and	)
THE ALASKA FISH AND WILDLIFE	)
CONSERVATION FUND	)
Intervener Plaintiff,	)
vs.	)
STATE OF ALASKA,	)
DEPARTMENT OF FISH & GAME	)
Defendant,	)
and	)
AHTNA TENE NENE'	)
Intervenor Defendant.	)
_____	)

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Case No. 3KN-09-178CI

**DECISION ON SUMMARY JUDGMENT**

Plaintiff Kenneth Manning ("Manning") and intervenor-plaintiff The Alaska Fish and Wildlife Conservation Fund ("AFWCF") seek to overturn Board of Game ("Board") decisions in 2009 regarding the Unit 13 Nelchina Herd Caribou hunt. The issues before the court include the following:

1. Did the Board properly set the number of Unit 13 caribou reasonably necessary for subsistence at 600-1000 per year;
2. Did the Board properly find that customary and traditional subsistence uses only require one caribou every four years;
3. Did the Board properly change the subsistence caribou hunt in Unit 13 from a Tier II to a Tier I drawing hunt allowing a Tier I hunter no more than one hunt every four years, as well as other special restrictions;
4. Was the Board authorization of a residence-based community harvest permit ("CHP") lawful;

D



5. Did the Board lawfully delegate to the Ahtna Tene Nené Subsistence Committee authority to administer a CHP hunt for eight Ahtna villages in the Nelchina area; and

6. Did the Board properly set aside 300 caribou for the CHP as well as up to 100 any-bull moose, and a number of restricted bulls equal to the number of individuals subscribing to the CHP permit, leaving only 300 caribou for all other Tier I hunters?

The Board and Ahtna Tene Nené contend the actions by the Board in 2009 were constitutional, authorized by statute, supported by substantial evidence, and appropriate. The motions for summary judgment focus exclusively on Board action in 2009, with reference to Board findings in 2006 regarding subsistence uses in this area. Board actions in 2010 are not before the court.

Procedural Setting: The issues were extensively briefed and argued at the preliminary injunction stage in 2009. Hearings were held in 2009 on the preliminary injunction challenges. A preliminary injunction to halt the 2009 hunt was not issued, but the court found that serious and substantial questions were raised and required changes in the Ahtna CHP for the 2009 caribou hunt to address the local residency problem.

Summary judgment motion practice ensued. This case was brought as an original action, not as an appeal from an administrative decision. In September 2009 the parties reported in line with Civil Rules 26(f) and 16. The parties, other than Manning, agreed there were no pertinent factual issues, no need for formal discovery practice, and no need for a trial. Manning moved to bifurcate the constitutional claims and to conduct discovery leading to a normal trial on those issues. Oral argument was conducted on the motions for summary judgment on January 4, 2010. At the January 21 pretrial conference Manning agreed to forego a separate trial on the constitutional issues, and all parties agreed that there were no genuine material factual issues in dispute.



The parties have focused on the Nelchina Caribou Herd in Unit 13. The Manning complaint includes challenges to the Board actions regarding moose in Unit 13. The Ahtna CHP covers both moose and caribou, and moose are addressed herein in that context.

The parties submitted supplemental information and authority. Ahtna filed a Notice of CHP Administrator's Final Report regarding the 2009 hunt. The report indicates that under the CHP for 2009 as of January 7, 2010, 66 any-bull moose, 27 restricted bulls, and 97 caribou were taken. Ahtna also submitted the CHP as issued by the Department on August 7, 2009, the CHP application form, the harvest plan for the 2009 CHP, and a copy of frequently asked questions and the responses re the 2009 Ahtna CHP. Other supplemental authority was submitted.

**Outline of the Summary Judgment Motions:**

AFWCF moved for summary judgment to invalidate the Ahtna CHP and the set aside of 300 caribou for the Ahtna CHP as violating Article VIII, sections 3, 15, and 17 of the Alaska Constitution, regulations, and case law. The motion was supported by an affidavit by Tony Russ, a lifelong Alaska resident who has either hunted or shared caribou meat from the Nelchina herd for 48 years.

Manning filed a motion for declaratory relief under the public trust doctrine. His motion challenges the legality of the Board's delegation of resource management and hunting permit authority to the Ahtna Tene Nené Subsistence Committee in the authorization for the Ahtna CHP. Manning relies on constitutional provisions, Alaska constitutional convention papers, the 1989 McDowell case, and Owsichek v. State, 763 P.2d 488 (Alaska 1988).

The State opposed the AFWCF motion and cross-moved for "summary judgment in its favor on the AFWCF's and Manning's claims." The State supported its position with





exhibits including findings, transcripts, and excerpts from the record before the Board. The State claims that neither Manning nor AFWCF have challenged the constitutionality of AS 16.05.330(c) in their complaints. The State contends the language in the statute "indicates that the legislature viewed subsistence as largely involving communal or cooperative behavior." The State points to findings made by the Board in 2006 on the eight criteria in 5 AAC 99.010 to identify customary and traditional uses in this area. The State concludes on page 12:

In short, the customary and traditional use findings that are the prerequisites for any subsistence use of caribou in Unit 13, by anyone, are based on a pattern that is communal and local in nature, not individualized and urban.

On page 13 the State contends that the Alaska statutes require the Board to give preference and protect the communal subsistence users, which the State says, "means, among other things, that all other users must be eliminated before the identified customary and traditional, communal, use is restricted to a Tier II hunt."

Ahtna opposed the AFWCF motion for summary judgment and cross-moved for summary judgment. Ahtna supported its position with exhibits. Manning filed a Consolidated Opposition to Motions for Summary Judgment, supported by exhibits. The State filed a reply to the Manning and AFWCF oppositions to the State cross-motion for summary judgment. Ahtna filed a reply to the Manning and AFWCF oppositions to the Ahtna cross-motion for summary judgment.

#### STANDARDS FOR SUMMARY JUDGMENT

For summary judgment under Civil Rule 56 the moving party has the burden of proving that the opponent's case has no merit. This burden must be discharged by submission of information and material admissible as evidence. "The moving party has the



entire burden of proving that his opponent's case has no merit." Himschoot v. Dushi, 953 P.2d 507, 509 (Alaska 1998), quoting Nizinski v. Golden Valley Elec. Ass'n, 509 P.2d 280, 283 (Alaska 1973), cited favorably in footnote 12 in Barry v. University of Alaska, 85 P.3d 1022 (Alaska 2004). The non-moving party is not obliged to demonstrate the existence of a genuine issue for trial until the moving party makes a prima facie showing of its entitlement. Himschoot v. Dushi, 953 P.2d at 509, citing Shade v. Co & Anglo Alaska Service Corp., 901 P.2d 434, 437 (Alaska 1995). The non-moving party is entitled to have the record reviewed in the light most favorable to it and to have all reasonable inferences drawn in its favor. Reasonable inferences are those inferences that a reasonable fact finder could draw from the evidence. The non-moving party "must present more than a 'scintilla' of evidence to avoid summary judgment; [namely,] enough evidence to 'reasonably tend to dispute or contradict' the evidence presented by the [moving party]." Alakayak v. British Columbia Parkers, Ltd., 48 P.3d 432, 449 (Alaska 2002).

All parties claim to be entitled to summary judgment as a matter of law. Because there is no genuine issue in dispute as to any material fact and because the parties' claims can be resolved as a matter of law, summary judgment is appropriate.

#### STANDARDS FOR REVIEW OF BOARD ACTION

The Alaska Supreme Court has established a two-step inquiry for review of regulations:

First, we will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, we will determine whether the regulation is reasonable and not arbitrary.



Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1971). In an unrelated action challenging Board of Game regulations, the Alaska Supreme Court held:

Regulations are presumptively valid and will be upheld as long as they are “consistent with and reasonably necessary to implement the statutes authorizing their adoption.” But reasonable necessity is not a requirement separate from consistency. If it were, courts would be required to judge whether a particular administrative regulation is desirable as a matter of policy. Thus where a regulation is adopted in accordance with the Administrative Procedures Act, and the legislature intended to give the agency discretion, we review the regulation first by ascertaining whether the regulation is consistent with the statutory provisions which authorize it and second by determining whether the regulation is reasonable and not arbitrary.

Interior Alaska Airboat Ass'n, Inc. v. State, Bd. of Game, 18 P.3d 686, 689-90 (Alaska 2001) (footnotes omitted; emphasis added). The constitutional challenges in that case based on Article VIII, sections 2, 3, 4, 14, and 17 as well as Article I, section 1 of the Alaska Constitution were addressed one by one, and all were denied. The trial court was described as an intermediate court of appeal, and its findings of fact and conclusions of law regarding its grant of summary judgment were reviewed *de novo* by the Alaska Supreme Court.

In an earlier challenge to lack of action by the Board of Fisheries, the Alaska Supreme Court explained,

When we interpret the Alaska constitution and pure issues of law, we substitute our judgment for that of the Board.<sup>FN9</sup> We interpret the constitution and Alaska law according to reason, practicality, and common sense, taking into account the plain meaning and purpose of the law as well as the intent of the drafters.<sup>FN10</sup>

FN9. See *Moore v. State, Dep't of Transp. and Pub. Facilities*, 875 P.2d 765, 767-68 (Alaska 1994).

FN10. See *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 979 (Alaska 1997).

When we determine whether the Board properly applied the law to a particular set of facts, we review the Board's action for reasonableness. Under this standard, we “merely determine[ ] whether the agency's determination is supported by the facts and is reasonably based in law.” This court will not substitute its judgment for



the Board's or alter the Board's policy choice when the Board's decision is based on its expertise.

Native Village of Elim v. State, 990 P.2d 1, 5 (Alaska 1999) (footnotes 11-13 omitted).

### APPLICABLE, RELATED, OR NOTEWORTHY LAW

The following state constitutional provisions, federal and state statutes, and case law decisions reflect long standing principles and disputes regarding game management and subsistence in Alaska. Familiarity with the history provides context for the present dispute.

#### Constitution of the State of Alaska. Article VIII

**Section 2: General Authority.** The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of the people.<sup>1</sup>

**Section 3: Common Use.** Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

**Section 4: Sustained Yield.** Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial users.

**Section 15: No Exclusive Right of Fishery.** No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic duress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

**Section 17: Uniform Application.** Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

#### Alaska Native Claims Settlement Act. 43 U.S.C. § 1601 et seq.

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<sup>1</sup> “[T]he question of how fisheries and wildlife resources were to be managed gave rise to one of the deepest controversies of the convention.” Fisher, Alaska's Constitutional Convention, page 134, 1975.



Sec. 2(b) of the Act: [Congress finds and declares that] the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, ....

Sec. 4(b) of the Act: All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3101 et seq.

Sec. 804. Preference for Subsistence Use. [T]he taking on [federal] public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes. Whenever [restrictions are necessary], such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

State of Alaska Statutes

The Legislature delegated substantial authority to the Department of Fish and Game, AS 16.05.050, and, with regard to wildlife, to the Board of Game. AS 16.05.221(b). The Board of Game was given regulation-making powers as set out in AS 16.05. AS 16.05.241. AS 16.05.255 details the subjects and areas for which it may adopt regulations. AS 16.05.258 addresses subsistence use and allocation of fish and game. AS 16.05.330 addresses licenses, tags, and subsistence permits. Subsection (c) gives the Board authority to adopt regulations for subsistence permits for areas, villages, communities, groups, or individuals as needed for administering the subsistence harvest of game.

Case Law

Unit 13 has been the subject of the following criminal and civil appellate decisions.

In Myrick v. State, not reported, 1983 WL 807771 (Alaska App. 1983) Leonard Myrick was convicted after a jury trial in Healy of taking a bull moose having less than a thirty-six inch antler spread and less than three brow tines on at least one antler in violation of a regulation in effect in Unit 13.

In State v. Kluti Kaah Native Village of Copper Center, 831 P.2d 1270 (Alaska 1992), the Alaska Supreme Court reversed a preliminary injunction by the superior court against the Board of Game imposition of a seven day moose hunt in Unit 13. The trial court



was found to have erred by concluding that the harm to the State was insignificant. The Alaska Supreme Court held that the state had an interest in developing and maintaining a uniform system of game allocation. The Alaska Supreme Court was concerned that the injunction did not adequately protect the interests of other subsistence hunters or guard against depletion of the moose population. Also, the court held,

In determining whether to issue a preliminary injunction, the trial court should have considered the threat that multiple injunctions would represent to the moose population and the problems it would create for orderly game allocation.

State v. Kluti Kaah, 831 P.2d at 1274.

In Palmer v. State, Not Reported in P.2d, 1993 WL 13156637 (Alaska App. 1993), the court of appeals reversed a conviction of Howard Palmer for violating the one-caribou bag limit in Unit 13 by shooting two caribou where his wife and son also held caribou permits. The Alaska Supreme Court reversed the court of appeals in State v. Palmer, 882 P.2d 386 (Alaska 1994), finding that the invalid portion of the emergency regulation was severable. The Palmer court commented on the effect of its 1989 decision in McDowell v. State, 785 P.2d 1 (Alaska 1989):

In McDowell, this court found that the rural preference expressed in AS 16.05.258 violated several provisions of the Alaska Constitution. 785 P.2d at 12. In addition to greatly increasing the number of eligible subsistence users, the McDowell decision cast doubt on the validity of many of the Board's subsistence regulations.

With respect to the Nelchina caribou herd, the increased number of eligible subsistence participants meant the Board would have to implement a Tier II subsistence hunt.<sup>FN2</sup>

<sup>FN2</sup> The Board realized that the Nelchina herd was not big enough to accommodate the increased number of subsistence hunters who might want to participate. In such cases, former AS 16.05.258 provided for a Tier II hunt. Officials implementing a Tier II hunt limited the eligible subsistence hunters on the basis of three factors: customary and direct dependence on the fish stock or game population as the mainstay of livelihood, local residency, and availability of alternative resources. Former AS 16.05.258.

State v. Palmer, 882 P.2d at 387.

In Shepherd v. State, Dep't of Fish and Game, 897 P.2d 33 (Alaska 1995), hunting guides challenged the constitutionality of the statute requiring regulations adopted by Alaska Board of Game to give the taking of moose, deer, elk, and caribou by residents for personal or family consumption preference over taking by nonresidents in, among others, Unit 13. The court found that resident and non-resident hunters are disparate groups, not similarly situated for equal protection constitutional purposes.



### Additional Case Law on Subsistence in Alaska:

In Madison v. Alaska Dep't of Fish & Game, 696 P.2d 168 (Alaska 1985), the Alaska Supreme Court struck down subsistence fishing regulations that imposed a rural residency requirement on Tier I subsistence users as violating the 1978 statute on subsistence. Before invalidating the Board action, the court observed,

The board argues that the legislature intended to narrow the scope of subsistence fishing to mean fishing by individuals residing in those rural communities that have historically depended on subsistence hunting and fishing.

Madison, 696 P.2d at 174. After the Madison decision, the Secretary of the Interior notified the state that state law was no longer consistent with ANILCA and that federal management would begin unless consistency was achieved by June 1, 1986. The Legislature amended the subsistence statute in 1986 to provide a rural residency requirement for subsistence. The Secretary then found consistency.

In McDowell v. State, 785 P.2d 1 (Alaska 1989), the Alaska Supreme Court held the 1986 subsistence statute's rural residency requirement unconstitutional. The court held,

We therefore conclude that the requirement contained in the 1986 subsistence statute, that one must reside in a rural area in order to participate in subsistence hunting and fishing, violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.

McDowell v. State, 785 P.2d at 9.

In State v. Morry, 836 P.2d 358, 371 (Alaska 1992), the Alaska Supreme Court reversed a key trial court ruling in the context of a criminal case, namely, "the superior court's holding that the boards' All Alaskans policy for first tier eligibility is invalid."

In State v. Kenaitze Indian Tribe, 894 P.2d 632 (Alaska 1995), the court held,

The Tier II proximity of the domicile factor violates sections 3, 15, and 17 of article VIII of the Alaska Constitution, because it bars Alaska residents from participating in certain subsistence activities based on where they live.

State v. Kenaitze Indian Tribe, 894 P.2d at 642. The court discussed appropriate review of Board allocation decisions:

In reviewing allocation decisions made by the Board, a deferential standard of review is employed. Board decisions are upheld so long as they are not unreasonable or arbitrary and proper procedures have been followed. *Id.* (Board's decision favorable to commercial trollers concerning allocation of king salmon in Southeast Alaska not "unreasonable or arbitrary"); Gilbert v. State, Dep't of Fish & Game, 803 P.2d 391, 399 (Alaska 1990) (Board's decision allocating sockeye



salmon between commercial fishing interests in two areas on the Alaska Peninsula not arbitrary or unreasonable); Meier v. State, Bd. of Fisheries, 739 P.2d 172, 174-75 (Alaska 1987) (Board's decision allocating sockeye salmon between commercial setnetters and driftnetters in Bristol Bay "reasonable and not arbitrary."). We have not subjected allocation decisions to the more rigorous least restrictive alternative test employed in cases where entry into a user class is restricted. Compare McDowell, 785 P.2d at 10; Owsichек, 763 P.2d at 498 n.17; and Johns v. Commercial Fisheries Entry Comm'n, 758 P.2d 1256, 1266 (Alaska 1988) with Tongass, 866 P.2d at 1319; Gilbert, 803 P.2d at 399; and Meier, 739 P.2d at 175. Allocation decisions are so complex and multi-faceted that they are not amenable to analysis under such a test.

State v. Kenaitze Indian Tribe, 894 P.2d at 641-42 (footnote omitted).

In State v. Manning, 161 P.3d 1215 (Alaska 2007), a majority the Alaska Supreme Court held that the criteria used to determine the relative eligibility of Tier II subsistence hunters did not violate the rule against residency-based criteria. The food and gas criteria used in the regulation did not violate the Alaska Constitution. Also the court held that Rule 11 sanctions were not appropriate against AAG Saxby. *But the game ratio criteria violated the equal access clause in the Alaska Constitution.*

In Ahtna Tene Nene Subsistence Committee v. State of Alaska Board of Game, 3AN-07-8072 CI (Judge Smith presiding), a preliminary injunction was issued on July 20, 2007. The case was still pending on the merits when last updated by the parties herein. A hearing was conducted on the motion for preliminary injunction, and though affiants were not required to testify, 94-year old Chief Ben Neely wanted to make a statement, which the judge allowed. PI Hearing Transcript at 6-8; State Exh. C. The trial court applied the balance of hardships test and found that the plaintiff had a probability of success of the merits to the point of issuing a preliminary injunction to enjoin some of the regulatory changes, particularly the income factor and the exclusivity use area had to be revised, crafted by the court with the least amount of effort to re-do the Tier II scoring for the 2007 Unit 13 hunt. Id. at 153-56.

#### Additional Case Law in General:

In Owsichек v. State, 763 P.2d 488 (Alaska 1988), a registered guide challenged the Guide Licensing and Control Board's exclusive guide area ("EGA") program as violative of the common use provision in Article VIII, section 3 of the Alaska Constitution. Based on a careful reading of the constitutional minutes regarding the common use provision and prior case law, the court found that the common use clause was "intended to guarantee broad public access to natural resources" including wildlife. Id. at 492. The court observed that the Alaska constitutionalized common law principles imposing upon the state a "public trust duty" with regard to the management of fish, wildlife, and waters. Id. at 493. The court commented, "The extent to which this public trust duty, as constitutionalized by the common use clause, limits a state's discretion in managing its resources is not clearly defined." Id. at 495. The court concluded that the statutes and regulations regarding the Board's EGA





program “are in contravention of article VIII, section 3 of the Alaska Constitution.” *Id.* at 498. The court noted that the EGA program may also violate article VIII, section 17, but did not decide the question because the parties had not briefed the issue and the court found much less constitutional history on section 17 than of the common use clause.

### Supplemental Authority

[By Ahtna on 1-21-10] Superior Court Decision by Judge MacDonald in The Alaska Fish & Wildlife Fund v. State, 4FA-09-966 CI, regarding the Board of Fisheries’ classification of the Chitina dipnet salmon fishery as subsistence or personal use.

[By AFWCF on 2-8-10] Report to the Board of Game by the Department’s Area Management Staff of the Division of Wildlife Conservation on the first year (2009) of the moose and caribou hunt in question (the “DF&G Report”). Ahtna and the Department object to consideration of the DF&G Report. Among other things the DF&G Report states that “[m]any community hunters failed to abide by hunt conditions.” The DF&G Report recommends on page 1:

If the community hunt is continued in 2010-2011, there must be substantial changes to the administration of this hunt to ensure hunter understanding and compliance both for harvest control and to ensure conservation concerns are met.

The DF&G Report notes that there are only three community hunt areas in Alaska. The original two are “very small remote community hunts.” The Report states, “Neither hunt has had any participation in recent years, one reason has been the lack of interest in taking on the administrative duties.” The Report further indicates,

While this is technically a State hunt, the burden of the hunt administration legally falls on Ahtna, an organization with no experience administering this type of program. ADF&G has helped each step of the way .... Without our active participation we believe we would not be able to provide a report of activities or evaluate the success of the program. Still, because the hunt is not administered by the State, the standard protocols ADF&G has developed over many years of administering hunts are not being followed.

The State opposition notes that this report does not rise to the level of an official Department position, but was considered by the Board in 2010 with no change from the action the Board took in 2009.

