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Submitted By  
Andy Couch  
Submitted On  
4/23/2015 10:37:14 AM  
Affiliation  
Fishtale River Guides -- owner

Chairman Spraker and Members of the Board of Game,

I request that you reconsider Board action on Proposal 207 and find a better solution -- before the coming 2015 sheep hunting season. I agree with comments you have already received that the regulation put forth by Proposal 207 that would not allow sheep spotting from airplanes after August 9 or 10, by sheep hunters will increase crowding and encourage people to push safe flying opportunities to the limit to get their spotting done before the deadline. This is a safety issue in a state where flying accidents are already too prevalent. I agree with comments you have already received that this new regulation will be difficult to enforce and will likely result in unequal enforcement with the possibility of sheep hunters being cited even though they had no intention of breaking the regulation ---- and / or hunters who intentionally break the regulation getting away with it because it may be very difficult to prove their intent. As a business owner who depends upon outdoor recreational users I also believe this new regulation will likely have severe negative financial consequences for both air taxi transporters and some hunting guides. In consideration of these unintended consequences, I request the board reconsider and remove this regulation before our 2015 sheep season.

Sincerely,

Andrew Couch

Palmer, Alaska



Submitted By  
ben morookian  
Submitted On  
4/22/2015 11:17:42 PM  
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I, as a non-pilot resident hunter, strongly encourage the Board of Game to call a special meeting to rescind prop 207.

This proposition gives preference to people with more flexibility in their jobs than mine allows.





Submitted By  
Berchmans  
Submitted On  
4/23/2015 9:39:40 AM  
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The game board is very much over reaching thier authority by the proposed aircraft restrictions during the sheep hunting season. As I read them any licensed hunter flying through the area during the season could be sited for this even if they are not hunting sheep. There are already sufficient regulations regarding the use of aircraft in support of hunting activities.



Submitted By  
Birch Yuknis  
Submitted On  
4/23/2015 10:40:12 AM  
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Hello Board of Game,

I am in support of expanding the Call for Proposals for Statewide sheep hunting and bag limits. (Even though I feel that this should not have to be expressed as this is a Statewide meeting)

I am also in support of having a meeting to discuss rescinding the poorly crafted recently passed proposition 207.

And lastly I am in support of a Sheep working group if it is facilitated by the proper moderator and the members of the working group come from diverse backgrounds. I do not support a Sheep Working group filled with special interests. The group should be composed of Alaska residents. Sheep biologists should be present for consult. The working groups priorities should be more sheep on the mountain and increasing resident opportunity for this limited resource.

Thank you for your time,

Birch Yuknis



Dear Members of the BOG,

I am in support of proposal 207 as it was decided upon at the most recent BOG meeting. I am concerned by the extremely short turnaround time from the announcement of the this emergency meeting and the actual meeting date. This does not give adequate time for public comment, aside from the fact that this issue was recently discussed and decided. Unless there is new and pertinent information that has recently surfaced, I am unclear as to why this has occurred.

I am also opposed to the idea of expanding the call for proposals. Having just gone through our normal process, I feel that it is unnecessary to re-open then entire process when it was just recently completed. Again, if there is a compelling reason to do so, it should be done in a manner that gives appropriate time for public comment and not with such short notice and turn-around time.

Thank you for your consideration in this matter.

Bob Ermold, Vice Chair

Kenai/Soldotna Fish and Game Advisory Committee



Submitted By  
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4/22/2015 11:20:54 PM  
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I support having a meeting to rescind 207 and to expand the call the proposals.



Submitted By

Brian Turner

Submitted On

4/23/2015 9:58:34 AM

Affiliation

support having a meeting to rescind 207.



Submitted By  
Chris Gill  
Submitted On  
4/23/2015 9:25:03 AM  
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I am in support of having a meeting to rescind #207.



Submitted By  
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4/22/2015 12:57:13 PM  
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I support having a special meeting to rescind 207.



Submitted By

clint lentfer

Submitted On

4/23/2015 8:21:06 AM

Affiliation

please rescind 207. 2 main reasons, #1 - it is unenforceable, what a waste of resources to have staff fly around and try and bust folks who will just say they are flightseeing or hunting for other animals, then try to PROVE without a doubt they were sheep spotting, IMPOSSIBLE!  
#2, by having this ridiculous law in place it does not benefit sheep hunters or the sheep, it simply adds an unenforceable law to the books.  
please rescind 207





Please submit the following for April 24th sheep meeting as your webpage will not allow it.

