

*~DRAFT~*  
**Finding of Emergency**

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

On July 9, 2010, in Kenai, the Superior Court issued Decision on Summary Judgment in the case of Kenneth Manning, et al v. State of Alaska, et al, 3KN-09-178 CI, holding the community harvest permit moose and caribou hunts for Unit 13 and adjacent areas invalid and the Unit 13 Tier I individual permit hunt also invalid, and enjoining both hunts for the current year. This ruling was issued almost exactly a month before the subsistence moose and caribou seasons were set to begin, on August 10, and was not received by counsel for the Board until July 16, 2010. As of the date of the order, a total of 850 Tier I individual permittees had been authorized to hunt caribou beginning August 10, and, based on 2009 participation, approximately 500 other hunters had likely planned on participating in the community harvest permit program. Because of the applicable regulations, these up to 1350 hunters had given up their opportunities to apply for moose or caribou permit hunts in any other areas of the state and are prohibited from participating in non-permit hunts for these species where the bag limits are for one animal (most of the rest of the state).

While it is not perfectly clear, it appears that, unless the court directs otherwise, the only way to have a 2010-11 caribou hunt under the Decision on Summary judgment is to have a Tier II hunt. While the Decision left open the possibility that the Board could come up with regulations allowing both a Tier I hunt and a community harvest permit hunt, such regulations would have to follow the regular Administrative Procedures Act process, as the court found that the previous record was insufficient to support the actions and a new record would need to be developed, as well as proper public notice given. There is insufficient time before August 10 to follow the full administrative process, as 30 days are required for notice, and the regulations cannot be effective until 30 days after filing, plus time is required for Board consideration, staff and legal review, and filing. So, the Tier II hunt that existed prior to 2009 seems, implicitly, to be the only possibility the court left open for the pending season.

However, Based on information from the Department, it appears that, even if the Board is able to act immediately, the administrative process necessary to implement a Tier II hunt will take approximately 60 days to complete. Accordingly, if the Board is going to preserve any portion of the 2010-2011 Unit 13 caribou hunt, it must act as quickly as possible to authorize a Tier II hunt.

Public peace, health, safety and general welfare are detrimentally affected by the court's unforeseen order, and its unfortunate timing, in the following ways. First, the Board has made detailed findings, 2006-170-BOG, to the effect that hundreds of Alaskans, and especially many local residents, are dependant on Unit 13 caribou and moose for their nutritional, health and cultural needs. As stated above,

approximately 1350 Alaskans have been issued permits or counted on participating in the community harvest hunt for this August-September. It will not be possible in the time remaining before the hunting season begins to get the word out to all these hunters, some of whom live in very remote locations and infrequently check mail, that their permits are null and void. This will subject many hunters to the potential for committing game violations, and the Nelchina caribou herd to potential overharvest, as the harvest ratio between cows and bulls needs to be carefully balanced.

Also, it is extremely unlikely that the Department will reach all interested hunters to let them know about the changes, so many hunters will lose opportunity if they miss an unexpected, abbreviated, out of cycle Tier II application period. An average of 7,455 hunters applied annually for Nelchina Tier II permits between 2006 and 2008. During mid- to late summer, many of these applicants are at remote fish camps, commercial fishing, or engaged in other subsistence or occupational activities and will probably not even learn of the changes until too late.

When hunters were awarded Tier I caribou permits, under the rules they and all their household members (nearly 1,700 hunters) were systematically denied any and all other moose and caribou drawing permits. Those permits have now been issued to other applicants. Thus, many hunters awarded Tier I caribou permits and members of their households have lost opportunity that cannot be restored this year. Elimination of all opportunity to harvest Nelchina caribou will exacerbate these losses. Moreover, even if the Board is able to restore some opportunity to hunt in other areas, Having no Unit 13 autumn season for Nelchina caribou will cause shifts in hunter effort to alternative hunting areas. This will be most problematic for the adjacent Forty-mile Caribou Herd, where the board has recently enacted regulations to try and keep the hunt open for more than 48 hours, as harvest pressure is already extremely intense on that herd.

Based on the Department's records, it seems likely that the majority of hunters that were planning to participate in the Ahtna Community Hunt this season never applied for any other moose or caribou permit hunts, as the community hunt provided them with the best opportunity to harvest moose and caribou. These opportunities will also be lost.

Hunters planning to participate in the Ahtna community hunt expected the moose and caribou hunt to open 10 August. While some may have a limited opportunity to hunt caribou in this area if new emergency regulations are adopted, elimination of the community harvest permit will significantly reduce their moose hunting opportunities as the general moose season does not begin until September 1.

Attempting to expedite a Tier II hunt at this late date could only be accomplished through emergency regulations, and even then will require a minimum of about 60 days before scoring and permit distribution could even be done. (Emergency Board of Game meeting application, scoring, permit distribution, etc.) The public has had no opportunity to comment on emergency regulations adopting such an expedited Tier II hunt, the most controversial hunt in the State of Alaska.