[By AFWCF on 2-19-10] 1991 Attorney General Opinion: AFWCF filed a notice of supplemental authority in February 2010 to bring the April 12, 1991 Alaska Opinion Attorney General (inf.) No. 227 to the court’s attention. By letter response neither Ahtna nor the State object to taking the opinion into account, but both contend the opinion supports their position.



## CONSIDERATION OF THE MERITS

### A. Alleged Board Violation of the Alaska APA:

Manning contends in Count VI of the Amended Complaint that the Board's notice of the proposed regulations did not comply with the notice and comment procedures required by the Alaska Administrative Procedure Act ("APA"). The Board "is required to follow APA procedures where adopting regulations pursuant to its statutorily delegated authority." Kenai Peninsula Fisherman's Co-op. Ass'n, Inc. v. State, 628 P.2d 897, 904 (Alaska 1981). See also Morry v. State, 836 P.2d 358, 364 (Alaska 1992). The State seeks summary judgment based on the presumed validity of adopted regulations. Manning asserts that the Board's notice was not specific enough to adequately inform members of the public that their interests could be affected by the proposed regulations, and that the adopted regulations are therefore voidable under the APA. See AS 44.62.300; AS 44.62.310. See Kelly v. Zamarello, 486 P.2d 906, 911 (Alaska 1970) (Notice must contain the regulations proposed for adoption under AS 44.62.190).

Under the APA the public notice must contain "an informative summary of the proposed subject of an agency action." AS 44.62.200(a)(3). However, a procedural violation must be "substantial" before the regulation will be declared invalid. See AS 44.62.300. The challenger of a regulation's validity bears the burden to show that there has been a substantial failure to comply with the statute. See AS 44.62.100(a); see also Koyukuk River Basin Moose Mgmt. Team v. Board of Game, 76 P.3d 383 (Alaska 2003). It is insufficient to prove a minor violation. See Gilbert v. State, Dept. of Fish and Game, Bd. of Fisheries, 803 P.2d at 395 (Alaska 1990). See also Chevron, U.S.A. v. LaResche, 663 P.2d 923, 929 (Alaska 1983). The wording of a regulation that is adopted, amended, or repealed may vary in



content from the informative summary, "if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject." AS 44.62.200(b). This construction of the notice requirement allows an agency to adopt regulations arising from meetings that vary from the notice.

In State v. First Nat'l Bank of Anchorage, 660 P.2d 406, 425 (Alaska 1982), the court held that the informative summary requirement was satisfied where the notice consisted merely of broad topics that would be considered. The court held that the general subject headings give "members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their views known to the agency." State v. First Nat'l, 660 P.2d at 425. As long as the public can discern the general topic that the agency was addressing in its proposed regulations, the notice satisfies the informative summary requirement. See Chevron U.S.A. Inc. v. LeResche, 663 P.2d 923, 930 (Alaska 1983); but see Kenai Peninsula Fisherman's Cooperative Assn., Inc. v. State, 628 P.2d 897 (Alaska 1981) (improper notice was found where the notice stated that the meeting would set fishing season dates for the December 1977 season, but did not mention the planned adoption of a long-term management policy).

The subject matter of the Board's proposed regulations was identified and distributed for public comment in a "proposal book," in advance of the Board's public meeting in 2009. State Exh. J; State Exh. I, "Notice of Proposed Changes in Regulations of the Alaska Board of Game & Additional Regulations Notice Information." The public notice stated that "any or all of the subject areas covered by this notice," are proper subjects



for discussion at the Board meeting, and warned, "THE BOARD IS NOT LIMITED BY THE SPECIFIC LANGUAGE OR CONFINES OF THE ACTUAL PROPOSALS THAT HAVE BEEN SUBMITTED BY THE PUBLIC OR STAFF." Exh. I. The notice stated that the Board could consider topics, "including but not limited to ... community subsistence harvest areas and conditions...[and the]...Tier II subsistence hunting permit point system and priority for Tier II permits for Unit 13." *Id.* The proposal book stated: "It is unlikely that the ANS for moose and caribou in Unit 13 will allow for any significant harvest outside of what is needed for subsistence uses. The proposed community harvest permit system would provide an opportunity for the board to more narrowly, and more accurately define subsistence uses consistent with its Customary and Traditional Use finding for moose and caribou in Unit 13." Exh. J, at 7.

The proposal book notified the public of the possibility that the board might implement changes in the permitting process for Unit 13, that it might create a new community subsistence harvest system, and that it was considering more narrowly defining subsistence use under the "customary and traditional use" criteria. The Board's notice provided more detail than the public notice in First Nat'l Bank of Anchorage, and, unlike the notice provided in Kenai Peninsula Fisherman's Cooperative Assn. Inc., the Board's notice was not off-topic. The notice provided the public, including Tier II hunters, with information to determine that their interests might be affected by the proposed regulations regarding the establishment of a CHP for Unit 13. The court finds that the notice satisfied the informative summary requirement of the APA with regard to the CHP.

The State argues that the Board has a long established practice of providing public notice similar to the notice provided for the 2009 Board meetings, without providing the full



wording of proposed regulations. The State contends the sheer scope, magnitude, and time sensitivity of the Board's responsibilities to manage wildlife throughout Alaska makes it impractical to provide more detail than it has historically provided before finalizing regulations after the public hearings. The State relies on the argument that the regulations on the 2009 Unit 13 caribou hunt are presumptively valid. See, e.g., Koyukuk River Basin Moose Co-Management Team v. Board of Game, 76 P.2d 383, 386-87 (Alaska 2003).

The court finds that the public notice for the 2009 Board meetings was not sufficient to alert the public that the Board might (a) find that subsistence use of caribou in Unit 13 only requires one caribou every four years, or (b) change the Unit 13 caribou hunt from a Tier II to a Tier I hunt when there was no significant change in the number of caribou in the Nelchina Herd. The proposal book conveyed the impression to the interested public that Unit 13 would remain subject to a Tier II hunt with a possible modification to accommodate a CHP. The statement in the proposal book that it is "unlikely" the moose and caribou populations would allow for any significant hunt outside subsistence uses suggested that AS 16.05.258(b)(3) or (4) was applicable. Given the unbroken chain of previous Tier II hunts in Unit 13 and no significant change in the population of the Nelchina Caribou Herd or the subsistence uses, the public was not reasonably notified in 2009 that the Board might change the Unit 13 Nelchina Caribou hunt to a Tier I hunt. The Board regulation adopted in 2009 to change the Unit 13 caribou hunt from Tier II to Tier I violated the due process requirements of the APA and is therefore invalid.

**B. Alleged Violation of the Alaska Open Meetings Act:**

Manning challenged meetings between Assistant Attorney Generals and Ahna representatives and meetings between employees of the Department of Fish and Game and



Ahtna representatives as violating the Open Meetings Act (“OMA”). OMA is designed to ensure that meetings of a governmental body of a public entity are open to the public. See AS 44.62.310. OMA was amended in 1994 to narrow its scope. Individual actions are not within the scope of the OMA. See Krohn v. State, Dep’t of Fish & Game, 938 P.2d 1019 (Alaska 1997). Under the amended OMA the Commissioner, Department employees, and Assistant Attorney Generals need not give public notice and an opportunity for the public to participate prior to meeting with private individuals such as Ahtna representatives.<sup>1</sup> The OMA challenge is summarily denied.

**C. The Manning Taking of Tier II Property Rights Argument:**

Manning contends that the Board decision that a Tier I hunt was appropriate for 2009 and 2010 constitutes an improper taking of his Tier II hunting rights. Under the Tier II factors, the parties do not dispute that Manning has a relatively high Tier II number as compared to other Tier II hunters. If a Tier I hunt is permitted for Unit 13 caribou, the Tier II priority position that Manning has accumulated over the years will be lost. He will have equal standing with all of the other Tier I hunters. As such he will have no greater or lesser chance of being awarded a Unit 13 caribou hunting permit than any other Tier I hunter. Manning argues that his Tier II position is a constitutionally protected right.

Personal hunting and fishing rights are more correctly viewed as privileges. See Herscher v. State Department of Commerce, 568 P.2d 966 (Alaska 1977)(“The state’s power

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<sup>2</sup> It would be a violation of the OMA for three or more members of the Board of Game to meet privately with the representatives of any user group. However, an individual member of the Board is not precluded by the OMA from discussing game management issues with a member of the public. See Brookwood Area Homeowners Ass’n v. Municipality of Anchorage, 702 P.2d 1317, 1323 n.7 (Alaska 1985) (“Quadrant’s representatives could have met with each Assembly member individually to discuss their development project and to lobby for the passage of a rezoning ordinance without violating the Open Meetings Act.”).



over natural resources is such that it could entirely eliminate the role of hunting guides, and no problem of due process would arise.”); Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 916 (Alaska 1961) (dicta suggests court concurrence with the proposition that “fishing rights” as used in § 4 of the Alaska Statehood Act is more correctly viewed as fishing privileges). In an Attorney General Opinion in 1979, Assistant Attorney General Jon Tillinghast wrote:

However, as our state supreme court stressed in Herscher, supra, the taking of fish and game resources in Alaska is in the nature of a privilege rather than a right, and the legislature may alter the statutory terms under which that privilege may be exercised, without the necessity for due process protections, and certainly without the need for compensation:

Alaska A.G. Opinion, File No. J-66-031-80, 1979 WL 22727. In McDowell v. State, 785 P.2d 1, 19 (Alaska 1989), the court stated that other courts have concluded in considering the degree of scrutiny in a constitutional context that “recreational hunting is not a fundamental right,” citing Baldwin v. Montana Fish & Game Comm’n, 436 U.S. 371 (1978) (elk hunting by non-residents not fundamental); Utah Public Employees Ass’n v. State, 610 P.2d 1272 (Utah 1980) (entry in big game hunting permit drawing not fundamental).

Manning has not shown that his comparatively high Tier II hunting factor position is a fundamental property right entitled to heightened constitutional scrutiny. Manning was not singled out by the Board. The existence of Tier II priority positions held by Manning and other Tier II hunters does not, in and of itself, preclude the Board from changing the Unit 13 caribou hunt from a Tier II to Tier I hunt. The Manning challenge on that basis to the actions of the Board is denied.



**D. The Manning Challenge to the 2009 Board Finding that the Unit 13 Caribou Hunt Should Be a Tier I Rather than a Tier II Hunt:**

Discretion is delegated in AS 16.05.258(a) to the Board of Game to “identify the ... game populations, or portions..., that are customarily and traditionally taken or used for subsistence.” The Commissioner is obligated to provide recommendations to the Board regarding population identifications. The Board is obligated to make decisions on the harvestable number of caribou consistent with sustained yield and the number of caribou reasonably necessary for subsistence uses.

The parties do not challenge the Board’s finding that for 2009-2010 the harvestable sustained yield from the Nelchina Caribou Herd is 600-1000 bull caribou. With federal control over a portion of the migratory range of the Nelchina Herd, the split of the harvestable sustained yield is 400 bull caribou to federal harvest control and 600 to State management.

Until 2009 the Board routinely concluded that the harvestable number of caribou in Unit 13 consistent with sustained yield was not sufficient to meet the subsistence use needs. Thus, a Tier II hunt was necessary under AS 16.05.258(b)(4). In 2009, no evidence was presented to the Board that the number of harvestable caribou had increased. Nevertheless the Board concluded that the 1000 harvestable caribou would meet 100 percent of the subsistence use needs, so that a Tier II hunt was not required. That determination appears to have been based on the Board’s determination that subsistence users only need one caribou every four years. The Department has not identified factual evidentiary support for that determination by the Board. The Board’s Findings in 2006 do not support that proposition. The only pertinent factual reference in the administrative record of the Board in





2009 was to an anecdotal comment of a Board member that he still had caribou in his freezer from two years ago.

Deference should be accorded Board determinations. See State v. Kenaitze Indian Tribe, 894 P.2d at 641-42, See also Native Village of Elim v. State, 990 P.2d 1 (Alaska 1999) (the expertise of the Board of Fisheries stands in contrast to a court trying to make natural resource management decisions such that deference to Board decisions is appropriate); Koyukuk River Basin Moose Co-Management Team v. Board of Game, 76 P.2d 383 (Alaska 2003) (plaintiff conceded that the Board has substantial discretion to identify game populations in any rational manner related to the purpose of the subsistence statute). There is no factual support in the administrative record for the determination that subsistence users only need one caribou every four years. There is no support in the record for the Board change of position in 2009 that the harvestable number of caribou in Unit 13 is sufficient to meet the subsistence needs of all subsistence users. The Board characterized its 2009 changes to the Unit 13 caribou hunt as an “experiment.”

The court finds that the Board decision in 2009 to change the Unit 13 caribou hunt from a Tier II to a Tier I hunt was arbitrary and unreasonable because it was not supported by evidence in the administrative record.

**E. The Manning and AFWCF Challenge to the Board Decision To Establish a CHP in Unit 13:**

In 2009 the Board decided to issue a CHP for the Ahtna Tene Nené Subsistence Committee to administer a community subsistence harvest hunt for eight Ahtna villages in the Nelchina area setting aside 300 caribou for the CHP as well as up to 100 any-bull moose, and a number of restricted bulls. The Board has authority under AS 16.05.330 and the



regulations adopted thereunder to establish CHPs. Here one CHP was issued under which eight separate hunting areas were established; one for each of the eight authorized villages.

The question is whether the CHP adopted by the Board for Unit 13 caribou and moose violates any Alaska constitutional or statutory provision or Alaska case law. The State notes on page 23 of its August 31 Memorandum that “no case has yet addressed the Board’s authority under AS 16.05.330(c).” The CHP portion of AS 16.05.330 was enacted in 1986 as part of the legislative response to the federal takeover of game management in Alaska and to a then recent Alaska Supreme Court decision. Extensive legislative history exists regarding the intent of the Legislature in 1986 with respect to providing protection for subsistence, especially rural based subsistence, but very little of that history addresses the legislative intent concerning the CHP concept in 330(c).

Part A of the McDowell decision makes a rural residency requirement unconstitutional under Article VIII, sections 3, 15, and 17 of the Alaska Constitution. The court held, “It follows that the grant of special privileges with respect to game based on one’s residence is also prohibited.” McDowell, 785 P.2d at 9. Part B of the McDowell decision provides that any system which closes participation to some, but not all, applicants creates a tension with the protections of Article VIII of the Alaska Constitution such that if the exclusionary criterion is not per se impermissible, “demanding scrutiny” is appropriate. Id. The fact that in 1986 the Legislature authorized the Board to establish CHPs does not trump the 1989 McDowell precedent, which must be applied on a CHP-by-CHP basis.

The State and Ahtna argue that the Ahtna CHP is not improper because anyone can choose to reside in one of the eight villages in question. Although it is true that anyone, in theory, could relocate to reside in any one of these eight Ahtna villages, that argument



does not defeat the fact that the Ahtna CHP as adopted constitutes a barrier to entry based on residency. Although it is not determinative of the legality of the CHP, the court notes that the Ahtna CHP Hunt Administrator notified those who received an Ahtna Harvest ticket that the ticket does not give the hunter permission to hunt on Ahtna lands and that "All Ahtna Lands are closed to hunting." Manning Exh. A. The notice does not indicate whether tribal members may hunt on Ahtna lands. The Ahtna CHP proposal 84 called not only for a Village resident requirement for the CHP, but also required Tribal membership, "The Ahtna community permit would apply to tribal members enrolled in the Ahtna Village tribes." Manning Exh. J, at 2. As adopted by the Board, the Ahtna CHP limits the participants to Ahtna Village residents and limits the subsistence sharing of caribou taken under the CHP to residents of the eight Ahtna villages. The Ahtna CHP, if implemented without change, has a residency based standard for taking and sharing a subsistence resource. The conditions for the community hunt set forth on the updated 7/31/2009 version provide in ¶ 2 that "Community hunters must be ... a member of the community." ¶ 4 provides that if you sign up as a community hunter, you are prohibited from holding a state harvest ticket or any other state hunt permit for moose or caribou that year. Also the hunter will be limited to hunting for moose or caribou only within the community harvest area. Pursuant to ¶ 8, all hunters are "encouraged" to salvage C&T parts of the animal including the heart, liver, and kidneys and, for moose, the head, hide, intestines, and stomach. Manning Exh. B.

At the preliminary injunction stage the court severed the residency portions of the Ahtna CHP in an attempt to salvage the remainder under the Alaska Constitution and applicable case law. Opening the Ahtna CHP at least in legal theory to any and all interested Alaskans proved confusing, difficult, and expensive for Ahtna to administer. There is



inherent, inescapable tension between the Alaska Constitutional provisions as interpreted and applied in the McDowell case and the concept of a community harvest permit as authorized in this instance by the Board. The Board's 2006 Findings regarding subsistence in the Unit 13 area do not alleviate the tension. The Board Findings in 2006 regarding the customary and traditional subsistence uses in Area 13 emphasize local residency and communal sharing. The Board found that local members of the community were being hindered in passing along their customary and traditional practices because younger and older members of the community could not obtain a Tier II permit. Following the observation that virtually since its inception the Tier II subsistence permit system has "plagued with public complaints about inequities, unfairness, and false applications," the Board's 2006 Findings include the following:

- (1) The Tier II bag limits were 3 caribou per year, recently as of 2006 reduced to 2 per year (page 2);
- (2) After 1950, historical use patterns changed rapidly with more mechanized access, cash employment, increased human population, increasing competition for wildlife, and fluctuating wildlife populations (page 3);
- (3) The fall hunt traditionally followed the salmon harvest; the winter hunt was whenever meat was needed and game was available (page 4);
- (4) Local hunters travel shorter distances to hunt and utilize less technology than non-local hunters (page 4);
- (5) Local hunters take more than needed for their own families to provide for the community at large (page 5);
- (6) Lifelong local residents do not share the non-local resident attitude of utilizing other areas (page 5);
- (7) The traditional of local residents is to salvage and use all parts of the harvested animal in contrast to patterns based out of urban areas where the focus is on meat and antlers and most organs, bones, and the hide are left in the field (page 6);
- (8) Traditions and roles regarding harvesting, providing, preparation, and storage are important within the Ahtna "engii" system regarding the human place within the natural world and a respectful treatment of animals (page 6);



- (9) Local users learned how to hunt from family in the local area; most non-local users tend to be controlled by the law rather than long-term oral traditions and community-based values (page 6);
- (10) It is “imperative to accommodate the customary and traditional family and community harvest sharing practices as part of the subsistence way of life to the maximum extent possible” (page 7);
- (11) There are no non-local traditions of community-wide meat distribution (page 7);
- (12) The separation of the interconnected diversity of resource uses by non-local users undermines the use of efficient and economic methods and means by local users (page 8);
- (13) Under the State’s Tier II permit system permits have been slowly shifting from local residents who are the most dependent upon wildlife resources to less subsistence-dependent urban residents (page 1);
- (14) It is almost impossible for new and younger Alaskans to qualify for Tier II permits despite a subsistence dependence on wildlife resources for food (page 1);
- (15) The long term goal of the Board is to design a system to accommodate subsistence-dependent users in a way that permits can be virtually guaranteed from year to year (page 1);
- (16) The customary and traditional subsistence uses of the Nelchina Caribou Herd and moose were established by Ahtna Athabascan communities in the Copper River Basin and have been passed between generations orally and through practices which were later adopted by other Alaska residents (page 2);
- (17) The pattern of taking and use among Ahtna village residents is more economically cost and effort efficient than among non-local residents (page 4); and
- (18) Ahtna members have a pattern of taking, use, and reliance where the harvest effort of products that are harvested are distributed or shared, including customary trade, barter, and gift-giving.

The customary and traditional subsistence practices of local residents are contrasted to the practices of urban users. The Board received evidence that Tier II hunters do not necessarily use their Tier II permit, which implied to the Board that the individuals who did not use their Tier II permit are not true subsistence hunters dependent upon wildlife resources for survival.

The theme throughout the Board’s Findings in 2006 is that the customary and traditional subsistence uses established and practiced by local Ahtna community members



are in line with a traditional subsistence way of life, but the practices of urban-based subsistence users and subsistence users from other rural areas are not.<sup>3</sup> As fashioned by the Board in 2009, the Ahtna CHP hunt reflects the Board's Findings in 2006 and the expressed long-term goal of the Board to "virtually guarantee" a permit for a caribou every year for local resident subsistence users. The Ahtna CHP provides for eight separate community hunt areas and is designed to allow CHP participants to hunt every year that a CHP hunt is held. In contrast, the Tier I drawing permit hunt restricts participants from any other hunt and, if successful, from hunting again in Area 13 for three years.

The legislative history (even broadly defined) regarding AS 16.05.330 is limited. By letter of March 13, 1985, Governor Sheffield conveyed a proposed bill to the Speaker of the House to provide the Board of Fisheries and the Board of Game the same authority they had before the then recent February 1985 decision by the Alaska Supreme Court in Madison v. Alaska Department of Fish and Game. A Special Committee on Fisheries within the House received testimony in a heavily attended meeting on March 21, 1985, regarding the effect of the Madison decision. The Special Committee urged action that session on the subsistence issue in a "prompt but thorough manner." An unsigned letter of intent by Representative Miller, Chairman of the House Rules Committee, dated 5/2/85 for CSHB 288

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<sup>3</sup> In Payton v. State, 938 P.2d 1036 (Alaska 1997), the court reversed a Board decision not to characterize the upper Yenta River area as a subsistence use area. The court concluded,

The Board erroneously required current users of salmon in the upper Yentna River area to have a familial relationship with prior generations of subsistence users in the area. We determine that this interpretation of 5 AAC 99.010(b) is inconsistent with AS 16.05.258(a) and AS 16.05.940(7). We also conclude that the Board failed to explain adequately why it determined 5 AAC 99.010(b)(5) does not favor a finding that uses of upper Yentna River area salmon are customary and traditional.

