

ALASKA BOARD OF GAME FINDINGS
NELCHINA CARIBOU PROPOSAL 21A
96-102-BOG

RC 7

The Nelchina caribou herd occupies a huge area of Southcentral Alaska and western Canada. During the 1950s this herd erupted reaching a peak population of 80,000 to 90,000 animals by the early 1960s. The herd crashed in the late 1960s and by 1971 numbered only 8,000 caribou. The Department and the Board recognized that careful restrictions on the harvest were necessary to rebuild the herd and instituted a permit drawing hunt in the mid-1970s. Annual harvests declined from about 9,000 in 1971 to about 500 shortly thereafter.

During the 1970s and 1980s the herd increased toward the management goal of 40,000 animals. Tier II permits replaced the permit drawing hunt, one of the most popular permit hunts in Alaska. During the early 1990s, permit numbers were increased greatly in an effort to harvest more animals and reduce the rate of population growth. However, unpredictable movements of the herd during hunting season, and reduced hunter success rates acted to keep harvests below desired levels. By 1996, the herd had increased to over 50,000 caribou and biologists warned that a population decline may result if harvests were insufficient to reduce numbers to about 40,000.

Based on public testimony and reports of Department biologists, the Board finds that:

1. Biological information on herd movements, range conditions, and growth of calves suggests that this caribou herd may decline from increased mortality and reduced survival if numbers continue to increase.
2. If the herd increases further and approaches levels reached in the early 1960s (80,000 to 90,000), a crash may again result and long-term damage to the range will occur.
3. Prudent and conservative management of this herd and its harvest has previously resulted in recovery of this herd from very low numbers. This is a wildlife management success story that can be continued with proper measures to regulate harvests in the 1990s.
4. In recent years, the harvest of Nelchina caribou has been about 5,000 animals annually, and has focused predominately on older bulls. A harvest of about 15,000 animals (5,000 bulls and 10,000 cows) is necessary in 1996 to reduce the herd to about 40,000 by spring 1997, given normal recruitment in 1996. However, the Board recognizes that logistical problems of managing the harvest may make such a large one-year harvest impossible to obtain. It may require two or more years of large harvests to reduce the herd.
5. In order to maintain an optimum bull:cow ratio and to harvest sufficient numbers of cows to reduce the herd it will be necessary to allocate permits such that the bull harvest does not exceed 5,000 animals. Furthermore, it will be necessary to require

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hunters to shoot animals with certain antler characteristics in order to target cows. Biologists indicate that virtually all cows and very few younger bulls have six or fewer antler points on one antler. Certain permits will therefore be issued requiring hunters to shoot only animals with certain antler characteristics.

6. In order to obtain a large harvest, it will be necessary to open the season on 1 August and extend it into March. To avoid disrupting the rut and to avoid the potential for numerous problems associated with road-side shooting during road crossings of the Richardson and Tok-Cutoff highways, it is appropriate to close the season during the period 21 September to 20 October. However, if conditions are suitable to allow harvest of the cow segments of the population during this time, the Department should open the season by Emergency Order to ensure an adequate harvest.

7. The Board finds that there is ample potential to extend hunting opportunity to many residents of the state as a result of growth of the Nelchina caribou herd and the need to institute large harvests to reduce its size. Such opportunity includes use of primitive weapons early in the hunting season.

8. The Board finds that issuance of Tier II permits only will be insufficient to obtain the necessary harvests of cows. The Board also finds that, for now, it is not necessary to limit participation in the hunt which is focused on the cow segment of the population. Accordingly, Tier I registration permits available by mail will be issued for a cow segment of the population.

9. The Board finds that there is a serious potential for problems related to road-side incidents, including excessive wounding loss, human injuries due to accidental gunshots, and traffic accidents, when large numbers of hunters encounter migrating caribou near the road system. Careful monitoring of the hunts will therefore be necessary with emergency order closures by the department if problems occur.