I am asking the BOG to change wording of Prop 207 (or repeal) to the following to meet BOG intent and not have any unintended consequences.

[From August **9th** to September 20 the use of aircraft to judge Dall Sheep for trophy/legal status for the purposes to hunt/harvest is prohibited]

I am against a sheep working group. There will be too many special interest groups fighting for their piece of the pie. We need to manage the resource first and then manage for Alaska residents harvest first and foremost. We have working groups made up of Alaska residents already, they are called ACs. This will just add another layer of politics and groups fighting for their special interest groups

Thanks

Dan Jirak  
Wasilla, AK  
907-360-1711



Submitted By  
George Dorman  
Submitted On  
4/23/2015 9:35:25 AM  
Affiliation

I support having meeting to rescind #270



Submitted By  
Guy Turner  
Submitted On  
4/23/2015 9:07:05 AM  
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Please support to having a meeting to rescind 207

Thank You, Guy Turner



Submitted By  
Hans Nordstrom  
Submitted On  
4/22/2015 4:25:01 PM  
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To BOG,

I am an Alaska resident and pilot. I am deeply concerned with prop 207 and feel that it unfairly penalizes resident hunters that choose not to use commercial services. It was sold to the public as a way to alleviate crowding for hunting, but in all actuality it will have the opposite affect. This prop will push a large majority of hunters into the first week of hunting and cause more crowding and safety concerns. This prop is ambiguous and poorly written. I realize that certain members have indicated that the law will not affect hunters that simple see a sheep from the air and choose to hunt this animal the next day, but that is no how it is written. If you spot a sheep from the air you can not hunt that animal regardless, the prop is very cut and dry in it's wording. Also I have been told that numerous troopers have been asked about enforcement of this law and indicate that it will be nearly impossible to enforce this law. There are already laws on the books that address harassment of animals so if that was the goal the law is redundant. I urge you all to use common sense and remove prop 207, the only thing it does is harm law abiding residents.

Thank you,

Hans Nordstrom

Submitted By  
Henry Tiffany  
Submitted On  
4/22/2015 3:32:34 PM  
Affiliation

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Dear Alaska Board of Game Members,

I have been meaning to send you this email for a few weeks now but am prompted to do so today as I have learned that a special meeting of the Board of Game has been called.

I would sincerely like to thank you for passing proposal 207 at your March 2015 meeting. In some ways your decision to promote ethical, fair chase hunting of Dall Sheep in Alaska feels like a landmark decision and one that has been long, long overdue. I do believe proposal 207 will help to strengthen Alaska's conservation efforts and will encourage ALL hunters engaged in Dall Sheep hunt to do so in a more ethical and fair-chase manner and will eventually lead to less over-crowding in the sheep mountains.

My estimation is that about 90% of resident hunters DO NOT utilize their own aircraft when sheep hunting so the positive ramifications of proposal 207 will eventually be felt broadly. There is a small percentage of residents that do use their own aircraft to spot sheep and a larger percentage of guides that do as well (I would estimate 60% to 70% of guides may do so) and so those two user groups will have to adjust their hunting practices and tactics and conform to a more ethical standard, which is the way it should be, and should have been, for a long time. I do not see that as a hardship or undue burden by any means because the majority of resident hunters, and a reasonable percentage of guides, have been successfully hunting sheep ethically and under the fair-chase clause for many years so it can be done, as is proven every year by those hunters that harvest rams WITHOUT first having to spot them from the air. It would be a real travesty were you, the Board of Game, to even consider rescinding proposal 207 much less actually do so. To the contrary, frankly, I would like to see the concept of proposal 207 significantly broadened and adopted to include other big game species in Alaska, including Moose, Brown Bear and Grizzly.

Additionally, I have concerns with this call for a special meeting of the Board of Game. Firstly, virtually no public notice was given for this meeting and thus public comment opportunities I would have to think will be very limited. Secondly, during a fiscally very challenging time for our state, with budget cuts being felt in almost every sector of state government, I have to wonder if allocating funds for this special meeting is really the most prudent use of resources considering the fact that this special meeting was called by only two of the board members and none of the agenda items would seem to be of any type of "emergency" nature. Thirdly, there seems no need whatsoever to extend the call for proposals relating to statewide hunting seasons and bag limits for sheep nor extending the proposal deadline. Proposal 208, which relates directly to this, has been deferred to a later meeting as I understand it and there has been at least the last seven years' worth of time for the public to offer proposals on this topic, which they have done amply. Perhaps the public can offer "methods and means" proposals but I think the Board of Game has a very clear idea of the source and nature of many of these "sheep season dates, allocation and bag limit" type of proposals, which you have been inundated with the last five to ten years; as such there is no justification in my mind to extend the call for proposals nor extend the proposal deadline.