Payton v. State, 938 P.2d 1036, 1045 (Alaska 1997).



states that under the bill the boards will limit subsistence uses to “Alaska residents who are domiciled in rural communities and rural areas.” Hearings were held, statements were made, but no legislation on subsistence was enacted in 1985.

Next session, by letter of April 24, 1986, to Senator Kelly, Governor Sheffield noted that he had introduced HB 288 in 1985. Governor Sheffield attached a 20-page background briefing document on HB 288. The briefing document explained, *inter alia*, that HB 288 was intended to address the problems said to have been caused by the decision in Madison v. Alaska Department of Fish and Game:

IV.A. It [HS 288] would amend the definition of “subsistence uses” in statute to clarify that they are the customary and traditional uses by rural Alaska residents of fish and game. [Emphasis in original]

With regard to the CHP concept, page 8 of the March 12, 1986 Senate Resources Committee Staff report regarding SCS for CS for HB 288 states in pertinent part:

Section 8 amends AS 16.05.330 to allow the boards to adopt regulations providing for subsistence permits. Those permits may be for all subsistence users within a rural area, for rural communities or villages, or for groups or individuals in rural areas. The boards are required to adopt a permit program when the subsistence preference requires reductions in the harvest by nonsubsistence users. Such a reduction should only take place in case of a resource shortage compared to the number of users. When that situation exists, the Department and boards should have such a system in place so they can closely monitor the harvest and the demand on the resource.

The April 3, 1986 Senate CS for CS for HB 288 used the phrase “rural areas” in its proposed 330(c) language, not “areas, villages, communities, groups, or individuals” as was eventually enacted.

The 2006 Findings by the Board regarding customary and traditional subsistence uses in Unit 13 were largely supported by testimony from local and nearby residents during the Board meetings in 2009. Local subsistence needs in Unit 13 for moose and caribou are



important, indeed vital to many families. There is no doubt that traditional local hunting receives significant and arguably unfair competition from non-local hunters who are perceived to have, and may well actually have, more financial resources, alternative access to other subsistence game, and state-of-the-art hunting equipment. However, based on the legal analysis and precedent established by the Alaska Supreme Court in McDowell v. State, 785 P.2d 1 (Alaska 1989), this court concludes that despite the Board's attempts to characterize it otherwise, the Ahtna CHP is fundamentally a local-residency based CHP. As such the Ahtna CHP violates sections 3, 15, and 17 of article VIII of the Alaska Constitution.

**F. The Board Exceeded Its Authority by Delegating Hunt Administration Authority for the Ahtna CHP to the Ahtna Tene Nené Subsistence Committee.**

Under the public trust doctrine, the State may not delegate control over fish and game management to private individuals or entities. See McDowell v. State. See also Informal Attorney General Opinion No. 227, 1991 WL 542011; Informal Attorney General Opinion No. 663-86-0504, 1986 WL 81121; Attorney General Opinion No. 663-88-0521, May 12, 1988 WL 249437. Delegations of authority that are merely ministerial rather than discretionary in nature may be delegated. The breadth of the CHP hunt administration responsibilities go beyond ministerial into discretionary determinations.

The court finds that AS 16.05.330(c) does not authorize the Board to delegate hunt administration authority under a CHP to a private individual or entity. The Ahtna CHP for Unit 13 must be administered by the Department. The Department may establish one or more CHPs within Unit 13, consistent with Alaska constitutional and statutory requirements, but must retain the administration responsibilities to ensure that accurate, timely information is provided to the public regarding who, when, and how interested Alaskans may apply to





participate in the community hunt. Delegating CHP hunt administration to the Ahtna Tene Nené Subsistence Committee unduly compromised the Department's game management duties and responsibilities. The Department needs to maintain control of the determination of the lawful criteria for selecting who may hunt, for establishing any special restrictions for the hunt and for the handling of the game, and for establishing the terms and conditions for a meaningful communal sharing of caribou and moose taken under a CHP.

**G. The Board Decision To Allocate 300 Caribou to Tier I Permit Hunters for Caribou in Unit 13 for the 2009 and 2010 Hunts:**

Given the court's finding that the Board violated Alaska law by changing the Unit 13 caribou hunt from Tier II to Tier I, this issue is moot.

**H. Board Decision To Allocate 300 Caribou to the Community Harvest Permit in Unit 13 for the 2009 Hunt:**

Given the court's finding that the Board violated Alaska law by authorizing a residency-based CHP for the Unit 13 caribou hunt, this issue is moot.

**I. The Special Restrictions on the Unit 13 Caribou Hunt:**

The Board imposed restrictions and special requirements on the 2009/2010 Unit 13 caribou hunts. Those special restrictions and requirements do not present issues of constitutional dimension. The Board has discretion in fashioning special restrictions to achieve its overall game management objectives. Reasonable minds could differ over conditions such as the requirement to destroy and leave caribou antlers in the field. Caribou antlers have been used for centuries as toys and for pipes, art carvings, jewelry, snow goggles, rustic furniture components, and trade. However, the Board is vested with considerable discretion and authority in this regard. Given the annual potential for Board review and modification of these conditions, the challenge to these restrictions is denied.



CONCLUSION

For the reasons set forth above, summary judgment is granted as follows:

- The motion by AWFCF to invalidate the Ahtna CHP is granted;
- The public trust doctrine improper delegation challenge by Manning to the Board's authorization of the Ahtna CHP is granted;
- The open meetings act challenge by Manning is denied;
- The argument by Manning that his Tier II priority status is a right entitled to heightened constitutional scrutiny is denied;
- The challenge by Manning to the adequacy of the public notice of the 2009 Board meetings is granted with regard to the Board change from a Tier II to a Tier I hunt and with regard to the finding that subsistence users of Unit 13 caribou only need one caribou every four years;
- The challenge by Manning to the Board's experiment to change the Unit 13 caribou hunt from Tier II to Tier I is granted;
- The Manning/AWFCF challenge to the allocation of 300 caribou to the Ahtna CHP and 300 caribou to the Tier I permit drawing hunt is moot;
- The challenge by Manning to the Board's special conditions for the 2009/10 Unit 13 caribou hunt is denied.

Based on the foregoing rulings, the Board is enjoined from proceeding with a Tier I hunt for caribou in Unit 13 this year, is enjoined from delegating CHP hunt administration authority to private entities or individuals, and is enjoined from authorizing an Ahtna CHP that is fundamentally residency-based.

DATED this 9<sup>th</sup> day of July, 2010.

Carl Bauman  
SUPERIOR COURT JUDGE

CERTIFICATION OF DISTRIBUTION	
That a copy of this foregoing was mailed to	
at their addresses of record:	
Manning, Saxby, Starkey, Kramer	
<u>7-9-10</u>	<u>[Signature]</u>
Date	Clk



EXHIBIT NO. C  
PAGE 1 OF 8

Kenneth H. Manning  
P.O. Box 775  
Kasilof, AK 99610  
907-394-4377

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT KENAI

Kenneth H. Manning,	)	
Plaintiff,	)	
Vs.	)	
ALASKA DEPARTMENT OF FISH & GAME,	)	Case No. 3KN-11-367Ci
Kevin M. Saxby,	)	
Defendants,	)	<b>PLAINTIFF MANNING'S</b>
Ahtna Tene Nene,	)	<b>POST HEARING SUPPLEMENTAL</b>
Defendant-Intervenor	)	<b>BRIEF</b>

Pursuant to this Court's request at the October 2, 2012 hearing on motions for summary judgment requesting additional briefing on the questions from the court including "reasonable opportunity" and determination of "amount necessary for subsistence" ("ANS"), Plaintiff Manning submits the following post-hearing supplemental brief.

**BACKGROUND FOR ANS:**

It is imperative to review the background of how the amount necessary for subsistence ("ANS") was changed by the ADFG Board of Game ("BOG") in 2009 and when reviewing "reasonable opportunity" for subsistence use as intended by the Alaska Subsistence Law AS 16.05.258(b) (4) [i.e., the unlawful ADFG/BOG elimination of the Tier II statutory mandate].<sup>1</sup>

<sup>1</sup> See Judge Bauman's landmark decision in Manning v. ADFG, et al, case no. 3KN-09-178CI hereby incorporated by reference, still pending Ahtna's appeal in the Alaska Supreme Court case no. S-13968.



In March of 2009, the BOG "findings"<sup>2</sup> in a collusive and corrupt manner, acted to intentionally eliminate Plaintiff Manning and 10,000 long-time Tier-II subsistence hunters from being counted as subsistence users for purposes of determining the amount necessary for subsistence ("ANS") by the BOG 2009 "findings" that "rail belt" and urban hunters are NOT subsistence users because they are NOT rural local resident Game Management Unit 13 hunters<sup>3</sup> AND because they do not practice the Ahtna racial customs and traditions, and only those that "walk the walk" like Ahtna are "real" subsistence users for purposes of ANS.<sup>4</sup> Denial of subsistence eligibility based on location of residency and racial customs and traditions denies equal protection guarantees supported by decades of constitutional case precedent including McDowell,<sup>5</sup> Kenaitze,<sup>6</sup> Owsichek,<sup>7</sup> Madison,<sup>8</sup> and Manning.<sup>9</sup>

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<sup>2</sup> See Board of Game Findings 2009, as amended 20011, 2012, hereby incorporated by reference, where each includes the same determination in each that "rail belt" and urban hunters are not counted for ANS, i.e., using the same erroneous numbers of 600-1,000 ANS, alleging because "rail belt" and urban hunters are not local Unit 13 resident hunters AND because they do not practice Ahtna racial customs and traditions they are NOT "real subsistence hunters" like Ahtna for determining ANS.

<sup>3</sup> Statute AS 16.05 (32) and (33), and Regulation 5 AAC 99.010 (c) Definition of Subsistence Use limited to "rural resident" is unconstitutional, per Kenaitze, *id.*, McDowell, *id.*, and the Public Trust Doctrine.

<sup>4</sup> See Plaintiff Manning's Consolidated Reply to Oppositions To Summary Judgment hereby incorporated by reference, exhibit A attached thereto - the BOG audio and brief explaining how the 2009 BOG meeting replaced the Alaska Subsistence Law with an unlawful "Experiment" to eliminate the Tier-11 mandate, all in order to pass the Ahtna Proposal 84B which was originally submitted with a native preference and priority for tribal members only, and was declared unconstitutional by Judge Bauman, case 3KN-09-178CI.

<sup>5</sup> McDowell v. State, 785 P.2d 1 (Alaska 1989), Madison v. State, 696 P.2d 168 (Alaska 1985).

<sup>6</sup> State v. Kenaitze Indian Tribe, 894 P.2d 632, 638 (Alaska 1995).

<sup>7</sup> Owsichek v. State, 763 P.2d 488 (1988)



It must also be reiterated that in 2009 the Nelchina caribou herd was at a near all time low <sup>10</sup> of approximately only 33,000 animals -and for several decades previously the total annual harvest quota and ANS was 2,000 to 3,000 caribou, and as determined by ADFG all the harvestable quota was necessary to meet the ANS - for the 10,000 <sup>11</sup> to 12,000 long-time Tier-11 subsistence hunters identified by the ADFG. Yet in 2009, the BOG then arbitrarily and capriciously determined that only 600-1,000 caribou were needed for ANS<sup>12</sup> - because they eliminated all "rail belt" and urban users<sup>13</sup> as subsistence hunters based on their location of residency as NOT local Unit 13 hunters AND because the BOG alleged they did not practice the Ahtna racial customs and traditions, all without any substantial factual findings whatsoever, and without regards to constitutional equal protections and the Public Trust Doctrine. McDowell, id., Owsichek, id., Kenaitze, id., Manning v. ADFG, et al, 3KN-09-178CI.

The BOG findings and regulations are blatantly inconsistency with clear statutory intent and its actions are unreasonable, arbitrary, capricious, and constitute collusive corrupt action violating all enabling authority of the BOG and constitutional equal protection guarantees of the Public Trust Doctrine. See Interior Alaska Airboat Association v. State Board of Game, 18

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<sup>8</sup> Madison v. State, 696 P.2d 168 (Alaska 1985).

<sup>9</sup> State v. Manning, 161 P.3rd 1215 (Alaska 2007).

<sup>10</sup> The Nelchina caribou herd reached a maximum of approximately 77,000 animals in the early 1960s when Plaintiff Manning started subsistence hunting the Nelchina caribou. See ADFG Report: The Nelchina Caribou Herd.

<sup>11</sup> See Affidavit of ADFG Permit Hunt Administrator attached to Complaint, hereby incorporated by reference.

<sup>12</sup> 5 AAC 99.025 Customary and Traditional Use of Game Populations; ANS for game/unit: 600-1,000 Unit 13 Nelchina Caribou Herd.

<sup>13</sup> Plaintiff Manning and 10,000 long-time Tier-11 subsistence hunters were eliminated as "subsistence users."



P.3rd 686, 689-690 (Alaska 2001); Owsichek v. State, 763 P.2d 488 (1988).

REASONABLE OPPORTUNITY

"Reasonable opportunity" must first be "for subsistence uses" only to protect subsistence dependency required at the Tier-11 level per AS 16.05.258(b) (4) (B).

Alaska Subsistence Law

Sec 16.05.258. Subsistence use and allocation of fish and game.

(a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;



(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) **adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses**; and

(4) if the harvestable portion of the stock or population is **not sufficient to provide a reasonable opportunity for subsistence uses**, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) **distinguish among subsistence users**, through limitations based on

(i) the customary and **direct dependence** on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(ii) the proximity of the domicile of the subsistence user to the stock or population; and [*struck down by State v. Kenaitze Indian Tribe, 894 P.2d 632, 638 (Alaska 1995); McDowell v. State, 785 P.2d 1 (Alaska 1989)* ]

(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

Reasonable opportunity for subsistence uses MUST consider All subsistence users, and NOT just the arbitrary and capricious determination by the BOG that **only** those 600 - 1,000 hunters in the local unit 13 area AND who practice Ahtna racial customs and traditions are "real" subsistence users for purposes of ANS and determining **direct dependence** on the game resource. This blatantly violates constitutional equal protection guarantees and the Public Trust Doctrine. <sup>14</sup> Under the Tier-11 mandate where a 2,000 to 2,400

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<sup>14</sup> Alaska Constitution Article VIII Section 3 "common use" Public Trust Doctrine. Owsichek v. State, id.



harvest quota is not sufficient game for all 10,000 - 12,000 subsistence users, there must be distinction among users based on direct dependence for human food on the subsistence resource.<sup>15</sup> The present Tier-1 three-ring circus of lottery drawing, Tier-1 one-permit-per household, and community harvest permits,<sup>16</sup> fails to distinguish among subsistence users<sup>17</sup> for their direct dependency on the resource for human food, and utterly failed to comply with the clear statutory intent of Tier-11 to protect subsistence dependency on the resource mandated by AS 16.05.258(b)(4)(B). The subsistence

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<sup>15</sup> By ADFG regulation definition 5 AAC 99.010(b)(1), subsistence use must be for a long term of "no less than one generation." The present Tier-1 three-ring circus of permits including the "community" permits, do NOT consider any duration of subsistence use whatsoever, thus all present Tier-1 "subsistence" permits violate the ADFG's own subsistence regulations and statutory definitions.

<sup>16</sup> At the Oct. 2' 2012 hearing, Ahtna Attorney Starkey intentionally mislead this court by falsely claiming "under Tier-11 the Ahtna youth would never be able to hunt." Ahtna children who have directly depended on the caribou resource gain years of direct dependency on the caribou resource for human food even though their parents or "CHP designated hunter" actually harvest the animal and BECAUSE they can still pool their Tier-11 permits into CHPs, while receiving the Tier-11 level of statutory protection for their long-time customary and traditional use and direct dependency on the caribou resource.

<sup>17</sup> The State incorrectly called the Tier-11 permits a closed class, where in fact anyone can develop the direct dependency use of the resource, however it takes years of developing a "dependency" on the Tier-11 resource by using the resource for human food, no matter how acquired, i.e., many children grew up on the resource food thus developed years of dependency without ever shooting a caribou. Similarly, others whose customs and traditions share and barter caribou meat in exchange for other salmon, moose, or other barter considerations, thus developed a "dependency" on the resource as human food as fully recognized by the Alaska Subsistence Law AS 16.05.258(b)(4); those that never ate any caribou before have not developed the legislatively mandated direct dependency on the resource for protection of subsistence dependency.





law does NOT empower the BOG to determine by location of residency in the state and racial customs and traditions<sup>18</sup>, and without any eligibility application questions or duration of direct dependency, to pre-determine who has direct dependence on the subsistence resource or not to so be automatically eliminated as a Tier-11 subsistence user.

To be allowed to enter a lottery drawing with many thousands of others or to be allowed to hunt with tens of thousands of other Tier-1 household and CHP<sup>19</sup> hunters on opening day until the quota is achieved and/or closed by "Emergency Order" game management <sup>20</sup> is NOT a reasonable opportunity for annual subsistence and offers NO statutorily mandated protection for direct dependency on the

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<sup>18</sup> Ahtna continues to coerce the BOG into passing regulations to provide for an unconstitutional native aboriginal preference for hunting rights including increased bag limits, seasons, antler restrictions, racial and residency requirements - see Ahtna Proposal 65 to the upcoming BOG for 2013 BOG Meeting, all in clear and blatant violation of Alaska Native Claims Settlement Act 43 U.S.C. 1601, Sect 2b, Sect 4b, the Alaska National Interest Lands Conservation Act 16 U.S.C. 3101 et seq, Sect 804; Alaska Subsistence Law AS 16.05.258; and The Public Trust Doctrine.

<sup>19</sup> The "community" permits (CHP, CSP) provide a preference to the "community" that an "individual" subsistence hunter no longer enjoys, in violation of the constitutional equal protection guarantees and the Public Trust Doctrine. Owsichek, id.; Judge Bauman's landmark decision in Manning v. ADFG, 3KN-09-178CI still pending Alaska Supreme Court review, and similar issues challenging CHP still pending appeal from the Fairbanks case in Alaska Wildlife Conservation Fund v. State, case 3FA-11-1474CI. "Community" preference hunting rights that an "individual" no longer enjoys is unconstitutional. Owsichek, id., Madison, id.

<sup>20</sup> Alaska Constitution Article VIII: SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

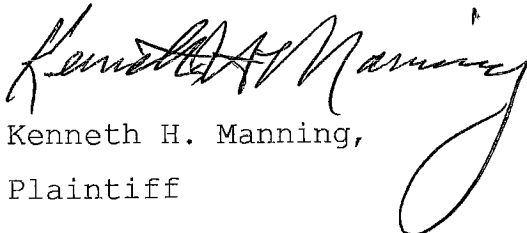


resource, as mandated by the clear intent of the Alaska Subsistence Law AS 16.05.258(b)(4)(B). Owesichek, *id.*

WHEREFORE, based all the above, Plaintiff's motion for summary judgment must be granted, and the defendants State and Ahtna cross-motions for summary judgment must be denied.

Date: October 30, 2012

Respectfully submitted:

  
Kenneth H. Manning,  
Plaintiff



# Wrangell-St. Elias National Park Subsistence Resource Commission

P.O. Box 439  
Mile 106.8 Richardson Hwy.  
Copper Center, AK 99573

November 8, 2012

Ted Spraker, Acting Chairman  
Alaska Board of Game  
Board Support Section  
P.O. Box 115526  
Juneau, Alaska 99811-5526

Dear Mr. Spraker:

The Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) met on October 30, 2012. The SRC reviewed and would like to provide comments on one Board of Game proposal that would affect the Wrangell St. Elias National Preserve:

**Proposal 79: Exclude NPS managed lands from brown bear tag fee exemptions**

The Wrangell-St. Elias SRC unanimously opposes the proposal. There are no conservation concerns or biological reasons for this proposed change. Additionally, eliminating the exemption on lands managed by the National Park Service, while retaining it on other lands, would make the regulations unnecessarily complicated and potentially result in confusion.

Thank you for the opportunity to comment.

Sincerely,

Don Horrell  
Acting Chair

cc: Superintendent, Wrangell-St. Elias National Park and Preserve  
NPS Alaska Regional Director



Alaska Board of Game

Proposals 82 & 83

I trap in GMU 13 and have developed concerns very similar to the concerns addressed by these two proposals. I have had the pleasure of watching the moose population recover in GMU 13 over the past 7 winters. I started to become concerned two years ago when concentrations of moose in some wintering areas seemed to be getting too high. Though some of those populations could be reduced with antlerless tags I don't feel that is feasible or, in some instances, safe for winter time moose hunters in some of the more remote portions of the unit. The browse in many of these areas has started to show the affects of heavy winter feeding. I am not certain if there has been an impact on the twinning rates yet but that is why I think these proposals are so well written and timely. We have an opportunity to switch to a more conservative approach before we suffer devastating loses.