10. The Board finds that an effort to reduce a major caribou herd by instituting a large, one year harvest of up to 15,000 animals is a bold, unprecedented step in caribou management in Alaska. Although a crash is probably not imminent, prudent management suggests that in order to continue the success story of managing this herd, it is time to take this action. By doing so, the Board intends to reduce the risk of overpopulation problems while providing a significant increase in hunter opportunity for resident hunters. However, we must also carefully avoid creating problems that may occur when large numbers of hunters and caribou interact at major road crossings

Larry Holmes
Larry Holmes, Chair
Alaska Board of Game

Date: 4/18/96
Juneau, Alaska
Vote: 6-0-0-1

RC8

Fairbanks Advisory Comments on Bear Trapping and other Proposals for October
8-12 Board of Game meeting
Selection from Fairbanks AC September 29, 2010 Meeting

17. The FAC made the following comments on proposal number 31:
 - a. Mr. Tinker commented on the proposed changing of the wolf harvest numbers from 80-110 to 140-160. The FAC still supports the 80-110 wolf harvest numbers.
 - b. Mr. Tinker stated that the FAC is not interested in prior year population numbers but is interested in current spring numbers of wolf to cow ratios.
 - c. Mr. Burris stated that wolf to cow ratios is not an effective way to predict caribou survivability. Calf to cow ratios is a more effective way to predict herd survivability. The most significant measures of survivability would be to count the numbers of calves and cows in the fall.
18. Mr. Umphenour called for questions. Mr. Tinker made the motion to accept the comments made on proposal number 31 and Larry Kappel seconded the motion. The FAC voted to accept the comments on proposal number 31 by a vote of 12 in favor, 0 opposed, 3 absentees.
19. The group took a break at 2145. After the break, the ADF&G introduced Roy Nowlin.
20. Mr. Nowlin summarized the proposals 33, 34, 35, and 36. Refer to proposal book pages 50-51 for a detailed summary of these proposals.
21. Mike Tinker made the motion and Larry Kappel seconded the motion to adopt proposals 33, 34, 35, and 36. The FAC voted on adopting these proposals by a vote of 12 in favor, 0 opposed, 3 absentees.
22. The Chair recognized the following individuals and their comments on ADF&G Bear Trapping proposals:
 - a. John Guichici asked about selective snaring and the number of snares allowed. Mr. Nowlin stated that selective snaring can be accomplished through the use of bucket snares and there is no limit on the number of snares that can be used to trap Black Bear.
 - b. Steve Vincent noted a discrepancy in the proposal. This discrepancy deals with identifying center-fire firearms in one paragraph and center-fire rifles in another paragraph. Mr. Nowlin complimented Steve on finding this discrepancy. ADF&G will use the term center-fire firearms throughout their proposal.
 - c. Ray Heuer wants unit 20C added into this proposal.
 - d. Bill Larry asked Mr. Nowlin on the meanings of the words register and registration. Mr. Nowlin explained that a person in the bush/village could call ADF&G and register to trap bears whereas someone on a road system could apply for a registration permit.
23. Mr. Umphenour called for questions. The FAC voted to adopt the amendments to include subunit 20C on the Bear Trapping proposals by a vote of 12 in favor, 0 opposed, 3 absentees.

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24. Mr. Barrette recommended that the FAC provide a letter to the Board of Game requesting the Board of Game hold work sessions dealing with the Nelchina Caribou proposals.

25. Larry Kappel made the motion to have Mr. Heuer write the letter and submit to the Board of Game that requests the Board of Game establish working groups to address the Nelchina Caribou proposals, Mr. Dalrymple seconded the motion.

26. Mr. Nowlin then provided a brief on their proposal number 32 to extend Brown Bear season in units 26A and 26B. Brown Bear predation is causing a serious decline in the Muskox population. ADF&G must do something now to protect the Muskox herd or risk losing the herd. A sustainable herd size of 350 has declined to around 150 animals.

27. Mike Tinker made the motion to adopt proposal number 32 and Larry Kappel seconded the motion. FAC voted to adopt the proposal by a vote of 11 in favor, 0 opposed, and 4 absentees.