The Board understands that the July 9, 2010 decision enjoins the Tier I caribou hunt for the 2010-2011 regulatory year, as well as the community harvest hunt, which both begin on August 10, 2010. The Board and Department are moving as expeditiously as possible to implement these mandates and provide some kind of a hunt for the 2010-2011 regulatory year. However, because of the steps which must be taken to do so and the timing of the decision, the Department and Board cannot complete the regulatory and administrative processes necessary to do so, even under emergency authorities, until well into September, 2010. Thus, if the Decision is not stayed, the only option for obeying the mandate enjoining these hunts is to close at least the August and September portions of the Unit 13 caribou hunt, and the community harvest moose hunt, which will result in a loss of all late summer and autumn caribou hunting opportunity for all users who hunt under state regulations for this herd, and to significant losses of moose hunting opportunity as well.

An expedited application process will also likely cause unforeseen challenges and a tremendous dedication of staff resources in regional and area ADF&G offices. Any unforeseen complications and delay will further result in loss of hunting opportunity. These losses of, at least, the autumn hunting seasons will especially affect those who want to hunt with school age children and those who traditionally hunt on the autumn ranges of the herd. Nelchina caribou are migratory and the herd's wintering areas are often 200 miles from traditional autumn ranges, and far less accessible.

By mid-summer, most Alaskan hunters have already made hunting plans for their autumn hunting seasons, including the use of moose or caribou drawing permits they may have received. Hunt plans that involve substantial logistics, transporter fees, and/or leave from work often cannot be amend this late, resulting in a further loss of financial and subsistence resources. To the extent that the Board is able to, on an emergency basis, ameliorate any of the above described losses, emergency action is warranted.

Also, the Court's Decision has affected the Board's ability to respond to a conservation emergency. Based on preliminary data, it appears that the Nelchina Caribou Herd numbers are significantly over management objectives. After counting the photos from the 2010 Nelchina Caribou census, the final herd count is 44,954. This estimate will not be final until later this autumn when the fall composition survey is completed. However, based on the current estimate, to meet management goal, a should harvest of 1500 bulls and 800 cows this regulatory year is necessary.

The higher harvest this year is necessary to bring the herd back closer to the established, sustained yield population objective range of 35,000-40,000. To maintain sustainability, it is imperative that hunters harvest a large number of caribou this regulatory year, otherwise there are likely to be too many caribou on the range.

A harvest of 2,300 caribou is needed this regulatory year to keep the population closer to objectives and prevent overstocking which would result in poor animal condition, decreased productivity, and increased potential for severe population

decline. In addition, too many caribou on the range could lead to overgrazing and reduced capability of the habitat to support caribou.

It is highly unlikely that a winter hunt alone can reliably provide the needed harvest. On average during past years, twice as many caribou have been taken during the autumn compared to the winter hunt. Caribou are widely distributed in the autumn providing good access during favorable hunting conditions. Hunting conditions are less favorable in winter. More importantly, caribou distribution is more variable in the winter and distribution can greatly affect the harvest. A substantial number of Nelchina caribou winter in areas far from access points and communities which reduces harvest. Some Nelchina caribou also winter on National Park Lands, which can greatly reduce harvest opportunities. In addition, Nelchina caribou have often wintered within the range of other herds such as the Mentasta Herd (which is closed to hunting for conservation reasons) and the Delta and Forty-mile herds (which usually reach harvest quotas in autumn and are closed in all or part of the winter). In the event of overlapping, harvest must be restricted or eliminated to prevent over-harvest of the herd closed to hunting. This is not a reliable option for taking a considerable number of Nelchina caribou.

In short, a fall hunt is needed this regulatory year to ensure that harvest goals and subsistence needs are met.

The attached emergency regulations are adopted in the alternative because, as of the time of this finding, the Board is unsure how the Court will respond to the various requests to temporarily stay the decision that have been filed, as well as other pending motions.

There is insufficient time to follow the normal regulatory process for permanent regulations in the time between issuance of the court's Decision on Summary Judgment and the time period most critical for hunting and effective management of the Unit 13 moose and caribou herds. For all the reasons given above, the Board finds it necessary to adopt emergency regulations to immediately respond to the court's Decision, and authorize alternative courses of action in the event that a stay of some type is granted. Preserving as much of the August-September caribou and moose hunts as possible, and authorizing a winter hunt for caribou that complies with the Decision, is necessary for the immediate preservation of public peace, health, safety, and general welfare.

#### ORDER CERTIFYING ADOPTION

I certify that the Board of Game, under the authority of AS 16.05.255 and AS 16.05.258, adopted at its July 28, 2010, meeting the attached XX pages of regulation changes as emergency regulations to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: \_\_\_\_\_  
Juneau, Alaska

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Denby S. Lloyd, Commissioner  
Alaska Department of Fish and Game

FILING CERTIFICATION

I, Craig E. Campbell, Lieutenant Governor for the State of Alaska, certify that on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

\_\_\_\_\_  
Craig E. Campbell  
Lieutenant Governor

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

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