During these winters I have been able to expand my trapline to include a number of different areas and habitat types. Last winter I did not see a single wolf track on any of my lines. I did encounter numerous moose on all of these lines. The success and effectiveness of the predator control is obvious and impressive. But we should not get lulled into believing wolves are not important to the ecosystem or that they should remain at unnaturally low numbers. I think we are in a good position to make management decisions that can benefit everyone.

I support the immediate stoppage of same day airborne wolf control in GMU 13. I know may people will view that the wrong way initially and many will, unfortunately, never understand it. The supporting information provided by the advisory counsels addresses the situation very well. We have a chance to exercise sound management. We can, and must, keep the area in predator management. But we can use the changes provided in these proposals to slow our rapid moose population increases and slowly reach realistic population objectives. The course we are currently on has us racing toward an unknown outcome that could prove devastating for moose, wolves, sportsman, and the Game Board's reputation as a sound managing body. I do not make that statement to "play" on the board's ability or political standing. I honestly believe it to be true. No the board will not receive due recognition for making a sound management decision but we should do it none the less.

It should also be noted that the second and third order affects of low wolf numbers is unknown. It has been theorized that wolverines rely on wolf kills. Magpies and ravens obviously depend on them to some degree. One of the proposals mentions the increased coyote population. How are they impacting sheep numbers? Are we trading wolves for coyotes? Having some wolves might bring balance to some ecosystems that we pay little attention to. I cannot provide solid proof of most of these relationships but do feel some exist and they shouldn't be ignored entirely.

I think the best part of this situation is the possible outcome for everyone involved. We know we what we are capable of now. We know we can increase moose numbers very efficiently. We can have wolves and moose in the ecosystem for a long time to come. We have experienced pilots ready to bring balance back when needed. Trappers can have opportunities at wolves again. Game mangers can apply this model throughout the state. We have done very well to this point.



I applaud the A/Cs for drafting these proactive proposals and support them as written with one amendment. I think we should act immediately. It takes time to see the affect and erring on the side of caution, in my opinion, is in the best interest of all concerned parties.

#### Proposal 89

I do not support proposal 89. I am a bowhunter and I see two problems with this proposal. One is that bowhunters have historically gotten special season IN ADDTION to any weapon seasons or where rifles are not safe or feasible. I fight for bowhunting rights but not at the expense of other hunters. Second, muzzleloaders are not primitive. Current muzzleloaders have 250 yard capabilities. Muzzleloader hunters are not nearly as disadvantaged as archers. I am not anti-muzzleloader but that doesn't mean we can put apples and oranges together and call them the same thing.

#### Proposal 86

I do not support proposal 86. It is clear overreach in my opinion. Denali has a healthy wolf population and will for the foreseeable future with our current regulations. We do not need to give the NPS more control over state lands weather through due process or not. I am certain that Denali Park will have plenty of wolves for years to come under our current regulations with no change needed.

I appreciate the work done by this Board of Game. Thank you for the opportunity to voice my opinion. Feel free to contact me for any further discussion.

A handwritten signature in black ink, appearing to read "Kyle L. Wait".

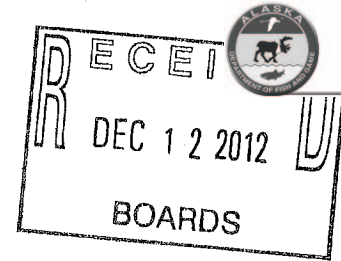
Kyle L. Wait

Palmer Alaska

(907) 748-3393

[bowhuntak@yahoo.com](mailto:bowhuntak@yahoo.com)

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December 10, 2012

Michele Stevens  
Box 20  
Talkeetna, Alaska 99676  
Mile 32 Petersville Rd.

Attention: This letter is in comment to the Alaska Board of Game concerning the Nilchina Caribou Herd in Unit 13.

I am a born and raised Alaskan. My family has been in Alaska since before statehood and we have hunted the Nilchina herd for 56 years. I have been raised in Talkeetna where the Nilchina herd also roams in my back yard in the Talkeetna Mtns. I have honored and lived the life of subsistence all my life. I live 32 miles from the nearest Hwy. No electricity, no amenities life offers. I probably live more subsistence than most Natives of Ahtna. I hunt, fish and gather my food. I do have a good job but even if my job paid more, I would continue my way of life. It is healthier food and it was *taught* to me as a way of life. It has been passed down to every generation in my family. The Nelchina Caribou Unit 13 hunt is about individual subsistence, which is what the herd has *always* been and was *designated* to be.

Under the new proposed regulations, Ahtna Natives have preference to some 300 caribou and the remaining permits will depend on a drawing hunt. The word subsistence, appears to no longer exist. Somewhere along the line it has been turned into a random drawing, to satisfy others who have not traditionally hunted this area.

The Natives have priority that is fine. What about other natives that are not included in the Ahtna villages, who have traditionally hunted this area? The herd also travels the Talkeetna Mountains, which is the back yard of Natives from Talkeetna, under the CIRI Corp. not Ahtna.

**Similarly, Article VII, Section 17, of the Alaska Constitution provides that "Laws and regulations governing the use of disposal of natural resources shall apply *equally to all persons similarly situated* with reference to the subject matter and purposes to be served by the law or regulation."**

This Article and section quoted above applies to my family and I, who have also hunted traditionally the Nilchina herd for 56 years. I am not an Alaskan Native, however I am native to Alaska since birth and before statehood. In the tier II application it ask how long you have hunted in this area.

**Specifically Article I, section 3 of the Alaska Constitution states that, "No person is denied the enjoyment of any civil or political right because of race."**

**In McDowell v. State, 785P.2d 1 (Alaska 1989), the Alaska Supreme Court**



**held that a statute that granted a preference to rural residents to take fish and game for subsistence purposes violated this section. If differentiating among persons of their race would not pass constitutional muster in Alaska.**

The Alaska Natives and other Alaskans living in the rural area of Unit 13 *already* have a "Federal" subsistence hunt area that is friendly to *rural preference*. The State already provides a drawing hunt for hunters that are not subsistence to the Nelchina herd in select areas.

The Unit 13 Nelchina Caribou Hunt has been *BY LAW, designated subsistence* and has been since before statehood.

*I am opposed* to the Board of Game adopting the new Tier I Hunt (which is a sport hunt) and creating a frenzy on the Caribou, all permits will be allowed and free for all until quota is met. I have already seen the change in the herd. *Eliminating the traditional Tier II hunt* (which is a subsistence hunt) for Unit 13 Nelchina Caribou herd is *unfair and unconstitutional to others who have customarily and traditionally hunted this area*. (as stated above and ruled in courts of law.)

*I am also opposed* to the regulation of no hunting of moose anywhere else in the state if you were to apply for Tier I. That regulation does not effect the Caribou. And since I live in Unit 16 which also allows Caribou to be hunted but I have never seen one there, I traditionally hunt subsistence Moose in Unit 16. I will not trade my Moose for a Caribou since a Caribou will not sustain me or my family for a year.

*I am opposed* to not being able to proxy for my older members of my family. That to is subsistence, to take care of my elders. To provide them with meat when they are no longer able to hunt. Which under the tier I,(sport hunting) you are not allowed to proxy. Tier II you were allowed to take care of your elders(subsistence).

I have watched the Board of Game (BOG) though out the years change the hunt regulations to suit their needs so they could strategically change this hunt to Tier I. One example is the hunting of Cows which dwindles the herd so you can meet the Tier I standards. The BOG has ignored the court rulings, **such as:**

**In July 2010, the superior court granted summary judgment for Manning and AFWCF and enjoined the Ahtna community harvest permit as unconstitutional, concluding that it was fundamentally a residency-based permit and an impermissible delegation of authority under the public trust doctrine. The superior court also concluded that the public notice of the changes noted above was insufficient under the Administrative Procedure Act and that the Board decision to change the caribou hunt from a Tier II to Tier I hunt was arbitrary and unreasonable.**



After this ruling the BOG went back and decided to reword the regulations, but yet still kept the same concept, thus ignoring the Alaska Supreme Courts Rulings. This practice has been on going for years with many court rulings against similar changes made by the BOG. **Such as:**

**Ahtna contends that (1) the constitutionality of a separate community harvest permit system with different hunting opportunities for the two hunts is the source of ongoing litigation between the parties and is capable of repetition, as demonstrated by subsequent lawsuits challenging the amended versions of these regulations; (2) this issue is likely to circumvent review since the Board's regulations are frequently changed, especially those related to controversial hunts; and (3) deciding these issues is in the public interest because a ruling in this case would legitimize the community subsistence hunt system and lend some finality to the issue.**

And also:

**(2) these issues will continue to evade review because the Board can make minor adjustments to “replace previous unconstitutional regulations with new regulations that must be continually challenged in separate lawsuits”**

I am asking you as an Alaskan to uphold the Supreme Court rulings and continue with the Tier II customary and traditional subsistence hunt. I have seen new hunters that do not respect the herd and leave waste, shoot at animals and not track them to make sure they are not wounded, I am even seeing less animals in the area I traditionally hunt. I have a whole list but I need to end this letter sometime. Just FYI Week ends are not always the best time for people to attend BOG meetings I feel after 5 on week nights might be a better plan according to others I have talked to.

Michele Stevens





re: proposal 104

Jan 24, 2013

Dear Board of Game Members,

As a hunter I urge you to adopt Proposal 104 to ban the snaring of bears in Southwest and Southcentral Alaska.

Snaring bears is an inhumane practice, which often causes suffering and anguish for the bear. By condoning this cruel practice we diminish ourselves as hunters and as human beings.

As a hunter I believe I have the responsibility to treat the animals I take with respect. For me, respecting the animals I hunt means: I learn about the animal and its needs; I work at being a good shot so I make a clean kill and the animal does not suffer; I use the animals I take; I support the rules of fair chase; I support and contribute to the sustained yield management of the species; and, I speak out for the protection of its habitat.

If, as a hunter, I fail to follow any of these basic elements of respect I demean the animal and myself and ultimately I put hunting in jeopardy.

The same is true for the Board of Game, even when it acts under the auspices of predator control.

When the Board of Game authorizes predator control it often has to suspend rules of fair chase and allow for shooting animals from helicopters or aircraft, same day airborne hunting, hunting over bait, or other practices not seen by many as fair chase hunting. This alone should make the use of predator control something done only in the rarest of circumstances.

However, there is no reason the Board of Game ever has to suspend the humane taking of an animal, even in the name of predator control.

I urge you not to adopt the cruel and therefore disrespectful practice of snaring bears anywhere in Alaska or for any reason.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Rue", written over a horizontal line.

Frank Rue

Former Commissioner

Alaska Department of Fish and Game



# ALASKA

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January 25, 2013

Ted Spraker  
Chairman, Alaska Board of Game  
Board Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526

Re: Request to Withdraw Proposal 118.

Dear Chairman Spraker:

The APHA respectfully requests that Proposal 118 be withdrawn from consideration by the Board of Game.

We submitted this proposal because of our concern for the increasing loss of nonresident allocation to "next of kin" hunters. Case in point, last year in the TOK out of 8 nonresident tags, 6 went to next of kin hunters. APHA is concerned this will continue to be an increasing problem; however we do not feel that our proposal is the best way to address this topic.

Thank you for considering our request to withdraw our proposal and thank you for the considerable time and effort you put into addressing the issues that face wildlife conservation in Alaska. We highly value the opportunity that all users have to participate in the Board of Game process.

Sincerely,

Sam Rohrer  
APHA President



# ALASKA

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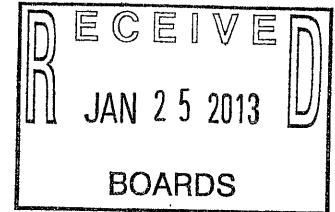
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January 24, 2013

Alaska Department of Fish and Game  
Boards Support Section  
PO Box 115526  
Juneau, Alaska 99811-5526



### WINTER 2013 REGION IV BOARD OF GAME WRITTEN COMMENTS

Dear Alaska Board of Game Members,

Please find the following comments for your consideration regarding proposals you will be addressing at your Central/Southwest Region IV meeting in Wasilla. The Alaska Professional Hunters Association Inc. (APHA) has serious concerns with the scope of several of the proposals you will be addressing at this meeting. The professional guide industry represents a significant and important rural economy in Alaska which is dependent upon prudent stewardship and conservation of Alaska's wildlife as well as fair allocation.

APHA is often working at the forefront of challenges related to wildlife conservation and hunting opportunities for all hunters, not just guides or APHA members. By doing this, we are often the "first line of defense" and advocacy for Alaska and all hunters.

Many of the proposals you will be considering at this meeting seek to eliminate or restrict existing non-resident hunter opportunity in some manner. There are numerous reasons for APHA to urge caution and restraint in regards to support of these proposals related to balance for the whole considerations. By eliminating non-resident hunters or by giving special season dates for resident-only hunters we further fragment the hunter/conservationist fraternities. The perceived conflicts will not disappear from the field, rather they will continue to be replaced and possibly escalated within different user groups. Let's turn together as hunter conservationists before we turn away from each other. Every time we turn away from each other as hunters we give success to those who work to eliminate our way of life. If we can encourage the turning together and work together as the hunter conservationists we are, Alaska can and will continue to be one of the greatest places for all people to enjoy wildlife. As subsistence hunters, general resident hunters or non-resident hunters we have a common bond; "wildlife conservation measures that provide for abundance, for sustained yield and maximum benefit provides for the best interest of the whole" and we encourage this board to continue to do the great job they have been doing to help provide that balance.



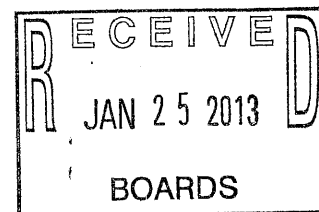
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As you consider the Region IV proposals, APHA asks that you keep the following points in mind:

1. APHA has no support for any of the reduce, eliminate or restrict nonresident opportunity proposals as written. None of these proposals have been submitted from a conservation based or best interest of the whole concern but rather from a self-serving aspect.
2. Many long established professional guide businesses will be negatively impacted and or put out of business if the proposals we oppose were to pass. To impact their businesses with preferential resident hunter privileges and thus provide a commercial transporter incentive to fill the void goes strongly against our constitutional mandate of maximum benefit.
3. Several of these proposals express concern over perceived crowding of guided hunting activity on public lands. Please understand that eliminating non-resident hunting activity will not eliminate transporter or other hunting parties. The perceived conflicts will continue or even be enhanced as the transporter industry has no conservation basis.
4. Alaska Statutes 08-54-720 clearly defines unlawful acts related to the guiding industry and of the 19 items listed therein, #2. states that it is "illegal for a person licensed as a guide to intentionally obstruct hinder or attempt to obstruct or hinder lawful hunting engaged by a person who is not a client of the person".

Additionally, AS 16-05-790 defines similar protection of hunters through the Hunter Harassment Law. If there are bad things going on within this scope, let's first turn to existing law, and enforcement of it before we start eliminating an important industry, hunting opportunities, meat sharing and allot of peoples ways of life.

We would encourage you to look at the number of complaints received from the public and that exist related to these two laws and the related conflict between nonresident and resident hunters to help you understand better the actual extent of the perceived problems.

5. According to ADF&G reports, approximately six percent of the annual human harvest of caribou, ten percent of the human harvest of moose and forty percent of the human harvest of Dall's sheep are harvested by nonresident hunters during general State regulated hunting opportunities. If the Federal harvest and unreported harvest factors are considered as well, the percentages of nonresident harvest drop several points even lower.



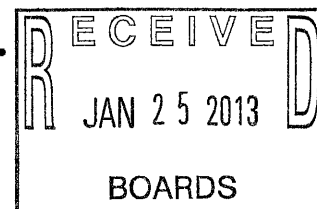
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6. Nonresident license fees are added to by multiplying times three with the matching Pitman-Robertson funds which make up the majority of ADF&G Wildlife Conservation Division budget. Nonresident annual harvest percentage of moose, caribou and sheep is low in comparison with the wildlife conservation funding (approximately eighty percent) they provide. Eliminating nonresident opportunity as many of these proposals request will result in an immediate and large shortfall of important conservation funding for ADF&G which will eventually result in overall resident hunter opportunity loss as well.
7. Also important to this equation is that Alaska's annual human harvest of these wildlife resources represents something near six percent of the annual mortality of these species while predation accounts for approximately eighty-four percent.
8. Intensive management increases actual costs to achieve prudent wildlife conservation goals that provide for the best interest of our wildlife and all people who enjoy or depend on them. When you eliminate non-resident opportunity, you eliminate vital funding needed to enhance and conserve wildlife for the best interest of the whole.
9. When non-resident hunting opportunity is reduced or eliminated, a substantial part of the annual predator harvest which occurs during the ungulate hunts is also reduced or eliminated. When you eliminate this non-resident harvest, you eliminate in most cases, the most significant annual predator harvest as well.
10. Few if any of these proposals are generated from concerns related to Federal lands where guide industry *concessions or special use permits* are incorporated which limit the number of guides per geographical region. Currently, the proposed DNR/ADF&G/BGCSB Guide Concession program development is in its final stages and implementation of the program will help dispel the perceived conflicts.
11. Over sixty percent of Alaska's lands are federal domain. Nonresident sportsmen and women pay for upwards of 80 percent of our wildlife conservation funding. Alaska represents by far the greatest divide between resident and non-resident licensing fees of any state. Nowhere else in the US do residents pay so little for so much in relation to hunting privileges. Alaska needs additional funding for wildlife conservation in a very serious way and the only tool we can find support for is increasing non-resident hunting license and tag fees. As our economy and especially our rural economy needs as much bolstering as possible, these proposals are pushing the envelope in a manner that will result in much greater adverse consequences.



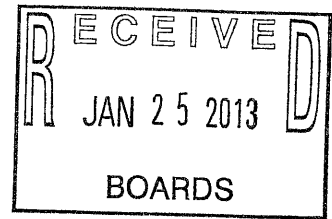
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12. The Board of Game has a policy related to basing nonresident and resident hunter opportunity when implementing a drawing permit program due to conservation and or allocation concerns. This policy requires the Board to look at the previous ten year history of effort between nonresident and resident hunters and to make the drawing permits available on that defined basis. This is a fair mechanism and should be continued.
13. It has been proven within the guide industry throughout the Western US States that when a limit of ten percent of hunting opportunity is provided to nonresident hunters, and guides have to compete with other guides to secure the hunters as clients, that a viable guide industry cannot survive. The broad overhead cost of maintaining a viable business cannot be supported on the "luck of the draw" concept.
14. Alaska is different than the rest of the US where we often hear comparisons. It is important to note that the Alaska Guide Required law is vitally important to the resident hunter. One of the key points is its application to wildlife conservation by restricting non-resident opportunity. Compare all of the other states that do not have this law and see what challenges exist for quality big game hunting opportunities. They are nearly 100 percent allocated by very restrictive drawing permits and many residents who live in the heart of these areas compete for a lifetime without ever receiving a permit to hunt in these hunts.
15. Montana recently underwent a loss of nonresident hunter opportunity due to a ballot initiative that did away with private landowner tags because a small group of residents felt that these permits should not be going to nonresident hunters. The result was a catastrophic loss of funding to Montana Fish Wildlife and Parks for important wildlife conservation programs. Alaska cannot afford this.
16. The number of resident hunters who use airplanes to find and then harvest animals, or that have mechanical means to access what used to be hard to access remote regions are growing in number. They also contribute substantially to the perceived conflicts in the field. Professional guides are already restricted by law (with the exception of some spring bear seasons) from using an airplane to find an animal with the intent to harvest that animal. Resident hunters are not thus restricted. Again, if problems do exist, allow for existing law to be applied.
17. APHA has concerns about the nature of these proposals which lack any proof of issue and have no biological or conservation basis. We urge you to explore the actual documented problem to define if it is real.



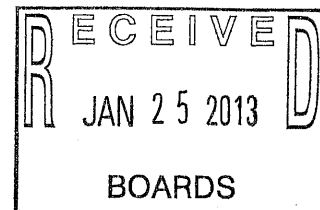
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18. There exists the serious question of "Can the Board of Game in such a serious manner legally separate one user group from another." Certainly, related to wild sheep or mountain goat populations which are not covered under the Intensive Management Law, the question is raised about how a preference would be provided without addressing the Tier I or Tier II hunt aspect and qualify them as an Intensive Management Species and then develop C&T and ANS findings statewide? These proposals have broad sweeping changes and impacts on the future of hunting and wildlife conservation in Alaska, none of which we view as beneficial to the whole.

### Specific Proposal Recommendations

**PROPOSALS APHA SUPPORTS: 45, 51, 53, 61, 62, 70, 92, 99, 103, 107, 119, 126**

**PROPOSALS APHA OPPOSES: 47, 50, 52, 54 - 58, 60, 71, 79, 86, 89 - 91, 98, 100, 101, 104, 105, 108 - 117, 120, 121, 125**

**APHA WISHES TO WITHDRAW PROPOSAL 18**

### INDIVIDUAL PROPOSAL COMMENT

**Proposal 45 - Support.** Based on its given merits.

**Proposal 47 - Oppose.** Prefer status quo, this proposal if implemented would slow the recovery of the Mulchatna Caribou Herd.