Lastly, I would like to offer my support and encouragement for the creation and establishment of a sheep working group, which I think could prove critical as you move forward.

Again, my most heartfelt and sincere thank you for passing Proposal 207 into regulation. I would be appalled were you to rescind it but I would certainly encourage you in the future to consider expanding it to include other big game species in Alaska.

I thank you all for your continued time and consideration and your service and dedication to our state, its natural resources and its people.

Sincerely,

Henry D. Tiffany IV  
Fairbanks, Alaska

Submitted By  
Hugh Leslie  
Submitted On  
4/23/2015 9:36:35 AM  
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Dear Board Members,

I am writing in response to Proposal 207 regarding the change in aircraft usage during sheep season. While I think the proposal was well intended I see what I consider some very severe legal ramifications as well as serious safety concerns.

I will try to set this up in a couple of scenarios that show how the practical application of this proposal has some flaws.

1. I am flying up to scout my sheep hunting area and locate a strip to land my plane prior to season . I locate a strip and return the day before season only to find the strip crowded with hunters and an aircraft blocking the runway. Under the current proposal, if I fly to another strip, or look for another place to land, it could be viewed as "spotting" and therefore illegal. My only other option is go home, wait a few days, then fly back and hope that the strip is open.
2. I drop my brother and his wife off on a remote strip and tell him I will check back in 4 days to see if they have tagged out or to resupply them. As I fly in they wave me off as they haven't tagged out or need anything, someone sees me and reports me for "spotting".
3. Using the scenario above, I decide to take a different route home, or head to another strip, I think if Im flying in sheep country, I could be cited for "spotting" when all Im actually doing is taking the shortest route to Talkeetna for a hamburger!
4. This is the safety concern I mentioned above. Given that sheep are in a geographically small area, and this new proposal will force increased activity in those areas immediately before season, there is an increased risk of mid-air collisions. Every sheep hunter will want to fly as close to the start of the season, knowing they can't scout during season. This takes all the flights formerly legal during sheep season and forces them in limited air space in a very short period of time.
5. Lastly, how will you enforce it? Even if Im flying in sheep country, how will the Law Enforcement Officers determine if I was looking at sheep or caribou?

Again, I hope that you reconsider Proposal #207 and rescind its implementation based on the concerns listed above.

Thank you for your time

Hugh Leslie

Submitted By  
Israel Payton  
Submitted On  
4/22/2015 3:14:36 PM  
Affiliation

My name is Israel Payton and I am in full support to have a meeting to rescind Proposal 207 I am also in support to expand the call for State wide and include all sheep hunting seasons and limits and not just proposal 208.

The Board of Game made its first error when they did not follow their own policy when creating a board generated proposal in 207 and 208.

The Board's second error was going against the majority of the AC's and written and oral testimony on PUBLIC RECORD that advised against proposal 207. Private phone calls to Chairman Spraker are not recorded *"and said he got phone calls from 10 supporters of the ban for every opponent."* – ADN 4/11/15

I know it is hard to admit an error but the public backlash that this proposal has spawned is hard to ignore and the BOG needs to address that and reverse its decision on 207.

Thank you for your consideration.

Israel Payton

Below is testimony at the Mat Valley AC meeting April 1st 2015 after the BOG passed 207

the full minutes can be found <https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=175808>

Persons to be heard: Tony Marchini - Disagrees with the adoption of the portion of 207 taken up by the BOG. Interested in running for vacant alternate position.

Wade Williams - Strongly opposed to what was adopted from Board Generated proposal 207. Could make early season flying more crowded. Is unsure how it will be regulated. Does not know if this will improve the sheep population. Would like to see Board eliminate nonresident uses first.

Joe Cizek - Would like to become more involved in the process by running for vacant alternate seat. Strongly Opposed to the action the board took on 207. Has 3 daughters who he takes hunting and if he can not use his aircraft to take his kids hunting then they will not have much of an opportunity. Concerning antlerless moose hunts - there is a core and transient population. This winter cows did not show up. If we kill off the cow population then we also kill off future spike fork 50 inch moose hunting in the future.

Loren Korro - Wants BOG to reconsider and remove the restrictions placed on aircraft for sheep hunting. This was a statewide proposal that did not address any emergency situation. It was not addressed at a statewide meeting. Believe aircraft are being unfairly targeted. There are many forms of transportation as are many tools hunters use to hunt and personal choices should be allowed. Many rural AC's were unable to meet and discuss 207 because it was generated and voted on without public process.