28. The following individuals commented on the Brown Bear proposal number 32:

a. Mike Kramer asked about allowing rifles and ATV use within the 5 mile corridor. Mr. Nowlin stated that ADF&G has not yet approached the legislature on allowing the use of rifles and ATVs within the corridor to hunt Brown Bears.

b. Mr. Umphenour stated that this area is not conducive to archery hunting because of the close distance required to successfully harvest a large Brown Bear. If ADF&G wants the Brown Bear hunt to be successful, opening up the 5 mile corridor to rifles and ATVs would be one of their best options.



October 4, 2010

Sent by Facsimile

Kristy Tibbles, Executive Director
 Board of Game
 P.O. Box 115526
 Juneau, AK 99811
 Facsimile (907) 465-6094

Re: Petition for November subsistence moose hunt in GMU 13

Dear Ms. Tibbles and Board of Game members,

Ahtna Tene Nene' writes to petition the Alaska Board of Game under 5 AAC 96.625, the Joint Board Petition Policy, and 5 AAC 615(a)(2), the Subsistence Proposal Policy, for a subsistence moose hunt for game management unit 13. Ahtna requests that the hunt be administered as a registration permit with a season from November 1 through November 20, 2010. Registration and issuance of subsistence permits would take place at Glennallen and the more remote communities located in GMU 13; Mentasta, Chistochina, Cantwell and Chitina. The subsistence hunt would be for up to 100 bull moose that do not meet the spike fork or 50 inch or 4 brow tines on one side antler restriction. Bull moose that fall within the spike fork or 50 inch antlers or 4 brow tines range would also be allowable take during the November registration subsistence hunt.

The situation facing Ahtna communities falls within those "rare instances" that require regulatory changes outside of the Board's normal process. 5 AAC 96.625(f). The petition also satisfies the conditions of the Subsistence Proposal Policy. The primary reason for Ahtna's request, and the communities' unsuccessful fall subsistence moose hunting season, is the superior court's last minute decision invalidating the community harvest permit. *Manning v. State*, 3KN-09-00178CI, Decision on Summary Judgment (July 9, 2010). The Board is familiar with the decision and its consequences, and on July 28, 2010 adopted a "Finding of Emergency" and emergency regulations. The Board found, for example, that hundreds of Alaskans are dependent on Unit 13 caribou and moose to meet very important subsistence needs." The Board went on to find that emergency action was necessary to fulfill its statutory mandate to provide a reasonable

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opportunity for subsistence uses of moose and caribou. The Board recognized that many of those who counted on participating in the community hunt never applied for moose or caribou permit hunts; that community hunters justly relied and depended on the subsistence moose hunting opportunity the Board provided through the community harvest permit. The Board found that immediate action was necessary in order to provide additional subsistence moose hunting opportunity. The same factors exist for this petition for emergency action.

The Board, in emergency session, and acting under difficult conditions brought on by the court's delayed decisions, adopted an additional 10 day subsistence moose hunting season from August 15-25 for bulls with spike fork or 50 inch antlers or 3 or more brow tines on one side. This hunt was in addition to the existing September 1-20 hunt for bulls with spike fork or 50 inch antlers or 4 or more brow tines on one side. Neither hunt was successful for the Ahtna community moose hunters.