**Proposal 48 -** We generally support this proposal, but would like the Board to consider the findings of the Unit 17A Moose Management Planning Group and see if the data gathered over the past decade suggest that the existing harvest thresholds should be lowered.

**Proposal 50 - Oppose.** APHA does not support the sale of Brown Bear parts. We agree with ADF&G's position on this proposal. This proposal should be rejected.

**Proposal 51 - Support.** Based on its given merits.

**Proposal 52 - Oppose.** This proposal would close all non-resident hunting for moose in the entirety of GMU 9. The makers of the proposal (Science Now Project) included virtually no scientific information whatsoever. This proposal offers that current levels of



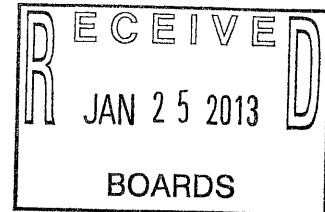
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non-resident harvest are jeopardizing general residents and locally domiciled residents from meeting their subsistence needs. This is simply not true. Nearly all of the non-resident harvest occurs on Federal Lands far from the villages where most domiciled hunters do not access. Their legal analysis justifying this closure is flawed as is their analysis of resident vs. non-resident percentage of take. Their assertion that the guiding industry had unjustified influence in recommending adoption of a registration permit to benefit its own interests is absurd. The objective was to work toward acquiring more complete data for real scientific purposes, as well as reduce the level of unreported harvest which historically translates into illegal harvest. This proposal should be rejected.

**Proposal 53 - Support.** This proposal once again speaks to the success of consistent yet measured wolf control programs. It is because of the intensive management efforts aimed at wolves that there is anything there to hunt at all.

**Proposal 54 - Oppose.** The BOG adopted a very liberal village residency hunt several years ago. To further liberalize to the extent outlined in this proposal would be contrary to the existing brown bear management plan. What is more concerning is that liberalizing the bear season in this manner will not have the desired result as the author of the proposal suggests. Bear populations have remained stable over the last 15 years, therefore it is reasonable to assume that bear predation on moose and caribou has remained approximately the same. What has increased is predation by wolves whose population has grown significantly in the past 15 years. What's more, from a guiding perspective, this would allow for a huge increase of bear harvest on State lands by transient guides, jeopardizing the entire population. This proposal should be rejected.

**Proposal 55 - Oppose.** This proposal would eliminate the village registration permit hunts in GMU 9 allowing for the taking of nuisance bears in the proximity of the villages. The proposal has some merit in that there now exists a very strong attitude on the part of some villagers that all bears within their sight should be killed. Many of these people do not take proper measure in the disposal of fish waste, garbage, management of freezers and smoke houses. Nuisance bears quite often are the result of improper human behavior as much or more than natural bear behavior.

**Proposal 56 - Oppose.** This proposal would further expand the taking of brown bears near villages in GMUs 9 and 10. This proposal does not take into account human responsibilities in bear/human conflicts and will not have any measurable effect on improving increase in the "survival" of the caribou herd. This proposal should be rejected.

**Proposal 57 - Oppose.** This proposal will expand the area of village registration (RB 525) in GMUs 9 and 10. The rationale for rejecting the proposal is the same as that for proposal 56. The proposal should be rejected.





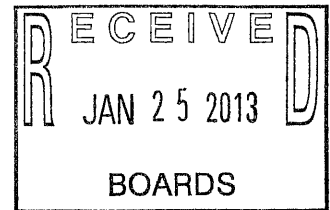
# ALASKA

## PROFESSIONAL HUNTER ASSOCIATION, INC.

310 K Street, Suite 200 ~ Anchorage, AK 99501

Phone: (907) 264-6619 ~ (907)-264-6602

Email: office@alaskaprohunter.org ~ www.alaskaprohunter.org



**Proposal 58 - Oppose.** This proposal requests the establishment of Katmai Preserve specific provisions restricting brown bear harvest within the preserve and to specific UCUs (702 and 703). The makers of this proposal, like so many others they have offered, seek to micro manage populations within a bio-geographical sphere. Bear populations, like some other wildlife populations, are quite transient, and should not be managed as if they were dependent on one specific biosphere. There is not a biological problem with bears in this or the surrounding sub-unit. The proposal has no merit whatsoever and should be rejected.

**Proposal 59 - No Recommendation.** This proposal would allocate brown bear permits in GMU 10 and establish limits for the number of applications. This proposal involves some provisions similar to those on Kodiak. We understand the merits of the Kodiak system but are cautious that the situation on Unimak may be somewhat different.

Limiting the number of applicants for non-resident permits by drawing area has some merit. We request the Board allow the maker of the proposal to better articulate his rationale and act accordingly.

**Proposal 60 - Oppose.** This proposal would exclude National Park Service lands from certain wolf hunting and trapping regulations. Once again, the makers of this proposal are asserting that Park lands (bio-geographic enclave) should be managed differently than adjacent lands. A hunter taking a wolf in conjunction with a brown bear hunt considers that wolf a trophy and most often its hide quality is not any less desirable than a wolf taken on August 10. ADF&G should have wolf sealing data indicating how many wolves have actually been harvested on park lands during the portion of the season they want to eliminate. The proposal is also inconsistent with mandates in accordance with Title VIII of ANILCA to manage for subsistence uses. Harvest of wolves in GMU 9 can only benefit subsistence users as well as other users. This whole proposal goes to the passive management vs. active management conflict. To not include predators in a management equation is contrary to allowing for human use, which is why the Preserves were originally created in ANILCA. The proposal should be rejected.

**Proposal 61 - Support.** This proposal would modify the intensive management plan for the NAPCH by expanding the area of State land available for intensive management efforts. The rationale for the proposal is carefully outlined and has significant merit. The proposal should be adopted.

**Proposal 62 - Support.** We support this proposal based on its given merits.

**Proposal 70 - Support.** There are 105 permits being issued to non-residents with a total harvest of 10 to 15 bulls per year in unit 13. That is less than 2% of the total harvest. The moose are near the high population objectives of ADF&G. We feel it is time to open



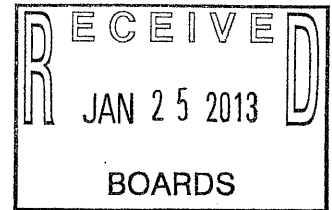
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these hunts to non-residents with a general harvest ticket. Currently there is about a 12% chance of drawing a permit which translates to 1 permit for every 9 years applying. If the board feels it is too soon to have a general season for non-residents then we would urge you to ask ADF&G to consider at least doubling the number of permits they are currently issuing.

**Proposal 71 - Oppose.** Please see points 1-18 at the start of this letter. There is no justification to eliminate non-resident opportunity with the current robust moose population in most of unit 13. This proposal should be rejected.

**Proposals 74 through 78 - No Recommendation.** This is due to a lack of consensus among members.

**Proposal 79 - Oppose.** We believe NPS land should be managed with the same regulations as other land in Alaska.

**Proposal 86 - Oppose.** We do not support buffer zones next to national parks. That is what park boundaries are for.

**Proposal 89 - Oppose.** Due to its easy access from the road we do not believe making a small special use area would solve the hunting pressure problems in this area.

**Proposal 90 - Oppose.** Due to the current low number of sheep in sub-unit 13D it would be detrimental to the population to have a general open season at this time. There is high interest in this area because of its trophy potential. A general season would cause crowding problems and possibly over harvest of rams. This proposal should be rejected.

**Proposal 91 - Oppose.** See comments on proposal 90. The same things apply for sub-unit 14A. The board adopted a policy when these areas were made into draw hunts in 2008. The policy is that permits would be allocated between residents and non-residents by taking the 10 year average use of each group. We believe this is a fair allocation policy and that it should be maintained. This proposal should be rejected.

**Proposal 92 - Support.** When these areas were made into draw permit areas for sheep in 2008, ADF&G staff recommended them as "any ram" areas. The reasoning was to take the hunting pressure off of the older age class rams and increase their numbers. This has occurred in 13D West because of the low number of permits issued and the low harvest. It has not occurred in 14A. The number of permits has gone from 40 in 2008 to 75 "any ram" permits in 2012. 18 full curl rams were counted in 2007 and only 16 in 2012. Over half the harvest has been sub-full curl rams. Since 2008 when 14A was made into a draw there has been 14 full curl rams harvested and 38 sub-full curls harvested. Under the current "any ram" policy the total ram population has only grown by 28 and the older age group full curl rams have shrunk by 2. The ADF&G objective of increasing the number



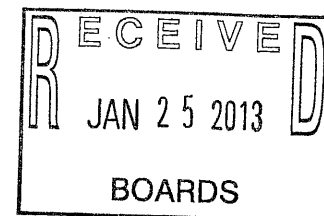
# ALASKA

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of mature rams is not being met. The 38 sub-full curl rams that were harvested never obtained their full breeding potential. The ram population in 14A could even begin to shrink under this management strategy. We believe an old, full curl Dall ram is one of the most magnificent trophies in the world and that they should be managed to obtain their maximum potential. We urge you to return these two areas back to a full curl harvest strategy.

**Proposal 98 - Oppose.** GMU 16A is still well below population objective. Most of the harvest and effort occurs at the end of the season. Adding the last 5 days of September, when the season is closed in surrounding GMUs, could certainly increase the harvest to an unsustainable level, and lower the bull cow ratio to unacceptable ratios. This proposal should be rejected.

**Proposal 99 - Support.** With bull cow ratios near or above 50 bulls/100 cows in much of GMU 16B, the department's recommendation in proposal 103 to liberalize 16B moose seasons, the population being at the minimum objective, the total harvest for the last 2 years being over 100 short of the minimum harvest objective, and the low nonresident participation and harvest the past two years, we feel this moose population can certainly sustain a longer nonresident season. Also, 14B and 16A are both below population objective and only have bull/cow ratios in the mid-twenties, yet still have equal length resident and nonresident seasons. This proposal should be adopted.

**Proposal 100 - Oppose.** See #99. Also, excessive surplus bulls can compete with cows and calves for winter browse and slow the population growth.

**Proposal 101 - Oppose.** See #99 and #100. Also, it makes no sense to deny off road vehicle access when the bull cow ratio is so high and the department wants to liberalize seasons to increase the harvest.

**Proposal 103 - Support with modification.** We support the department recommendations to liberalize moose seasons, continue the wolf control program until the harvest objectives are met for the entire unit, and to not allow cow hunts until the upper range of the population objectives are met. We would like to see the department continue the bear reduction programs for a while longer to better accommodate the moose recovery efforts.

**Proposal 104 & 105 - Oppose.** Most APHA members are not proponents for bear snaring, but we favor letting the department keep this method in their tool box to use if necessary to reverse severe decline in ungulate populations.



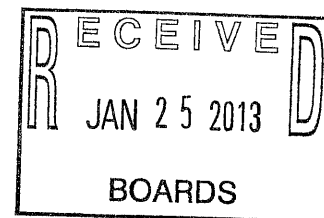
# ALASKA

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**Proposal 106 - No comment.** We have members that weigh in on both sides of this issue and prefer that they give their reasons to the board instead of making a "blanket" industry statement.

**Proposal 107 - Support.** There is still a high level of predation on moose calves by brown bears.

**Proposal 108 - Oppose.** We agree with the department's recommendation for proposal 103 to continue the wolf control program until the harvest objectives are met for the entire unit.

**Proposal 109 through 117 - Oppose.** Please see points 1 - 18 at the start of this letter. All of these proposals should be rejected.

**Proposal 118 - APHA** has asked the Board of Game to withdraw this proposal.

**Proposal 119 - Support.** We feel coyotes can be a significant predator on lambs.

**Proposal 120 - Oppose.** See # 119.

**Proposal 121 - Oppose.** Restricting the take of wolves in March and April in all of Region IV would seriously compromise the effectiveness of several department programs to increase ungulate populations. This proposal should be rejected.

**Proposal 125 - Oppose.** APHA feels this proposal is written a little too broad. We agree with the concept of promoting youth participation, but feel that the accompanying adult should also punch their tag or harvest ticket.

**Proposal 126 - Support.** We agree with the department and want to protect our sheep, goat and musk ox populations from disease caused by domestic sheep and goats.



1/25/13 Fax# 907 465-6094

TO WHOM IT MAY CONCERN  
AT BOARD OF GAME:



I oppose the practice of bear snaring which is indiscriminate, cruel and is not biologically sustainable.

I support Alaska Center for the Environment's proposal number 104 which prohibits the snaring of bears in the Central/Southwest region.

Sincerely and without hesitation,

Meg Mitchell

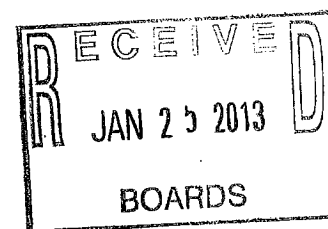
255 E. Fairview Ave  
Homer, AK 99603



TO: ALASKA BOARD OF GAME  
BOARDS SUPPORT SECTION

FROM: ALASKA CHAPTER OF THE WILDLIFE SOCIETY

RE: COMMENTS ON PROPOSAL 126





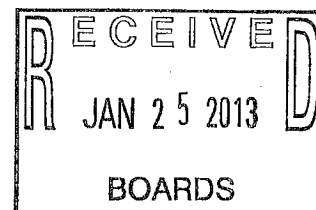
## THE WILDLIFE SOCIETY ALASKA CHAPTER

2627 Ingra Street  
Anchorage, AK 99508

*The Alaska Chapter of The Wildlife Society is a professional society founded in 1971. With over 200 members, the Alaska Chapter is one of the largest chapters of The Wildlife Society, an international organization representing wildlife biologists and managers employed by state, federal, and borough resource agencies, academic institutions, non-governmental conservation organizations, and private industry. Our mission is to enhance the ability of wildlife professionals to conserve biological diversity, sustain productivity, and ensure responsible use of wildlife resources in Alaska for the benefit of society.*

21 January 2013

Mr. Ted Spraker, Chairman  
Alaska Board of Game  
Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526



Dear Mr. Spraker:

The Alaska Chapter of The Wildlife Society fully supports Proposal 126 that prohibits use of domestic sheep or goats as pack animals for sheep, goat, or muskox hunting. We strongly encourage the Board of Game to adopt this regulation.

The issues described in the proposal are absolutely correct. Diseases transmitted by domestic sheep and goats are a major cause of mortality and reduced reproduction in bighorn sheep populations in western North America, and have caused the extirpation of some bighorn populations. Respiratory disease (pneumonia), in particular, is a serious problem that has often caused widespread die-offs of bighorn sheep following contact with domestic sheep. However, there are other domestic pathogens that can be transmitted from some species of livestock to wild sheep and goats. These include the skin parasite sheep ked (*Melophagus ovinus*), the bacteria *Mycoplasma conjunctivae* which can cause blindness, Johne's disease which is a gastrointestinal bacterium that causes chronic wasting, Contagious Ecthyma or Sore Mouth, parainfluenza-3, lungworms (*Muellerius capillaris*), and sheep nasal bot fly (*Oestrus ovis*). There is a great deal of published research that describes how transmission of pathogens from domestic livestock may adversely affect wild sheep populations. Fewer die-offs and disease problems have been documented in mountain goats than in bighorn sheep. However, mountain goats are susceptible to many of the same diseases as wild sheep. Muskox may likewise be susceptible to diseases transmitted by domestic livestock.

Alaska's sheep, goat, and muskox populations have thus far been minimally exposed to pathogens carried by domestic livestock. The potential negative consequences of contact with



Mr. Ted Spraker

20 January 2013

2

domestic animals in Alaska are greater than in the other western states because wild sheep and goats are free of and believed to have very low resistance to many domestic livestock diseases. Furthermore, any diseases that are introduced could be spread widely throughout the large contiguous ranges of Dall's sheep and mountain goats that occur in Alaska. Thus, a proactive and precautionary approach should be taken to avoid the introduction and establishment of many serious diseases of domestic livestock in Dall's sheep and mountain goat populations.

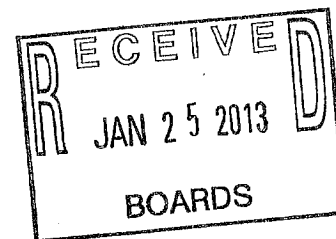
This proposal helps reduce the risk of disease transmission from domestic livestock to wild sheep and goat populations. Although some may argue that the risk of disease transmission from pack sheep or goats is small, we note that there currently is no oversight in transport, health inspection, or use of such animals in wild sheep or goat habitat. Introduction of pathogens to wild sheep or goats could occur from even a small number of such pack animals. We believe that this risk is unacceptable given the consequences to Alaska's sheep and goat populations. Introduction and spread of livestock pathogens could severely affect Alaska's sheep and goat hunters and have serious monetary consequences to the state.

Please note that our concerns at this time are specifically about pathogens transmitted by domestic sheep and goats. The Alaska Chapter recognizes that horses and mules have been used as pack animals and for travel in Alaska for over a century without adversely affecting Dall's sheep or mountain goats.

We appreciate your consideration of this issue and hope you and others on the Board will approve Proposal 126

Sincerely,

Jerry Hupp, Ph.D.  
President, Alaska State Chapter of The Wildlife Society

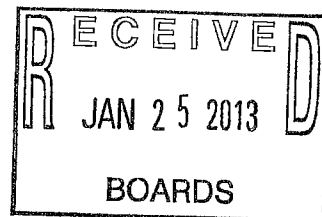






P.O. Box 2994  
59959 Skyline Drive  
Homer, AK 99603

January 24, 2013



ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526

Dear Board Members:

**RE: Proposals 104--Ban Bear Snaring in the Southwest and Central Regions of Alaska.**

I support Proposal 104 and urge the Board to pass it. This proposal would ban the use of the repugnant, inhuman practice of snaring bears that was not legal in Alaska since statehood. Snaring is dangerous, indiscriminate, inhumane, and unsafe. We are regressing in our management of our valuable wildlife resources when we implement such publicly unacceptable practices.

Please ban snaring to kill bears, a practice that jeopardizes any species that puts its body parts into the snare, including people or their pets, cubs, and other species. Banning bear snaring would return Alaska to principles of wildlife management that once made Alaska's Fish and Game Department the envy of the country.

I urge you to adopt Proposal 104.

Sincerely,

*Nina Faust*

Nina Faust



**FedEx Office**<sup>SM</sup>

FedEx Kinko's is now FedEx Office

# Fax Cover Sheet

Date Jan 26 2013

Number of pages 6 (including cover page)

To:

Name BOG- COMMENTS  
Company AK DEPT of Fish & GAME

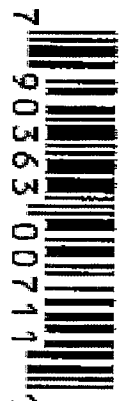
From:

Name Richard E. Hestens  
Company \_\_\_\_\_  
Telephone 907-646-1068

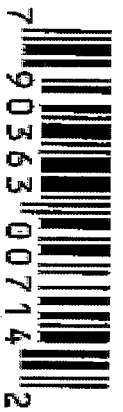
Telephone \_\_\_\_\_  
Fax 907-2165-6094

Comments I sent this yesterday but the reference to the region in the letter and footer was incorrect. This copy is correct. It is for the Central U.S. region BOG meeting in WTSILK.

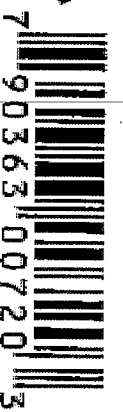
*thanks  
Richard*



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Fax - Local Send



90363 00714 2  
Fax - Domestic Send



90363 00720 3  
Fax - International Send

fedex.com 1.800.GoFedEx 1.800.463.3339



Richard E. Hoskins  
1008 W 16<sup>th</sup> Avenue  
Anchorage, AK 99501  
907 646-1068  
January 25, 2013

Board of Game Comments  
Alaska Department of Fish and Game  
Boards Support Section  
P.O. Box 115526  
Juneau, AK 99811-5526  
Fax: 907-465-6094

Dear Madam or Sir:

I am respectfully submitting comments concerning The Alaska Board of Game, 2012/2013 Proposed Changes to Regulations for the Central/South West Regions being considered in Wasilla in February. Thank you for the opportunity to respond.