Birch Yuknis - Interested in serving on the AC. Is opposed to the portion of Proposal 207 adopted by the Board of Game, and is in support of action to repeal Proposal 207.

Mark Richards - President Alaska Backcountry Hunters and Anglers. Only organization in Alaska that they know of that supports resident priority for sheep hunting. Does not believe the BOG generated proposals 207 and 208 met the process requirements for board generated proposals, and would like to see the Matanuska Valley Advisory Committee and the Anchorage Advisory Committee take on the effort to support allowing residents to spot sheep from the air.

Eugene Haberman - Public process - if the public does not have any attachments to the agenda of what is being suggested for action how can the public process be followed.

Dan Jirak - Does not support the action the board took on 207. Does nothing for resource. Asked how it would be possible for hunters to fly into an area without possibly seeing sheep. 207 could make crowding worse.

Herb Mansavage - at BOG meeting he felt that BOG was leading the testimony at the meeting, and providing extra opportunity for specific people's testimony to go on in at least one case for about half an hour. Felt the BOG was continually asking, what problems did you have with sheep hunting? As if everyone had to have a problem. 207 could create frantic flying/spotting in short window before season opens. Would like 207 repealed.

Toby Trimble - Speaking up to oppose proposal 207 - would like to see it repealed because it has ill intended consequences. Agrees with others comments who spoke before him during public testimony. Would like to see something done. Lives in Alaska for hunting/fishing and also so he could fulfill his dream of owning an aircraft and using it to sheep hunt. Does not like how 207 was pushed through. Added that



he meets a lot of people that do not know how to legally judge sheep. Recommends a class be developed and offered. Nonresidents should be drawing only for sheep.

Kevin Asher - Advisory Committees and Board of Game need to be conscious of collateral damage when certain proposals are passed. How does this proposal effect people flight seeing. Believes BOG did not follow standards for BOG generated proposals. Wants the Advisory Committee to hold BOG accountable. Believes false statement were made by board of game members when proposal 207 was passed. Opposed to 207.

Colt Foster - Echoes everyone else's comments in opposition to proposal 207 passed by the board. With the present rule how can he fly his children to hunt on a weekend without breaking this new regulation, especially since sheep hunters will already be in the field and some of the spot he may want to land will already be occupied by other hunting parties. Supports Birch and Hans being on AC.

Frank Noska - Opposed to 207.

Brad Sparks- Opposes 207. Doesn't own a plane but flies with others to hunt. Would like to see sheep hunters be able to relocate camp during season and pilots do so without worrying about 207. Would like to see nonresidents limited to only 10% of sheep permits - as occurs in many other states.

Randy Auckland - Has been sheep hunting, but not killed one yet, but he also does some flying in the mountains during sheep season and does not want to be reported as a violation just because he is flying in the mountains. Has flown for over 25 years. Has flown during time period in areas known to have sheep for other recreational purposes such as fossil hunting or berry picking. Opposed to 207.

Leonard Yuknis - Opposed 207. Was a guide in the mid 80's. Doesn't see need for 207 as buzzing or harassing sheep is already illegal. Supports his son, Birch Yuknis running for an AC position. !

Jacob Tham - Opposed to 207. Agrees with comments from public in regards to 207. Would prefer limiting number of sheep hunters.

Ron Kazina - Pilot who flies 200-300 hours per year and also flies during sheep season. Does not want to be called in as a potential violation simply because he is flying in the mountains. Sometimes it takes several passes by a pilot to determine where or if to land on a backcountry landing strip. Asks how you would even regulate something of this nature. Believes that 207 creates unnecessary distraction on a pilot trying to focus on flying safely. Strongly Opposes 207.

Neil DeWitt - Anchorage AC member speaking on his own behalf opposes 207 as adopted by BOG.





*Law Office Of*

***Robert D. Stone***

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April 10, 2015

Cheryl Rawls Brooking, *Esq.*  
Attorney General's Office  
Natural Resources Section  
1031 West 4th Avenue, Suite 200  
Anchorage, AK 99501

*Re: Proposal 207 – Restriction on Flying*

From August 10 to September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting. Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.