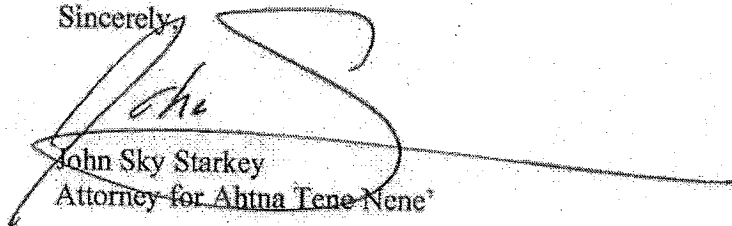
Throughout that past many years, Ahtna community hunters have depended very significantly on the GMU 13 "any bull" hunt administered through a Tier II permit process and, in 2009, through the community harvest permit. In 2009 for example, Ahtna community hunters harvested a total of 94 bull moose of which 67, or 71% were "any bulls." Previous Tier II any bull hunts, as well as the community hunt, allowed substantial subsistence moose hunting opportunity before the opening of the general moose hunt, thereby allowing subsistence hunters an opportunity to harvest moose before the Unit was crowded with hundreds of other moose hunters. For example, the 2009 community harvest permit was open from August 10 through September 20, perhaps partly accounting for the ability of community hunters to harvest 27 antler-restricted moose in addition to the 67 any bull harvest. Due to the extremely late nature of the court's summary judgment decision, and its subsequent last minute denial of a stay, including the order to adopt new subsistence moose hunting regulations, the Board was not able to include an "any bull" hunting opportunity for the 2010 season to replace the long season and any bull opportunity invalidated by the court. The result is that without the opportunity for an any bull subsistence hunt, many communities have harvested drastically fewer moose despite diligent hunting efforts. Reports are that some Ahtna villages were not able to harvest a single moose.

Attached is the Fourth Affidavit of Nicholas Jackson, a former Board member, a resident of Gulkana, an elder and subsistence hunter. It was prepared for the Motion for Stay that Ahtna filed in the superior court. The hardships Mr. Jackson forecasted related to the failure to provide an any bull subsistence hunt have come to pass and are even more severe than predicted because of the unusually warm fall weather. Many experienced hunters, including Mr. Jackson, were unsuccessful in harvesting a moose for the first time in many years because the bigger moose with the legal antler sizes stayed up high and were simply not available in the areas where many Ahtna community providers hunt. Many Ahtna people do not have the off-road vehicles necessary to get to the areas that the larger bulls inhabit until later in the fall when the weather is cooler. In addition, there was much confusion among the community hunters as to their subsistence moose hunting opportunity because of the court's late decision and the emergency actions the Board was required to take in response to the decision.

Ahtna is gathering more information from its communities related to the unsuccessful 2010 subsistence moose hunt and the hardships created by the lack of

harvest opportunity. Ahtna requests that the Board allow Ahtna an opportunity to present this information prior to the Board making a decision on this petition. The requested additional any-bull subsistence moose hunting opportunity is necessary to provide a reasonable opportunity to meet subsistence needs, and to alleviate the consequent hardships, given the rare and extraordinary circumstances of the fall hunt. Granting Ahtna's Petition is consistent with the Board's emergency action of July and justified under the circumstances.

Sincerely,



John Sky Starkey
Attorney for Ahtna Tene Nene

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Anchorage, Alaska 99508
(907) 360-4821
Fax: (907) 276-1674

Attorney for Ahtna Tene Nene'

IN THE SUPREME COURT FOR THE STATE OF ALASKA

AHTNA TENE NENE' and
STATE OF ALASKA,
DEPARTMENT OF FISH
AND GAME,

Appellants

v.

KENNETH MANNING and
THE ALASKA FISH AND
WILDLIFE CONSERVATION FUND

Appellees

Supreme Court No. S-

**FOURTH AFFIDAVIT
OF NICHOLAS JACKSON**

Trial Court Case No. 3KN-09-178 CI

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Nicholas Jackson, being first duly sworn, testifies and states that:

1. My name is Nicholas Jackson. I have submitted three previous affidavits in this case.

Fourth Affidavit of Nicholas Jackson
Manning v. State of Alaska, Case No. 3KN-09-178 CV

Exhibit A

2. I wanted to submit this additional affidavit to express my concerns about the possible loss of the community hunt for any bull moose and the Board's recent action at the emergency meeting regarding issuing Tier I caribou permits to community hunters and possibly issuing another 1000 caribou Tier I permits, and providing an subsistence hunt to harvest spike fork or 50 inch or three brow tine moose in Game Management Unit 13 from August 15 through August 25.