Sincerely,

*Richard E Hoskins*

Richard E. Hoskins

#### **Dillingham Area - Unit 17**

50 Allow the sale of brown bear in Unit 17. **Oppose.** *Liberalizing the sale of brown bear hides and skulls may encourage poaching and the development of more illegal trade. There is no reason to provide likely unneeded extra economic opportunity for hunters at the expense of the brown bear population. There is no evidence of untoward predation.*

51 Change hunting regulations for black bear in Unit 17 to a bag limit of three bears per year and no closed season. **Oppose.** *The ADFG does not provide compelling reasons to adopt this proposal except for the convenience of summer hunters. The proposal is vague and without documentation as to the benefit to the health of the bear population or at least to the lack of harm. No data is provided.*

#### **King Salmon Area – Units 9 and 10**

52 Restrict nonresident hunting opportunity in Unit 9. **Support.** *The Science Now Project has it right. Hunting priority should be for Unit 9 residents. The state should not adopt regulations that favor guided clients from out of state which benefits very few. Also the process for adopting the current regulations was flawed and appears to be against the spirit of the legislature intent and Alaska Supreme Court decisions. Further it appears that the moose population may be depressed which precludes allowing more hunting unless proper surveys are done.*



54 Modify the brown bear hunting regulations for Unit 9. Oppose. *There might be a good reason to change the regulations but there is no supporting data that brown bear predator control is necessary or effective, or most importantly that brown bears are a problem. This proposal does not reflect well on the ADF&G credibility overall if no well-designed survey data collection process and analysis is presented. No problem is articulated from which a useful study or solution can be developed. Also it seems that a census is needed of the supposed beneficiaries, hunters dependent on moose/caribou for their families. How many hunters like this are there? How many moose and caribou do they consume in a year?*

56 Increase the brown bear bag limit in Units 9 and 10 for the RB525 hunt. Oppose. *If there is an increase in bear-human confrontations then before approving the killing of more bears, the reasons for the increase should be assessed. How many confrontations have occurred? Is the rate going up? Is there a common factor to account for a change in rate? Maybe it is poor or uninformed human behavior that is the problem.*

58 Establish a Katmai Preserve, specific registration hunt for brown bear in Unit 9. Support. *The National Conservation Association is correct. This is a "do no harm" proposal in that the bear density is low but the population needs to develop age and sex distribution as in a natural environment as possible with minimum impact from hunting or hunting that potentially can upset a population characteristics that have not been determined but might be critical for long term viability.*

60 Exclude National Park Service lands from certain wolf hunting and trapping regulations. Support. *The National Parks Conservation Association proposal is a solution to the BOG's not responding to the NPS proposals. It appears that the state is not living up to current MMOU between the NPS and the state and is ignoring the intent of ANILCA. Continued artificial wildlife management which seems to be based on anecdotal evidence or just an unjustified intent to not cooperate with the NPS for some reason not based on objective facts should be reconsidered and previous agreements honored. If there is a misunderstanding between the BOG and NPS it should be resolved.*

61 Modify the intensive management plan for the North Alaska Peninsula Caribou herd. Oppose. *It is difficult for the general public to evaluate this proposal because there is no organized discussion and clear specification or quantification of the problem. There is the presentation of statistics on p 88-89 but there is no citation of a specific source and no indication of variability, that is, margin of error. Since considerable harm and expense could be done by the proposed changes in the intensive management plan it is essential that the studies and surveys done by ADF&G or others be made available to the public and that they are of high quality and vetted by peers. The data that is presented is not timely; there is no discussion about the variability of the numbers or the limitations on accuracy. There is a statement about comparing female calf weights at 10 months is precluded because of small numbers, but the numbers are presented anyway with no indication of the sample size. This is not standard scientific practice and it is difficult to believe that ADF&G scientists do not know this.*

*It appears that the population decline of caribou is now assumed to be because of predation and no longer because of nutritional deficiency but there is no evidence presented. Statements like "Wolves are a major predator of Caribou on the Alaska Peninsula" are not credible without supporting data and should not be considered in policy making. I believe that most wildlife biologists would have*



*considerable trouble with anecdotal based statements and would not support policy development with such unsupported statements.*

### **Glennallen Area – Units 11 and 13**

#### **74 Allow the taking of brown bear over registered black bear bait stations in Unit 13D. Oppose.**

*On the ADF&G website there appears a page concerning the ethics of bear baiting:*

**Ethics are standards of behavior or conduct which are considered morally right, above and beyond the written law.** Ethics apply to all users of the outdoors, including hunters. A good example of an ethical bear baiter would be a person who: a) is knowledgeable about and respectful both of the animals hunted and the requirements of the land owner; b) has practiced marksmanship enough to ensure a clean humane shot, c) abides by all wildlife regulations, and d) always behaves in a way that will satisfy what society as a whole – and other outdoor users in particular – expect(s) of them as a hunter and fellow outdoor enthusiast. The standard backcountry motto of “leave no trace” is a good way to reduce potential conflicts and bad feelings with other outdoor users of an area. Think of it not as being secretive about your activities, but as being respectful to the land, the wildlife, and others interested in accessing and enjoying those resources. Simply stated, ethics are a code of honor, i.e., how you behave, whether or not someone is watching you.

*Item a) refers to being respectful of the animals hunted. The vast majority of hunters respects and treats humanely the animals they pursue. But causing unnecessary pain and suffering by baiting them does not demonstrate a modicum of respect for animals which as mammals have exactly the same brain structures as we do, differencing only from us in having smaller cerebrums but having nearly identical complex pain centers. The State of Alaska should set the standard in the humane treatment of our wildlife by not promoting what amounts to cruel and unusual punishment for being hungry and attracted to bait. Part of being respectful of wildlife is being able to be empathetic. These “ethics” demonstrate none of that.*

*In d) It is clear that “society as a whole” does not support bear baiting but this is ignored by the State. Alaskans support humane and sportsman like hunting and the fair chase. It is disappointing that this ethics statement is so self-serving and all about people and nothing about the ethics of treatment of the individual bears. Of course if the standard ethics of animal treatment in our country were applied in AK there would be no bear baiting.*

*Since the reference to societal norms is supported in the ethics statement it is incumbent on the State to review the nature of societal norms and how State behavior measures up.*

**75 Open Unit 13 to brown bear baiting. Oppose. See above, Proposal 76.**

**76 Open Unit 13D to brown bear baiting. Oppose. See above, Proposal 76.**

**77 Open Unit 13 to brown bear baiting. Oppose. See above, Proposal 76.**

**78 Open Unit 13D to brown and black bear baiting. Oppose. See above, Proposal 76.**

**79 Exclude National Park Service lands from brown bear tag fee exemptions. Support.** *It is disappointing that the Board of Game continues to be at such odds with the NPS on so many issues when there is conflicting data or no data at all. Clearly Federal and State goals for wildlife management should not be in constant conflict. After all, the wildlife does not know about the boundaries where Federal land begins and State land ends. Substantial effort needs to be made to*



*develop a collegial relationship based on best practice scientific investigations which result in policy development which is good for the wildlife, good for Alaskans, respects the input from non-Alaskans, and is lawful and in the spirit of AK legislative and U.S. Congressional intent. And hopefully the process would be transparent and substantial efforts made to inform the public with regard to the nature of conflict, difficulties, limitations, and proposed solutions.*

**82** Modify the wolf population objective under intensive management for Unit 13. Support. *With qualifications. Whatever number is needed to support a viable ecosystem should be determined by a scientific process; who knows if 135 is the magic number? The statement "The current IM program triggers at the extremes of the moose population or at the low end of the wolf population" is a statement for consideration in general. It appears that most IM programs are based on anecdotal data and not scientific surveys and in spite of limited success and low regard for IM predator control in the wildlife scientific community. The statement of benefits: "Aerial hunters who participate in the IM program, by providing enough wolves to make if feasible" is ridiculous. There is certainly no obligation to provide wolves for the State to kill to maintain their predator control program.*

**86** Close an area near Denali National Park in Unit 13 to taking wolves. Support. *Mr. Steiner is correct. The only impact to humans is the trapping activity on the park boundary but the impact on the wolf population is potentially catastrophic. The wildlife management issue here is the proverbial, "no brainer." The real issue is a turf battle maybe not between the State in general and the NPS, but a turf battle between the BOG and the NPS. It is difficult to believe that the scientists in ADF&G do not support the Denali buffer zone. If there are scientific differences then the wildlife scientists from the ADF&G and the NPS should get in a room without politicians and bureaucrats and figure out 1) if there is a scientific debate and 2) develop a consensus with regard to sound management policy and/or the development of studies to find out.*

*The result of the BOG's actions and even a refusal to talk about the problem under the guise of not having enough time could have untoward consequences to the ecosystem, tourism, and further degradation of Alaska's wildlife ethics and practices which is in low regard in the other 49 states. Further it could have untoward consequences for the BOG. Beyond the issue that is right with respect to wildlife management, it would pay off a lot to make an attempt to cooperate with the NPS and recognize the political expediency of doing what the Alaskan public wants.*

#### **Palmer Area – Units 14A, 14B, and 16**

**100** Close the nonresident season in the Unit 16 intensive management area. Support. *Apparently the minimum population objective of moose has not been met. The law says residents have priority therefore if especially with a marginal moose population, residents who depend on subsistence hunting should have priority.*

**103** Review and modify the Unit 16 intensive management program and the progress that has been made towards meeting the program's objectives. Support. *With qualifications.*

Proposal 103-ADF&G wants to review and modify the IM program in Unit 16. The department will provide a review of the program at the Wasilla meeting in February. They admit that the department has not been able to document an increase in moose survival that can be attributed to the bear control program (bear snaring, taking of black bears sows and cubs, no bag limits, same day airborne taking of bears).



*Hopefully the assessment will be done with clear statements of what is being measured, and why with a protocol that makes it clear what the biases and limitations of the data collection are why they have or have not been addressed. Further a detailed financial cost should be made available with a cost benefit analysis. Also it would be useful if all factors that may contribute to moose mortality be identified and explored. These include injury, habitat loss and change, changes in other populations as well, environmental exposures, etc.*

104 Prohibit the snaring of bears in the Central/Southwest Region. Support. *I support the content but my objection is mostly about the unethical practice of bear baiting/snaring. See my response to proposal 74.*

105 Prohibit the snaring of bears in the Central/Southwest Region. Support. *I support the content but also see my response to proposal 74 where I oppose bear baiting as a general practice by the State or the public.*

106 Open Unit 16 to brown bear baiting for residents and nonresidents in the spring and fall. Oppose. *See my response to proposal 74 where I oppose bear baiting as a general practice by the State or the public.*

108 Suspend/relax the intensive management of wolves in Unit 16. Support. *This is a program that has gone wrong in many dimensions. It continues long after the goals have been reached. But then again, the goals are not clear and there is no census or other data to justify the continuance of a control program that could over reach and impact wildlife viewing and upset an ecological balance of coyotes and other wildlife. Further the program continues with no explanation or oversight that is clear to the public. Two national parks and the Denali State Park are impacted. Why aren't the ADF&G and the NPS working together on this? The proposal brings up several points that need to be addressed with explanations of the continued policy as well as demonstrable scientific support.*

### **Regional and Multiple Units**

120 Close the taking of coyotes on National Park Service lands during summer months and reduce the bag limit in the Central/Southwest Region. Support. *As is noted in the proposal the state has no data to support any impact of coyotes on moose or caribou populations. Assumptions are being made which apparently are against NPS statutes and exceed both in spirit and the letter of law Congressional intent of ANILCA. Here again this looks like some turf war that the BOG is having with the NPS. Measures to control a wildlife population for any purpose must be justified by the state and supported by the BOG. The burden of proof is on the BOG, not the not the BOG.*

121 Prohibit the taking of wolves March through November in the Central/Southwest Region. Support. *This is an opportunity for the BOG to promote the health of the wolf population with a simple change in regulations concerning the hunting season window. Wolf populations benefit, so does the hunter/trapper.*

### **Statewide**

126 Prohibit some pack animals from being used for big game hunting. Support. *This is a reasonable public health intervention for the wild ungulate population. This is prudent avoidance. For ungulate herds infection is almost guaranteed to develop into an epidemic.*



Jan. 24, 2013

To: Alaska Board of Game

Fax # 907 465 6094

From: Brian and Diane Okonek  
P.O. Box 583  
Talkeetna, AK 99676

e-mail: okonek@mtaonline.net

Ref: Bear snaring

Dear Board of Game;

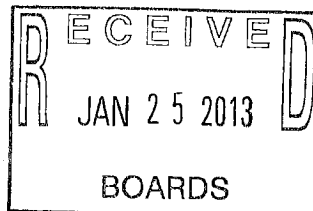
We support ACE's proposal # 104 which prohibits the snaring of bears in the Central/Southwest region. Snaring is indiscriminate and eliminates all fair chase ethics of hunting. We have seen the remains of large bull moose killed in a snare. It's meat was wasted. Alaska is known around the world by both hunters and wildlife viewers. Allowing the take of bears by snaring or baiting or aerial gunning gives Alaska a terrible reputation. Alaska deserved the highest integrity of game management that is ethical, scientifically defensible and considered fair by hunters and non hunters alike.

In addition we request that you allow comments to be sent in by e-mail.

Sincerely,

A handwritten signature in cursive script that reads "Brian Okonek".

Brian and Diane Okonek







# United States Department of the Interior

## NATIONAL PARK SERVICE

Alaska Region  
240 West 5<sup>th</sup> Avenue, Room 114  
Anchorage, Alaska 99501

IN REPLY REFER TO:  
L30(AKRO-SUBS)

**JAN 22 2013**

Mr. Ted Spraker, Chairman  
Alaska Board of Game  
ATTN: BOG COMMENTS  
Boards Support Section  
P.O. Box 115526  
Juneau, Alaska 99811-5526

Dear Chairman Spraker:

The National Park Service (NPS) appreciates the opportunity to provide comments on the proposals being considered by the Alaska Board of Game (BOG) at the Central/Southwest Region meeting on February 8-15, 2013, in Wasilla. There are a large number of proposals before the Board of Game that affect or have the potential to affect NPS areas in the state. As you have heard from the NPS in the past, our mission and mandates differ from the state of Alaska and other federal agencies and may require different management approaches consistent with NPS policy, regulations, enabling legislation, and the Alaska National Interest Lands Conservation Act (ANILCA). We recognize and support the State's fundamental role in wildlife management while at the same time we must assure that the laws, policies and regulations of the NPS are upheld.

Our specific comments on proposals follow:

**Proposal 45 - NPS Recommendation: Adopt**

(Affects: Alagnak Wild River, Aniakchak National Preserve, Katmai National Preserve, Lake Clark National Preserve)

Proposal 45 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. Change hunting regulations for the Mulchatna Caribou Herd in Units 9A, 9B, that portion of 9C within the Alagnak River drainage, 17, 18, 19A and 19B.

Under this proposal, hunting for Mulchatna caribou would change from a general hunt to a registration hunt. Seasons and bag limits would be aligned within the range of the Mulchatna Herd. NPS shares the Department's concern for the herd's declining population trend and supports efforts to collect more reliable harvest data to inform management decisions.



**Proposal 47 - NPS Recommendation: Do Not Adopt**

(Affects: Lake Clark National Preserve)

Proposal 47 - 5 AAC 85.025. Hunting seasons and bag limits for caribou. This proposal opens a nonresident caribou season in Unit 17B and requires nonresidents to hunt with a registered guide. It also increases the nonresident caribou locking tag fee in subunit 17B to \$1,000 per tag and limits the number of locking tags available to two tags for each registered guide licensed in a Guide Use Area. The most recent population estimates indicate that recruitment, bull:cow ratio and number of animals in the herd remain at low levels and that the overall population trend may still be in decline. The NPS concurs with the Department's position, "Do Not Adopt."

**Proposal 54 - NPS Recommendation: Do Not Adopt**

(Affects: Alagnak Wild River, Aniakchak National Preserve, Katmai National Preserve, Lake Clark National Preserve)

Proposal 54 - 5 AAC 85.020. Hunting seasons and bag limits for brown bear. This proposal liberalizes bear hunting in Unit 9 by offering brown bear hunts every year with extended seasons, increasing the bag limit to one bear per year, waives the brown bear locking tag requirement for resident hunters, and retains the locking tag requirement for nonresidents. The proposed open season dates are September 1 to October 31 (every year) and May 1 to May 31 (every year).

This proposal is intended to reduce the brown bear population in an attempt to decrease predation on moose and caribou calves. Liberalizing brown bear seasons and bag limits with the express intent of increasing ungulate populations to benefit hunters, conflicts with NPS policy. The season expansion is intended to increase prey populations, a practice not allowed in NPS areas. Should the Board adopt this proposal, NPS lands need to be excluded.

**Proposals 61, 84, 85, 103: NPS Recommendation: Do Not Adopt  
(Control of Predation and Intensive Management Plans Proposals)**

As previously stated, intensive management practices including predator control activities are not allowed on NPS lands. Many tracts of private lands within the park's external boundaries make limiting predator efforts to non-NPS lands difficult, especially any efforts involving the use of aircraft.

Proposal 61 - 5 AAC 92.125. Intensive management plans. This proposal modifies the intensive management plan for the North Alaska Peninsula Caribou herd and the Northern Alaska Peninsula Predation Management Area. (Affects land adjacent to: Alagnak Wild River, Aniakchak National Monument and Preserve, Katmai National Park and Preserve, Lake Clark National Park and Preserve)

Proposal 84 - 5 AAC 92.108. Identified big game prey populations and objectives; 5 AAC 92.110. Control of predation by wolves; 5 AAC 92.115. Control of predation by bears; and 5 AAC 92.125 intensive management plans. This proposal establishes predator control programs on non-NPS lands within the external boundaries of Wrangell-St. Elias National Park and Preserve in Units 11 and 12.



Proposal 85 - 5 AAC 92.108. Identified big game prey populations and objectives, 5 AAC 92.110. Control of predation by wolves, 5 AAC 92.115. Control of predation by bears; and 5 AAC 92.125. Intensive management plans. This proposal establishes predator control programs on non-NPS lands within the external boundaries of Wrangell-St. Elias National Park and Preserve in Unit 11. Additionally, the moose population in the area has historically been a low density population, and it is stable.

Proposal 103 - AAC 92.125. Intensive management plans. This proposal recommends a review and modification of the Unit 16 intensive management program. (Affects: Denali National Preserve)

**Proposals 75, 77, 106: NPS Recommendation: Do Not Adopt (Bear Baiting Proposals)**

The NPS has a long history of trying to prevent habituation of bears to food rewards. The public safety concerns posed by food-conditioned bears are universally recognized by natural resource agencies throughout the range of the species. Food conditioning of bears tends to increase the likelihood of a bear being killed in defense of life or property.

In December, the NPS started conducting public hearings on proposed changes to sport hunting regulations that would prohibit taking brown bears over bait stations in national preserves. These proposed restrictions are based on recent changes to State of Alaska hunting regulations. Those changes included allowing the taking of brown bears over bait stations in three game management units, which included portions of the Denali, Yukon-Charley and Wrangell-St. Elias National Preserves.

The proposed prohibition reflects the NPS concerns about the dangers of food-conditioned bears, as well as the potential impact to the natural abundance, behavior, distribution, and ecological integrity of brown bear populations. These hearings are the first step leading to the potential implementation of restrictions in the annual Superintendents' Compendium, an annual compilation of temporary closures and similar restrictions.

Should the Board adopt any of these proposals, NPS lands need to be excluded:

Proposal 75 - 5 AAC 85.020. Hunting seasons and bag limits for brown bear, and 5 AAC 92.044. Permit for hunting black bear with the use of bait or scent lures. This proposal would allow brown bear hunting over registered bait stations in Unit 13. (Affects: Wrangell-St. Elias National Preserve)

Proposal 77 - 5 AAC 85.020. Hunting seasons and bag limits for brown bear, and 92.044. Permit for hunting black bear with the use of bait or scent lures. This proposal allows brown baiting over black bear bait stations with same restrictions and a season date of April 15 to May 31. (Affects: Wrangell-St. Elias National Preserve)

Proposal 106 - 5 AAC 85.020. Hunting seasons and bag limits for brown bear, and 5 AAC 92.044. Permit for hunting black bear with the use of bait or scent lures. Open Unit 16 to brown bear baiting for residents and nonresidents in the spring and fall. (Affects: Denali National Preserve)



**Proposal 86 – NPS Recommendation: Adopt**  
(Affects: Denali National Park)

Proposal 86 - 5 AAC 85.056. Hunting seasons and bag limits for wolf, 5 AAC 84.270. Trapping seasons and bag limits; and 5 AAC 92.125 Intensive management plans. This proposal would close an area near Denali National Park in Unit 13 to taking wolves as follows:

“The area of Unit 13 west (and north) of the Parks Highway to the boundary of Denali National Park, and the area of Unit 13 within 5 miles east (and south) of the highway, is closed to any taking of wolves.”

Consistent with NPS proposals to the Alaska Board of Game and past NPS testimony, NPS supports BOG actions that balance broad visitor experience desires with harvest opportunities. Therefore, we support the intent of Proposal 86.

**Proposals 104, 105 - NPS Recommendation: Adopt**  
(Prohibit Bear Snaring and Bear Trapping)

In past letters to the Board, we have consistently stated NPS lands need to be excluded from any regulations allowing bears to be snared or trapped. General wildlife conservation practices have for many years prohibited this method of taking bears. This method can result in the taking of other non-targeted wildlife species. In addition to conservation concerns, bear trapping in NPS areas may lead to visitor safety issues where there is the potential for high use of an area by non-hunters. Also, where the intent of regulations are to reduce bear populations for the benefit of other species, these regulations are inappropriate on NPS lands. We support the intent of these proposals.

Proposal 104 5 AAC 84.270. Furbearer trapping, and 5 AAC 92.125 Intensive management plans. Prohibit the snaring of bears in the Central/Southwest Region. Snaring of bears is illegal in Central/Southwest Region (Units 9, 10, 11, 13, 14A, 14B, 15, 16, 17) (Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)

Proposal 105 - AAC 84.270. Furbearer trapping, and 5 AAC 92.125 Intensive management plans. Prohibit the snaring of bears in the Central/Southwest Region as follows: Snaring of bears, black and grizzly, would be prohibited in the Central/Southwest Region. The only exceptions would be for state wildlife personnel under specific emergency situations where a bear or bears have become a public nuisance or danger. Even then, it should be used only as a means of relocating the bears. (Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)



**Proposals 109, 110, 111, 114 - NPS Recommendation: Do Not Adopt  
(Regional and Multiple Unit Big Game Season Proposals)**

(Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)

Proposals 110 and 111 establish earlier Dall sheep seasons for resident hunters and Proposals 109 and 114 opens all resident big game hunting seasons earlier than nonresidents. These proposals should be evaluated on a unit-specific basis to ensure conservation of specific populations rather than applied to all of the Central/Southwest Region.

Proposal 109 – 5 AAC Chapter 85. Season and bag limits. (All big game species) This proposal opens the resident hunting seasons 10 days before nonresident seasons; allocates 90 percent of harvest to residents; removes guide requirements; and increases tag and permit fees for Central/Southwest Region.

Proposal 110 5 AAC 85.055. Hunting seasons and bag limits for Dall sheep. Open resident sheep seasons 7 days before nonresident seasons for the Central/Southwest Region.

Proposal 111 - 5 AAC 85.055. Hunting seasons and bag limits for Dall sheep. Open resident sheep seasons 7 days before nonresident seasons for the Central/Southwest Region.

Proposal 114 - 5 AAC Chapter 85. Seasons and bag limits. (All big game species) Open resident hunting seasons 7 days before nonresident seasons for Central/Southwest Region as follows: Whatever opening date is determined for any species, the new regulation would indicate the opening for nonresidents would be seven days later.

**Proposal 119 – NPS Recommendation: Do Not Adopt**

(Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)

Proposal 119 - 5 AAC 85.060. Hunting season and bag limit for coyote. This proposal opens the coyote hunting season year round with no bag limit. The proposal also states that sheep hunters will benefit if the season is extended.

The proposed year round hunting season allows coyotes (including pups) to be taken in late spring and summer when the animals are denning and raising vulnerable offspring. It also allows coyotes to be taken during the period when their pelts have little economic or trophy value. Management practices that seek to increase harvest of predators in order to increase populations of prey species are not consistent with the management of NPS areas which are to retain naturally-dynamic wildlife populations. Should the Board adopt this proposal, NPS lands need to be excluded.



**Proposals 60, 120, 121 – NPS Recommendation: Adopt**  
(NPS supports the intent of Proposals 60, 120 and 121.)

Proposal 60 - 5 AAC 84.270. Furbearer trapping, and 5 AAC 85.056. Hunting season and bag limit for wolf. This proposal closes the wolf hunting and trapping seasons in NPS preserves on April 30. Furbearer trapping or hunting seasons that extend into the late spring and summer months, when pelts have little economic value, are generally attempts to reduce predator populations. This is also a time when the raising of vulnerable offspring occurs and the newly born are dependent upon adults for their survival. Also, the taking of furbearers when pelts are not prime may reduce the future opportunity for those who desire to harvest prime pelts. The NPS supports the intent of this proposal. (Affects: Alagnak Wild River, Aniakchak National Preserve, Katmai National Preserve, Lake Clark National Preserve)

Proposal 120 - 5 AAC 85.060 Hunting season and bag limit for coyote. This proposal shortens the coyote hunting seasons by 25 days. The hunting season would end on April 30 instead of May 25. The proposal also reduces the hunting bag limit from “No Limit” to 10 coyotes per day in NPS preserves within units 9, 11, 13, 16-17. (Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)

Proposal 121 - 5 AAC 84.270. Furbearer trapping; 5 AAC 85.056. Hunting seasons and bag limits for wolf; 5 AAC 92.125. Intensive management plans. Prohibit the taking of wolves March through November in the Central/Southwest Region as follows:  
Wolf take is prohibited in all Central/Southwest Region Units prior to November 1 and after March 1. That is, wolf take is prohibited between March 1 and November 1. (Affects: Alagnak Wild River, Aniakchak National Preserve, Denali National Preserve, Katmai National Preserve, Lake Clark National Preserve, Wrangell-St. Elias National Preserve)

In December, the NPS started conducting public hearings on proposed changes to sport hunting regulations that would shorten the season for hunting coyotes and wolves in national preserves in Region IV. The NPS is proposing to prohibit the take between May 1 and August 9 because it is the period when coyotes and wolves are denning and raising offspring and their pelts have little trophy or economic value. These hearings are the first step leading to the potential implementation of restrictions in the annual Superintendents’ Compendium, an annual compilation of temporary closures and similar restrictions.

**Proposal 126 – NPS Recommendation: Adopt**  
(Statewide Proposal – Affects All NPS Areas)

Proposal 126 - AAC 92.085. Unlawful methods of taking big game; exceptions. This regulation would prohibit some pack animals from being used for big game hunting. 5 AAC 92.085. The following methods and means of taking big game are prohibited in addition to the prohibitions in 5 AAC 92.080. (x) the aid or use of domestic goats (*Capra spp.*) and sheep (*Ovis spp.*) as pack animals is prohibited in sheep, goat, or muskox hunting,

The NPS concurs with the Department’s position to “Adopt” this proposal to prevent the risk of disease transmission to Alaska’s wild ungulate populations.



Again, we appreciate the opportunity to provide you with comments on these important regulatory matters and look forward to working with you on these issues. Should you or your staff have any questions, please contact me at (907) 644-3505.

Sincerely,

A handwritten signature in blue ink, appearing to read "Debora R. Cooper".

Debora R. Cooper

Associate Regional Director of Resources and Subsistence

cc:

Cora Campbell, Commissioner, ADF&G

Kristy Tibbles, ADF&G

Pat Pourchot, Special Assistant to the Secretary for Alaska

Geoff Haskett, Regional Director, FWS

Chuck Ardizzone, FWS

NPS Superintendents

Dave Mills, Subsistence Team Leader

Sandy Rabinowitch, Subsistence Manager

Chris Pergiel, Chief Law Enforcement Officer, NPS-Alaska Region



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

1011 E. Tudor Road  
Anchorage, Alaska 99503-6199

IN REPLY REFER TO:

FWS/OSM13005.PM

**JAN 25 2013**

Mr. Ted Spraker, Chair  
Alaska Board of Game  
P.O. Box 115526  
Juneau, Alaska 99811-5526

Dear Chairman Spraker:

The Alaska Board of Game (Board) is scheduled to meet February 8-15, 2013, to deliberate proposals concerning changes to regulations governing hunting and trapping of wildlife for the Central/Southwest Region. We have reviewed the 82 proposals the Board will be considering at this meeting.

The U.S. Fish and Wildlife Service, Office of Subsistence Management (OSM), working with other Federal agencies, has developed preliminary recommendations on those proposals that have potential impacts on both Federal Subsistence users and wildlife resources. Our comments are enclosed.

We appreciate the opportunity to comment on these important regulatory matters and look forward to working with your Board and the Alaska Department of Fish and Game on these issues. Please contact Chuck Ardizzone, Wildlife Liaison, (907) 786-3871, with any questions you may have concerning this material.

Sincerely,

Peter J. Probasco,  
Assistant Regional Director, OSM

Enclosure

cc: Cora Campbell, ADF&G  
Tim Towarak, Chair, Federal Subsistence Board  
Kathy O'Reilly-Doyle, Deputy Assistant Regional Director, OSM  
Kristy Tibbles, Board Support Section  
Jennifer Yuhas, ADF&G  
Interagency Staff Committee  
Chuck Ardizzone, Wildlife Div. Chief, OSM  
Administrative Record







**RECOMMENDATIONS**  
**ALASKA BOARD OF GAME PROPOSALS**

**Central/Southwest Region**

**February 8-15, 2013**

**Wasilla, Alaska**

**U.S. Fish and Wildlife Service Office of Subsistence Management (OSM)**



**PROPOSAL 45 - 5 AAC 85.025. Hunting seasons and bag limits for caribou.** Change hunting regulations for the Mulchatna Caribou Herd (MCH) in Units 9A, 9B, that portion of 9C within the Alagnak River drainage, 17, 18, 19A and 19B. Under this proposal, hunting for Mulchatna caribou would change from the general hunt to a registration hunt. Seasons and bag limits would be aligned within the range of the Mulchatna Herd.

**Current Federal Regulation:**

**Unit 9 – Caribou**

*Unit 9A-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug.1 – Jan. 31.* Aug. 1- Mar. 15

*Unit 9B-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken from Aug.1 – Jan. 31.* Aug. 1 – Mar. 15

*Unit 9C, that portion within the Alagnak River drainage -2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug. 1 – Jan. 31.* Aug. 1 – Mar. 15

**Unit 17 – Caribou**

*Unit 17A, all drainages west of Right Hand Point-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug. 1 – Jan, 31.* Aug. 1 – Jan. 15  
*The season may be closed for the drainages between the Togiak River and Right Hand Point by announcement of the Togiak National Wildlife Refuge Manager.*

*Units 17A and 17C, that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay-Up to 2 caribou by Federal registration permit (FC1702).* Aug. 1 – Sept. 30  
Dec. 1 – Mar. 31

*Federal public land are closed to the harvest of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark’s Point, and Eku.* The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.

*The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the ADF&G*



*and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field.*

*Units 17A remainder and 17C remainder-Selected drainages, a harvest limit up to 2 caribou will be determined at the time the season is announced.*

*Season to be announced by the Togiak National Wildlife Refuge Manager between*

*The harvest limit and hunt area to be announced by the Togiak National Wildlife Manager between Aug.1 – Mar. 31*

*Aug. 1 – Mar. 31.*

*Units 17B and that portion of 17C east of the Wood River and Wood River Lakes-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug.1- Jan. 31.*

*Aug. 1 – Mar. 15*

**Unit 18 – Caribou**

*Unit 18-that portion to the east and south of the Kuskokwim River-2 caribou; no more than 1 caribou may be a bull; no more than 1 caribou may be taken Aug .1 – Sept. 30 and Dec. 20- Jan. 31.*

*Aug. 1- Sept. 30*

*Dec. 20 – last day of February*

*Unit 18 remainder-2 caribou; no more than 1 caribou may be a bull; no more than 1 caribou may be taken from Aug. 1 – Jan. 31.*

*Aug. 1 – Mar. 15*

**Unit 19 – Caribou**

*Unit 19A north of the Kuskokwim River-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug. 1 – Jan. 31.*

*Aug. 1 – Mar. 15*

*Units 19A south of the Kuskokwim River and 19B (excluding Lime Village)-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug. 1 – Jan. 31.*

*Aug. 1 – Mar. 15*

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.



**Impact to Federal subsistence users/wildlife:** Changing to a registration hunt throughout the range of the MCH would allow for better management of the herd and prevent localized overharvest.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale for comment:** Changing to a registration hunt would allow for better tracking of harvest throughout the range of the MCH and permit managers to be more responsive to in-season requests to alter season dates and harvest limits. OSM supports the proposed changes but encourages the Department of Fish and Game to work with the Regional Advisory Councils to submit a similar proposal to the Federal Subsistence Board for this change to be truly effective.

**PROPOSAL 47 - 5 AAC 85.025. Hunting seasons and bag limits for caribou.** Open a nonresident caribou season in Unit 17B with certain conditions as follows:

Caribou hunting for nonresidents will be allowed on a limited basis on a guided hunt only basis. There will be no unguided hunts for nonresidents allowed to maintain excellent trophy selection and no more over harvest of caribou cows, calves, and subpar bulls. Tags will be sold at the rate of two tags per contracting outfitter who is licensed in a Guide Use Area at the price of \$1,000/tag. The tags being sold in this manner will greatly limit the number of caribou being taken and still allow some caribou hunting to keep hunting this area of Alaska on the minds of sportsmen from other parts of the country/world. The resulting nature of the tags will increase demand for Unit 17 as destination for trophy caribou hunters.

**Current Federal Regulation:**

**Unit 17B – Caribou**

*Units 17B and that portion of 17C east of the Wood river and Wood River Lakes-2 caribou; no more than 1 caribou may be a bull, and no more than 1 caribou may be taken Aug. 1 – Mar. 15  
Aug. 1 – Jan. 31.*

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** If this proposal is adopted it may impact Federally qualified subsistence users by increasing the competition for caribou on Federal lands. Moreover, this additional harvest may result in exceeding the harvestable surplus for caribou in the area, causing a conservation concern.



**Federal Position/Recommended Action:** The OSM recommendation is to **oppose** this proposal.

**Rationale for comment:** The Mulchatna Caribou Herd (MCH) has continued to decline from historical highs experienced in the 1980s and 1990s. The last population census for the herd took place in 2008. Bull:cow ratios continue to be below minimum management objectives and the harvestable surplus is below the stated Amounts Necessary for Subsistence (ANS) threshold of 2,400 animals. Given the population status of the MCH and because the minimal ANS has not been met, non-resident hunting should not be permitted at this time.

**PROPOSAL 48 - 5 AAC 85.045. Hunting seasons and bag limits for moose.** Establish a nonresident registration hunt in Togiak National Wildlife Refuge in Unit 17A.

**Current Federal Regulation:**

**Unit 17A – Moose**

*Unit 17A—1 bull by State registration permit. Aug. 25–Sept. 20*

*Unit 17A-1 antlered bull by State registration permit. Up to Winter season to be a 14-day season during the period Dec. 1- Jan. 31 may be announced opened or closed by the Togiak National Wildlife Refuge Manager after consultation with ADF&G and the Chair of the Bristol Bay Regional Advisory Council.*

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** The moose population is currently growing and expanding its range in Unit 17A, which will allow additional harvest. A limited nonresident hunt should have minimal impact to Federally qualified users or the moose population.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale:** The moose management plan for Unit 17A is currently being updated to allow for a limited nonresident hunt in Unit 17A when populations are stable to increasing at 1,000 animals. The threshold to allow a nonresident hunt is currently at 1,700 moose. Management plan members agree that a new threshold is warranted given the growing moose population in the unit.



**PROPOSAL 53 – 5 AAC 85.025(4). Hunting seasons and bag limits for caribou.** Establish caribou hunting seasons and bag limits for the Southern Alaska Peninsula Herd in Unit 9D.

**Current Federal Regulation:**

**Unit 9D – Caribou**

<i>Unit 9D-1 bull caribou by Federal registration permit (FC0909) only. Quotas and any needed closures will be announced by the Izembek Refuge Manager after consultation with ADF&amp;G.</i>	<i>Aug. 10- Sept. 20</i>
	<i>Nov. 15 – Mar. 31</i>

**Has a similar issue been addressed by the Federal Subsistence Board?** At its January 2012 meeting, the Federal Subsistence Board adopted proposal WP12-37, which established a harvest season for caribou in Unit 9D from Aug. 1 – March 15 with a harvest limit of 1 bull caribou by Federal registration permit.

**Impact to Federal subsistence users/wildlife:** If this proposal is adopted it would increase hunting opportunities for Federal users in Unit 9D under the States Tier II permit system allowing them to harvest caribou on State lands. Although this hunt would allow additional opportunities for non-federally qualified subsistence users to hunt in the area, the hunt will be managed under a tier II permit and harvest will be managed closely to prevent overharvest while providing more opportunity.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale:** The SAPCH has experienced increased calf recruitment, bull:cow ratios and population size since 2007. Although management objective for this herd have not yet been met, establishing hunt parameters at this time is a prudent course of action so that a hunt can be opened once management thresholds have been met.

**PROPOSAL 79 - 5 AAC 92.015. Brown bear tag fee exemptions.** Exclude National Park Service lands from brown bear tag fee exemptions as follows:

**92.015 Brown bear tag fee exemptions.**

(a) Except for lands managed by the National Park Service, a resident tag is not required for the taking of a brown bear in the following units:

**Current Federal Regulation:**

**§ 100.6 Licenses, permits, harvest tickets, tags, and reports.**



*(a) (3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.*

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** There would be no impact on brown bears if this proposal was adopted, however there would be an increased cost for subsistence users harvesting a brown bear on national parklands if the tag fee exemptions are excluded for Federal users.

**Federal Position/Recommended Action:** The OSM recommendation is to **oppose** this proposal.

**Rationale:** Currently there are no known conservation concerns for brown bears within Park Service lands. Tag fees appear to have little effect on harvest in these areas. If this proposal is adopted it would discontinue the tag fee exemption, requiring Federal subsistence users to purchase a \$25 tag before hunting grizzly bears on Park Service lands in Alaska. Retaining this tag fee exemption is particularly important in areas where there are few vendors and local economies are in a depressed state.

**PROPOSAL 110 - 5 AAC 85.055. Hunting seasons and bag limits for Dall sheep.** Open resident sheep seasons seven days before nonresident seasons for the Central/Southwest Region Units.

**Current Federal Regulation:**

**Unit 9 – Sheep**

<i>Unit 9B-that portion within Lake Clark National Park and Preserve-1 ram with 3/4 curl or larger horn by Federal registration permit (FS0901) only. By announcement of the Lake Clark National Park and Preserve Superintendent, the summer/fall season will be closed when up to 5 sheep are taken and the winter season will be closed when up to 2 sheep are taken.</i>	<i>July 15 – Oct. 15</i>
	<i>Jan. 1 – Apr. 1</i>

<i>Unit 9B remainder-1 ram with 7/8 curl horn or larger by Federal registration permit (FS0903) only.</i>	<i>Aug. 10 – Oct. 10</i>
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<i>Unit 9 remainder-1 ram with 7/8 curl horn or larger.</i>	<i>Aug. 10 – Sept. 20</i>
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### Unit 11 – Sheep

*Unit 11 General Hunt-1 sheep* Aug. 10 – Sept. 20

*Unit 11 Elder Hunt-1 sheep by Federal registration permit (FS1104) only by persons 60 years of age or older. Ewes accompanied by lambs or lambs may not be taken.* Aug. 1 – Oct. 20

### Unit 13 - Sheep

*Unit 13, excluding Unit 13D, the Tok Management Area, and the Delta Controlled Use Area-1 ram with 7/8 curl horn or larger.* Aug. 10 – Sept. 20

*Unit 13D, the Tok Management Area, and the Delta Controlled Use Area* No Federal open season

### Unit 17 – Sheep

*1 ram with full curl horn or larger* Aug. 10 – Sept. 20

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** Adoption of this proposal is not likely to increase harvest of sheep, but could increase harvest by Alaska residents. It may also lead to a decrease in harvest by Federally qualified users as a result of non-Federally qualified users harvesting sheep during the proposed earlier season. However, Federally qualified users would also be able to hunt during the earlier season, but they would not be able to do so under the more liberal Federal harvest limits.

**Federal Position/Recommended Action:** While OSM is **neutral** on this proposal we would like to point out a few potential impacts this could have for Federally qualified subsistence users.

**Rationale:** Currently, Federally qualified subsistence users are provided a priority over non-Federally qualified users through less restrictive harvest regulations in some areas that include provisions for any sheep, 3/4 ram, or 7/8 curl ram. In many of the effected units the Federal sheep season dates are the State seasons. If all Alaskan residents, including Federally qualified users, are allowed to hunt a week earlier, then Federally qualified subsistence users would either have to compete with non Federally qualified users for full curl rams only or they may choose to wait until the Federal Subsistence season opens and they can take advantage of the more liberal





Federal sheep regulations and longer season available in some areas. Waiting until the later Federal season opens could put Federally qualified users at a disadvantage as fewer sheep would likely be available after that first week and the sheep may be displaced into areas less accessible to subsistence users.

If this proposal were adopted it may also prompt Federally qualified users to submit proposals to the Federal Subsistence Board to also modify the Federal subsistence season dates.

**PROPOSAL 111 - 5 AAC 85.055. Seasons and bag limits for Dall sheep.** Open resident sheep seasons seven days before nonresident seasons for the Central/Southwest Region Units as follows:

Region IV Units - Season Dates for Dall sheep:

Residents: August 5th – September 20th

Nonresidents: August 12th – September 20th

See comments for Proposal #110.

**PROPOSAL 122 - 5 AAC 92.015. Brown bear tag fee exemption.** Reauthorize the brown bear tag fees for the Central/Southwest Region.

**Current Federal Regulation:**

**§ 100.6 Licenses, permits, harvest tickets, tags, and reports.**

*(a) (3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.*

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** There would be no impact on brown bears if this proposal was adopted, however there would be an increased cost for subsistence users harvesting a brown bear if the tag fee exemptions are not reauthorized.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale:** There are no known conservation concerns for brown bears in Units 9, 10, 11, 13, 16 and 17. If this proposal is adopted it would continue the tag fee exemption, which eliminates the requirement that subsistence users must purchase a \$25 tag before hunting grizzly bears in Units



9, 10, 11, 13, 16 and 17. Retaining this tag fee exemption is particularly important in areas where there are few vendors and local economies are in a depressed state.

**PROPOSAL 123 – 5 AAC 85.045(a)(9). Hunting seasons and bag limits for moose.**

Reauthorize the antlerless moose seasons in Units 19D, 20A, 20B and 20D.