3. My understanding is that the Tier I caribou permits issued by ADF&G have a condition that persons using the caribou permit cannot hunt for moose in any other GMU in the State. This will put some of our community hunters in a bind. They will have to choose between getting a caribou with a state permit and giving up some of their subsistence moose hunting opportunity. Some community hunters depend on hunting in GMUs 11 and 12 for moose. Some of the Ahtna villages are close to these other GMUs, and these areas outside of GMU 13 are part of the in the Ahtna traditional hunting territory. The community hunt area adopted by the Board allowed community hunters to hunt for moose and caribou throughout the Ahtna traditional territory. This worked well for the Ahtna communities. We were able to get the moose that we needed last year to feed our communities. The restriction that we can only hunt for moose in GMU 13 if we use a state Tier I permit is add to the stress and harm some community hunters are feeling due to the loss of our any bull subsistence hunt. These things add up and take away important parts of our subsistence hunting opportunity.

4. The Board passed an emergency regulation providing for a short August season on small spike fork moose and larger 50 inch antler bulls and those with three brow tine on one side. I do not think this will come anywhere close to making up for the loss of the community any bull hunt. The larger bulls generally stay up high and are not common in the areas where community hunters traditionally hunt until after the rut begins. The medium sized antlered bull, which most communities prefer for subsistence uses, are

more common in the areas that are most accessible to the communities. Last year I believe community hunters took around 70 any bull moose and only 30 antler restricted bulls. This more accurately reflects the community's traditional subsistence patterns; it is just not that common to get a big antlered moose.

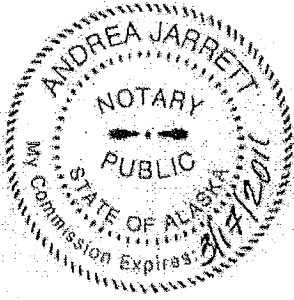
5. It will be hard for many and not possible for others to shift to hunting for the larger bulls if the any bull community hunt is lost. Going after the larger bulls will require more expense because hunters will have to travel farther, take longer trips, and obtain better and different gear than is required for hunting closer to home in familiar territory.

6. I am also concerned about the possibility that the state may issue another 1000 tier I permits for caribou. All those additional hunters will only be able to hunt moose in GMU 13. That means there will be a lot more hunters and hunting pressure for moose throughout the entire moose season, and that means less chance of hunting success. I understand the need to manage the caribou herd and the possible need to issue the additional permits, but this situation causes great conflict between the communities need to get moose for the winter and the need to make sure the caribou herd is healthy in the future. This whole situation with the last minute order shutting down the community any bull moose hunt makes for many hard choices and much less opportunity to get the moose we need for our customary subsistence uses.



Nicholas Jackson, Affiant

SWORN AND SUBSCRIBED TO before me this 05 day of August 2010.



Andrea M. Jarrett
Notary Public/Postmaster
for the State of Alaska
My commission expires: Mar 17, 2011

Hi Ms. Tibbles:

RC 11

I was looking at the December 22, 2009 public notice for the Board of Game regulation changes to be made at the **January 29 – February 1, 2010** meeting. At that meeting, black bears were classified as “furbearers,” which, as you know, has the effect of making them subject to trapping -- something they had never been in Alaska’s history -- when the board later establishes seasons for that killing. At the upcoming meeting (this weekend), the board is scheduled to establish those seasons.

In that Dec. 22 public notice, there is absolutely nothing to give the public “reasonable notice” that the board would be so reclassifying black bear – nothing to give members of the public “reasonable notice that their interests might be affected.” Paragraph E of that notice contains the only bit that even arguably might be claimed to give that notice (and I think that the agency would lose that argument in court). It stated:

“**E. INTENSIVE MANAGEMENT AND PREDATOR CONTROL IMPLEMENTATION PLANS** including: Special provisions for predator control plans; predation control area implementation plans including Units 15, 9 and 16; identified big game prey populations and objectives; methods for taking predators including with the use of cable snares, bait stations, and aerial permits; access to bait stations by helicopters; and restricting nonresident hunting in intensive management areas.”

The main and most serious defect in that notice is the lack of any clue that the board intended to reclassify black bear as furbearers. Now that the board plans to take the next step, and set seasons for trapping black bears, that defect in the December 2009 notice has become crucial. What clause in that Paragraph E (or any other paragraph) do you think would justify the board in adopting a black-bear reclassification that would make them subject to trapping – contrary to all of the state’s historical treatment of them? I don’t see one.

Somewhere along the line, I came upon the suggestion that some aspect of this matter was not a regulation and, therefore, not governed by the Administrative Procedure Act’s requirements for regs. adoption. Whoever put forth that notion is evidently not familiar with the APA’s broad definition of “regulation,” which covers all aspects of the current matter.

I haven’t even addressed, here, the “reasonableness” and the “reasonably necessary” tests of a regulation’s validity. Those tests deal with the substance of a regulation, rather than the adoption procedure. For the change last winter, and for the anticipated change this weekend, the board appears to have another major problem in this regard.

You need to do something to catch the Board of Game before it makes another mistake. As a former legal advisor to all agencies of the state, including the Board of Game, I’d hate to see the state subjected to yet another lawsuit.

At a quick glance, it appears to me that the January/February 2010 regulation change that reclassified black bear to furbearers was not properly adopted and is simply invalid as a procedural matter. You might want to inform the board that it cannot now adopt the trapping seasons for black bear, based on the current regulation that is invalid. Then you might want to work with the board on re-thinking the substantive aspects of this matter. Please pass this message along to the board members before or at the upcoming meeting.

Thanks, in advance, for your efforts to resolve this dual-aspect problem.

Best wishes.

Art Peterson
(Former Assistant Attorney General & Regulations Attorney)

Hello Mr. Marcotte and Governor Parnell's office,

I am making a formal request that the director of Board Support, Jim Marcott, the Alaska Dept. of Law, and the Chairman of the Board of Game, Cliff Judkins, make a finding that the "verbal" ACR request submitted by the ADF&G violated the Alaska Statute procedural process and the Alaska Public Notice requirements regarding an ACR request.

5 AAC 92.005 states:

(1) a request to consider a proposed regulatory change outside the board's published schedule must be in writing, and must specify the change proposed and the reason it should be considered out of sequence

The ACR submitted by Pat Valkenburg at the March 2010 Board of Game meeting was not in writing and there is no RC document submitted by the ADF&G detailing the required components of an ACR request. There is no formal written copy of the ACR request in the files for the March 2010 meeting.

Please review the attached email string below where board support confirms the ADF&G generated ACR request did not follow the required procedures required by state law.

I request a response from Board Support to my request prior to the Aug. 8 board meeting that is scheduled to discuss bear snaring.

Wade Willis
Science Now Project!
907 - 223 -0218

"The creative person is both more primitive and more cultivated, more destructive, a lot madder and a lot saner, than the average person." - Frank Barron

Politics is not about winning ... You make a statement - I'm here!

RC13

October 7, 2010


Members of the Board of Game Regarding **Proposal 33** and **36**,

My name is Victor Lord, and I am the co-chair of the Minto-Nenana Advisory Committee. I am asking the BOG to **defer all black bear trapping proposals** to the March meeting, or better yet until next year at the regularly scheduled Interior BOG meeting. My advisory committee has not had the ability to meet to formally submit a comment, and I believe that members of Minto as well as Nenana would not be in favor of these proposals as written. I would like our AC be given a chance to have their opinion heard on this issue.

I grew up trapping black bears for food, and it was not an easy task. It took a lot of skill learned along the way in order to do it effectively and humanely. This is not a proposal (**Proposal 33**) that should be passed lightly.

Proposal 36 has so many problems it really needs thorough discussion by the AC.

Please think about this when you are deciding on how to act on this topic.



Victor Lord
Co-Chair of Minto-Nenana Fish & Game Advisory Committee
PO Box 374
Nenana, AK 99760