**Current Federal Regulation:**

**Unit 19D – Moose**

*Unit 19D-that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift River-1 antlered bull.* Sept. 1 – Sept. 30

*Unit 19D, remainder of the Upper Kuskokwim Controlled Use Area-1 bull* Sept. 1 – Sept. 30  
Dec. 1 – Feb. 28

*Unit 19 remainder-1 antlered bull* Sept. 1 – Sept. 30  
Dec. 1 – Dec. 15

**Unit 20A – Moose**

*Unit 20A-1 antlered bull* Sept. 1 – Sept. 20

**Unit 20B – Moose**

*Unit 20B-that portion within the Minto Flats Management Area-1 bull by Federal registration permit only.* Sept. 1 – Sept. 20  
Jan. 10 – Feb. 28

*Unit 20B remainder-1 antlered bull* Sept. 1 – Sept. 20

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** Reauthorizing the antlerless moose hunt in Units 19D, 20A, 20B and 20D would not impact Federally qualified subsistence users as they could



hunt for an antlerless moose under State regulations. Moose harvest will be limited by drawing permit or emergency order if quotas are met under State registration permit regulations.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale:** Reauthorizing the State antlerless season will help to maintain management flexibility in the affected units.

**PROPOSAL 124 - 5 AAC 92.015. Brown bear tag fee exemptions.** Reauthorize resident grizzly bear tag fee exemptions throughout Interior and Eastern Arctic Alaska.

See comments for proposal #122.

**PROPOSAL 126 - 5 AAC 92.085. Unlawful methods of taking big game; exceptions.** This regulation would prohibit some pack animals from being used for big game hunting.

**Current Federal Regulations:** Currently there are no Federal hunting regulations restricting the use of pack animals while big game.

**Is a similar issue being addressed by the Federal Subsistence Board?** Currently, there are no wildlife proposals being addressed by the Federal Subsistence Board. The Board will be accepting proposals to change Federal subsistence hunting and trapping regulations from January to March 2013.

**Impact to Federal subsistence users/wildlife:** The proponent has provided evidence regarding the potential impacts to wild sheep and goat populations in Alaska. A recent risk assessment of the transmission of disease from domestic species to Dall's sheep and mountain goats in the Northwest Territories found "that contact between domestic sheep or goats and wild Dall's sheep or mountain goats would likely result in significant disease in the wild species with substantial negative and long term effects on population dynamics and sustainability."

Garde, E., S. Kutz, H. Schwantje, A. Veitch, E. Jenkins, and B. Elkin. 2005. Examining the risk of disease transmission between wild Dall's sheep and mountain goats, and introduced domestic sheep, goats, and llamas in the Northwest Territories. *Other Publications in Zoonotics and Wildlife Disease*. Paper 29.  
<http://digitalcommons.unl.edu/zoonoticspub/29>. Accessed 16 December 2011.

**Federal Position/Recommended Action:** The OSM recommendation is to **support** this proposal.

**Rationale:** The OSM recognizes the importance of protecting Alaska's resources and important subsistence species from the introduction of diseases and the effects of invasive species; however, this issue has not been addressed through the Federal regulation process.



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Dall Sheep Proposals #89, #90, #91, and #92

Comments and recommendations by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, Alaska 99709

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**Proposal #89:**

I oppose proposal #89 because restricting GMU 13A to primitive harvesting methods really doesn't make any management sense. The nature of GMU 13A's location, access, habitat, and capacity for sheep production make GMU 13A a logical area managed to provide maximum hunting opportunity for Dall rams.

The area is close and accessible to major population centers via paved highways, and has a well-developed system of trails for off-road vehicle uses. The sheep population in GMU 13A has never been famed for producing particularly large rams. The broader population of Alaska's Dall ram hunters with limited time and expense budgets need a place where they can participate in sheep hunting, even if it is not everyone's dream hunt.

Those sheep hunters with a preference for archery or primitive weapons hunting already have access to this area for sheep hunting during a 42 day season. Additionally, if these special methods hunters don't want to "compete" with rifle-users, they can hunt later in the season under present GMU 13A regulations. Typically, there is little rifle-hunter pressure in the second half of the season (although other species may be hunted in GMU 13A at that time). Still, careful hunt-time selection and expending more physical effort should provide the opportunity for a sheep hunt with a parity of experience comparable to or superior to that for other species in GMU 13A later in the season. It is also obvious that archery and special weapons specialists currently have access to higher quality sheep hunting throughout Alaska's Dall sheep habitats during the later 30 days of the regular 42-day season. There is notably lighter hunter pressure after the first two weeks of the Dall sheep season in all Dall sheep habitats.

Finally, the rationalization that full curl ram harvesting as currently offered in GMU 13A will compromise Dall sheep population welfare **does not match with the biology of Dall sheep or recent research which shows a sustainable harvest rate in GMU 13A** (Heimer and Want 2012, Board of Game testimony, and Heimer's harvest rate paper (in press) Northern Wild Sheep and Goat Council Proceedings 2012). This argument is presented as justification for proposal #89 under the "WHAT WILL HAPPEN IF NOTHING IS DONE?" section. It doesn't match what we know.

Respectfully submitted by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, AK 99709



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Comments and recommendations by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, Alaska 99709

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**Proposals #90 and #91:**

I support these proposals in concept. These two proposals would rescind a controversial permit system established in the Chugach Mountains 5 years ago. This permit system has a rich management history which stems from the perception of ram scarcity going back to about 2005.

Harvest reports from that era indicated ram harvests had declined notably from previous levels. Noting these declines in harvest, and coincident with hunter complaints of crowding and decreased hunter success, ADF&G surveyed the whole area for the first time in years. Surprisingly few legal ram were found. As a result, ADF&G proposed a controversial and restrictive permit system to lower hunter participation and harvest. Harvest reports of hunter use indicated this restrictive permit system in this popular hunting area would displace approximately 200 Dall ram hunters, 10% of Alaska's statewide sheep hunting effort, to other areas (if the displaced hunters didn't just quit sheep hunting).

The restrictive permit system was controversial. This controversy centered on the cause of the perceived ram scarcity. Some interests (ADF&G, and some local hunting interests) alleged the scarcity was due to overharvest of full curl rams, particularly by guided nonresident hunters. ADF&G also argued that the **assumed** "total" harvest of full curl rams was negatively affecting the genetics of Dall sheep in the Chugach Mountains. Others (Alaska FNAWS and I included) suggested an alternative cause. My friends and I argued the ram scarcity and accompanying human distress were probably temporary, and more likely a result of lamb production failures and compromised survival following the documented, extremely harsh winters that affected production of lambs (and eventually harvestable rams—eight years later) which folks (not acquainted with the earlier weather data) simply expected to be harvestable during the "down years." We thought establishing the restrictive permit system was premature, and based on inadequate data.

We also argued the alleged need for "genetic conservation," represented an intuitive response to an insufficient knowledge of the breeding behavior of mountain sheep in general and Dall sheep in particular. Subsequently, we showed the work on which the "genetic conservation" justification had been based was basically flawed, and had been largely discredited by population geneticists critiquing that work. The facts to justify the intuitive impression that restrictions in harvest were necessary to protect Chugach ram genetics simply weren't there. "Manager's intuition" trumped facts at that time.

The final justification for the restrictive permit system was that it represented an "experiment in Dall sheep management." The terms of this experiment (and it's relationship-if any- to "conservation genetics") were never defined, and there have been no conclusions or preliminary reports on results from the experiment during the intervening years. If an actual experiment were ever designed or if there were even preliminary results, they have never been reported. At the time, my friends and I suspected the "experiment" was a tactical justification for a reactively



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restrictive management program based on uncertain data and personal intuition. We've found no reason to alter our perspective over the last five years.

Last year, analysis of the ages of harvested rams was used to define maximal harvest rates in Dall sheep populations over the last 20 years in the Chugach as well as throughout the state. These analyses (J. Want and W. Heimer: Board Testimony last year; and W. Heimer's paper reporting these methods and the results for publication in the Northern Wild Sheep and Goat Proceedings) showed the typical first-year harvest rate of each age class of rams entering the harvestable ram population averaged (with minimal variation) about half of the rams which became age-legal that year.

When the ram populations in the areas affected by Proposals #90 and #91 were analyzed, the harvest rates were consistent with those throughout Alaska over the last 20 years. Joe Want and I think this means the notion that complete (or "over") harvest of rams from the Chugach was intuitive perception rather than objective reality. The reported harvests from the area immediately after the ADF&G survey and prior to the permit system plus the too-soon-to-be-results-of-the-permit-system harvest results show the situation was not actually as bad as the ADF&G survey had indicated.

The fact that ram harvests during the fall immediately following the ADF&G survey were significantly higher than the number of legal rams seen by ADF&G showed the survey underestimated the availability of legal rams. Additionally, unusually large (and old) rams harvested from the area since have shown things were not as bad as perceived. In short, the permit system was neither biologically or management-necessary.

Consequently it has worked a hardship on Dall sheep hunters, and may have complicated Dall sheep management elsewhere because of the hunters it displaced. If it didn't displace hunters, the permit system simply resulted in fewer Alaskans going Dall sheep hunting. Over the last 20 years, there has been a steady decrease in Dall sheep hunters (totaling about 30 percent fewer than 20 years ago). Decreasing Dall sheep hunting opportunity and lowering participation in (and consequently interest in Dall sheep conservation) has never been a legitimate management goal. The permit system should be rescinded

Given this history, **I recommend adoption of proposals #90 and #91 with one possible exception.** Game Management Unit 13D, particularly westward from the Matanuska Glacier to the Richardson Highway, has the capacity to produce the largest Dall Rams which can be hunted in Alaska, and perhaps the world. The country is rugged, and access is not always easy. Consequently, it would be an ideal area in which to establish a trophy management area based on the highly successful Tok Management Area model. **Consequently, I suggest maintaining a limited entry drawing as a trophy management area in a suitable portion of GMU 13D might be worthy of consideration.** How the Board might choose to allocate nonresident permits is peripheral to my interests in this becoming a fine trophy management area. Allocating nonresident permits in an equitable manner similar to that in the Tok Management Area might be a good place to start.

Respectfully submitted by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, AK 99709



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Comments and recommendations by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, Alaska 99709

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**Proposal #92:**

**I support proposal #92 to eliminate the “any ram” bag limits in GMUs 13 and 14.** This is because the “any ram” business was part of the “experimental conservation genetics” justification for the restrictive Chugach sheep permit system five years ago. In my judgment, this permit system has produced insufficient management benefits to justify continuing it.

The argument of the day (five years ago) for the “any ram” bag limits as part of the “experiment” discussed above was that if hunters could kill any ram, they would leave larger rams on the mountain and thus protect the genetic heritage of the Chugach rams. This intuitive argument was based on the data-free, assumption that large or dominant rams have better sex-linked genetics than smaller rams, and that large rams do virtually all of the breeding. Subsequent DNA-paternity studies (on the same Canadian population where the “trophy hunting ruins genetics” idea originated) showed conclusively that subdominant rams in that population did at least half of the breeding. Consequently, the “any ram” justification was biologically flawed when proposed in 2007. No new information on this subject (at least that known to me) has come to us in the intervening years. The “any ram” regulation rests on the “genetic conservation” issue, and has been scientifically discredited. I argue it should be revoked and the full-curl regulation (which has significant data-support and has shown its benefits) restored throughout GMUs 13 and 14. In the larger picture, it is not helpful to management or conservation to maintain regulations which carry a history of inadequate biological or management justification, promote “genetic misunderstandings,” or retain incorrect intuitive folklore. It’s time to set the “any ram” harvest regime aside, and return to full curl.

Respectfully submitted by Wayne E. Heimer, 1098 Chena Pump Road, Fairbanks, Alaska 99709



January 24, 2013

Alaska Board of Game  
P.O. Box 115526  
Juneau, AK 99811-5526

Dear Alaska Board of Game:

On behalf of the 10,000+ members (including 110 current members from Alaska) of the Wild Sheep Foundation (WSF) and our affiliates, please accept these comments relative to Dall's sheep hunting/management proposals before the Alaska Board of Game (BOG). Similar to our BOG comments a year ago, WSF remains concerned about proposals before the BOG which might limit or reduce resident and non-resident Dall's sheep hunting opportunities in Alaska.

Since forming in 1977, WSF has raised and expended more than \$85 million on conservation and education programs in North America, Europe, and Asia. WSF has raised and contributed almost \$1.2 million directly to the state of Alaska for their wildlife management programs, including Dall's sheep conservation and management.

WSF is focused on our mission of "Putting and Keeping Sheep on the Mountain." To achieve that mission, we believe it imperative to also keep hunters on those mountains. We recognize the importance of maintaining and/or enhancing hunter opportunity, particularly in a state like Alaska. In addition to expenditures made by resident Alaskan sheep hunters, \$15-\$20 million is expended in Alaska annually by non-resident Dall's sheep hunters coming to and hunting in Alaska.

Maintaining abundant Dall's sheep hunting opportunity in Alaska, for both Alaska residents and non-resident visitors, clearly adheres to the North American Model of Wildlife Conservation, critical to Dall's sheep conservation and management, and maintenance of Alaska's hunting tradition.

Based on analyses conducted by our staff, board, and informed members, WSF recommends the Alaska BOG oppose Proposal #89 which calls for creation of primitive-weapons (e.g., archery, muzzleloader) only hunting. In our view, Unit 13A should be managed for maximum hunting opportunity, under a full-curl limitation.

WSF supports Proposal #90 which eliminates the draw requirement for resident hunters, provided that non-resident tags remain at or above their current quota of 10-12. WSF supports a return to the full-curl limitation in Unit 13. Furthermore, WSF recommends establishment of a trophy management, limited-entry hunt in a





portion of Unit 13D (W from Matanuska Glacier to the Richardson Highway), following the Tok Management Area model and strategies.

WSF supports portions of Proposal #91 which eliminates the draw requirement for resident hunters and returns to a full-curl limitation in Units 13 and 14A. However, we oppose reduction of the non-resident tag allocation.

WSF supports Proposal #92 which eliminates the any-ram limitation in Units 13 and 14, returning to a full-curl limitation.

WSF recommends that the Alaska BOG consider and adopt proposals that are in the best interest of the Dall's sheep resource, Alaskan sheep hunters, and the WSF membership (which consists primarily of non-residents of Alaska).

If WSF can provide further justification or rationale for our recommendations, please contact us. Thank you for the opportunity to comment on these important proposals currently before the Alaska Board of Game.

Sincerely,

A handwritten signature in black ink that reads "Jack Atcheson, Jr." in a cursive style.

**Jack Atcheson, Jr.**  
WSF Chairman

A handwritten signature in black ink that reads "Gray N. Thornton" in a cursive style.

**Gray N. Thornton**  
WSF President & CEO

cc:           WSF Board



**FAX TO: BOARD OF GAME**

**Juneau, Alaska**

**907-465 6094**

**6017 Doncaster Dr.**

**Anchorage, AK 99504**

**January 25, 2013**

**SUBJECT: Proposal 104, submitted by Alaska Center for the Environment**

**To Prohibit Snaring of Bears in Central/Southwest Alaska**

**My husband and myself strongly support Proposal 104 submitted by the Alaska Center for the Environment which will prohibit snaring of bears in Central/Southwest Alaska.**

**This excessively cruel practice is unnecessary and unsustainable. Alaska wildlife deserves sound management, not reversion to barbaric methods of killing bears which have been outlawed for many, many years throughout the United States.**

**Why not try to set an example for exemplary wildlife management of our iconic predators, instead of continuing to wage the Board of Game's 'war on wildlife'?**

**Sincerely,**

A handwritten signature in black ink that reads "Dr. Walter and Valanne Glooschenko".

**Dr. Walter and Valanne Glooschenko**

**LAW OFFICE OF KNEELAND TAYLOR, P.C.**

425 "G" Street, Suite 610

Anchorage, AK 99501

907-276-6219 telephone

907-258-7329 FAX

e-mail: kneelandt@alaska.com

January 25, 2013

ATTN: Board of Game Comments  
Alaska Department of Fish and Game  
Board Support Section  
P. O. Box 115526  
Juneau, AK 99811-5526  
FAX 907-465-6094

Re: Meeting for Central and Southwest Alaska: 2013

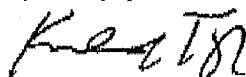
Dear Board Members:

Proposal 104: This proposal by the Alaska Center for the Environment would prohibit the use of snares to take bears. I support a ban of snaring. So do most Alaskans, and so do most Americans. The system of wildlife management in Alaska is broken, and history will see the State's predator control programs as misguided and counter productive.

I have lived here 38 years and have participated in Board of Game meetings since 1997. I value wildlife for reasons other than meat, fur, and target practice. I have had very special times in seeing wolves, bears, wolverine, fox, moose caribou and other species in places such as Denali National Park and Chugach State Park.

I urge you, members of the Board of Game, to recognize the value of wildlife to Alaskans such as myself, and to our children and grand children.

Very truly yours,

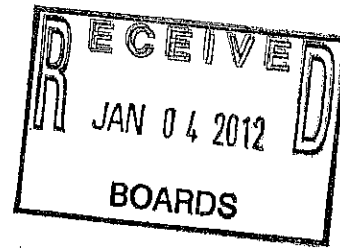


Kneeland Taylor

## Comments to the Board of Game for the Jan 11-15, 2013 meeting

### Proposal #18

Please **SUPPORT** Proposal #18  
Prohibit snaring of bears in the Southeast Region



I am, as are many Alaskans, **against** snaring of bears.  
The black bear population, in Southeast Alaska, is according to the Alaska department of Fish and Game declining and to increase killing of black bears, with the use of snares, would negatively impact healthy, sustainable bear populations.  
Snaring indiscriminately kills female bears, female bears with cubs, newborn cubs, yearling cubs, males.  
Additionally, there are dangers to hikers and other non-consumers using the land who may come upon a situation where one bear is caught while siblings or mother remain free in the area, creating the real possibility of sever injuries or fatalities.

### Proposal #19

Please **SUPPORT** Proposal #19  
Prohibit snaring bears in the Southeast Region

I am, as are many Alaskans, **against** snaring of bears.  
The black bear population, in Southeast Alaska, is according to the Alaska department of Fish and Game declining and to increase killing of black bears, with the use of snares, would negatively impact healthy, sustainable bear populations.  
Snaring indiscriminately kills female bears, female bears with cubs, newborn cubs, yearling cubs, males.  
Additionally, there are dangers to hikers and other non-consumers using the land who may come upon a situation where one bear is caught while siblings or mother remain free in the area, creating the real possibility of sever injuries or fatalities.

### Proposal #17

Please **SUPPORT** Proposal #17  
Close the taking of grouse hens in the spring for all Southeast Alaska Regions.

## **Proposal #20**

Please **SUPPORT** Proposal #20

Prohibit the taking of wolves March through November in the Southeast Region.

Killing wolves March 1 through November 1 is a waste of resources:

--The hides are of lower market value.

--Loss of dependent pups

--Loss of unborn pups from female taken

Wolves in Southeast Alaska are valued by visitors and residents alike.

Wolves are important to maintaining an healthy ecosystem

## **Proposal #86**

Please **SUPPORT** Proposal #86

Close an area near Denali National Park in Unit 13 to taking wolves.

After the loss of the Alpha female of the Grant Creek Pack no pups were born.

Because of this loss the most visible pack in Denali National Park dispersed, which means a huge loss to many Alaskans and visitors alike. The chance at seeing a wolf in Denali National Park is now very low.

The wolf population in Denali National Park is at an 25 year low of 54 animals, even though prey populations are healthy.

Please restore the buffer zone in this small area and let the Grant Creek Pack stabilize and reestablish itself, allowing viewing opportunities for Alaskans and the 400.000 visitors, who come to Denali National Park each year.

And please rescind your **moratorium on Denali National Park no-trapping buffer zones.**

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## **Proposal #33**

Please **OPPOSE** proposal #33

Shorten the season for brown bear in Unit 4

To start the season earlier would likely cause more male brown bears to be harvested. This could lead to over harvesting and emergency closures.

## **Feasibility assessment for maintaining or increasing sustainable harvest of Sitka Black-tailed deer in a portion of Game Management Unit 1a**

I **OPPOSE** predator control in Unit 1a to increase deer populations.

The feasibility study admits that wolves are not the only factor in fluctuations in deer populations:

Clear cutting of old growth forests has decreased and continues to decrease suitable habitat for deer.

Extreme weather

Harsh winters of 2006-2008 and 2011 have been a big contributor in deer decline and the miserable spring this year had no doubt a great influence in fawn mortality

Unsustainable Harvest goals of 900 deer, set at 1994-1999 peak harvest years when deer populations were at an all time high, are unrealistic and needs to be set to a lower harvest level.

No good science based information is available regarding deer, wolf and bear populations.

## **Feasibility assessment for increasing sustainable harvest of Sitka Black-tailed deer in a portion of Game Management Unit 3**

I **OPPOSE** predator control in Unit 3 to increase deer populations.

Clear cutting of old growth forests has decreased and continues to decrease suitable habitat for deer.

Extreme weather

Harsh winters of 2006-2008 and 2011 have been a big contributor in deer decline and the miserable spring this year had no doubt a great influence in fawn mortality

Unsustainable Harvest goals of 900 deer, set at 1994-1999 peak harvest years when deer populations were at an all time high, are unrealistic and needs to be set to a lower harvest level.

No good science based information is available regarding deer, wolf and bear populations.

Alexander Archipelago wolves is a rare subspecies of the gray wolf and requests have been submitted to list the Alexander Archipelago wolf as a threatened or endangered species under the Endangered Species Act.

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