Dear Ms. Brooking:

The Alaska Airmen Association is the voice for general aviation in Alaska and we thank the Department of Law for the opportunity to provide an educational briefing on how Board of Game Proposal 207, if enacted, will affect aviation in Alaska. The Alaska Airmen Association does not intend to address any hunting issues. We leave those issues to hunters and others with an interest in sheep hunting. Instead, this letter explains how Proposal 207 restricts the right to operate an airplane. It further explains that if Proposal 207 becomes a regulation, it will be unenforceable because it inappropriately infringes upon the exclusive jurisdiction of the federal government to regulate the airspace of the United States. This infringement may have been an unintended and/or inadvertent consequence of Proposal 207, but because it violates the Supremacy Clause of the United States Constitution, Proposal 207 cannot be enacted.

***I. Federal Law Preempts State Law***

It has long been established that federal law preempts state law. U.S. Const. Art. VI. In fact, when federal law so occupies the field, state legislatures are prevented from passing

Cheryl Rawls Brooking, *Esq.*  
April 10, 2015  
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laws and state courts are prevented from asserting jurisdiction over such matters. *English v. General Elec. Co.*, 496 U.S. 72 (1990); *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996). With respect to airspace, federal law does so occupy the field. 49 U.S.C. App. § 1348(a) (“Federal Aviation Act”). The Federal Aviation Act vests the broad authority to regulate navigable airspace in the Secretary of Transportation. *Id.* Congress has charged the Administrator of the Federal Aviation Administration (“FAA”) with carrying out the duties and powers of the Secretary related to aviation. 49 U.S.C. § 106(g). As such, if Proposal 207 creates restrictions upon flight within navigable airspace, any such regulation stemming from Proposal 207 is preempted by federal law and is therefore invalid and unenforceable. This naturally raises the next question, which is, does Proposal 207 inappropriately infringe upon the FAA’s authority to regulate airspace.

**A. Proposal 207, As Passed by the Board of Game, Unlawfully Infringes Upon the FAA’s Authority To Regulate Airspace.**

Proposal 207 places limitations on flight that only the FAA is authorized impose. Under Proposal 207, it is illegal to fly as follows:

From August 10 to September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting. Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.

Under Proposal 207, the prohibited flight will be subject to enforcement by the Alaska State Troopers, under the laws of the State of Alaska.

Aviation safety has largely been a matter of highly regulated federal concern. *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1<sup>st</sup> Cir. 1989). FAA regulations broadly preempt state law claims. *Id.*

Section 1108(a) of the Federal Aviation Act, provides in part, “The United States of America is declared to possess and exercise complete and exclusive national sovereignty in the airspace of the United States . . . .” 49 U. S. C. § 1508 (a) (*quoted in Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 626 (1973)).

Through §§ 307(a) and (c) of the Act, the Administrator of the Federal Aviation Administration has been given broad authority to regulate the use of the navigable airspace, “in order to insure the safety of aircraft and the efficient utilization of such airspace . . . and for the protection of persons and property on the ground . . . .” 49 U. S. C. §§ 1348(a), (c).



Cheryl Rawls Brooking, *Esq.*  
April 10, 2015  
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Section 307 provides in relevant part as follows:

(a) The Administrator is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. . . .

.....

(c) The Administrator is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

In *Burbank v. Lockheed Air Terminal, Inc.*, the United States Supreme Court addressed the City of Burbank's attempt to limit aircraft take-offs between the hours of 11:00pm and 7:00am. The District Court found the ordinance to be unconstitutional on both Supremacy Clause and Commerce Clause grounds. 318 F. Supp. 914. The Court of Appeals affirmed, citing the Supremacy Clause and preemption conflicts. 457 F.2d 667. The United States Supreme Court affirmed. 411 U.S. 624 (1973).

The following are a few of many examples where pilots in compliance with federal law will be subject to criminal charges by the Alaska State Troopers, if Proposal 207 becomes a regulation:

### **Hypothetical #1**

On August 20, Citizen A (Mr. Smith) takes off in his Piper Super Cub with a friend on a sightseeing trip to see the Knik Glacier in the Mat Su Valley. After spending some time flying over the glacier, Mr. Smith and friend decide to fly around the mountains looking for sheep and goat. It was a magnificent day, viewing glaciers, sheep, and goat. They end the day by landing at Lake Hood.

As stated, it is August 20 (between August 10 and September 20). Mr. Smith is visited the next day by "Trooper Jones." Trooper Jones asks whether Mr. Smith was spotting for sheep. Mr. Smith answers "yes." Mr. Smith is charged with violating the regulation that



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stems from Proposal 207. Since his Super Cub was used in the commission of the “crime,” it is seized. When Mr. Smith protests, the Trooper, and then the Prosecutor, tells Mr. Smith to “read the regulation.” The regulation states as follows:

“Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.”

Mr. Smith tells the Trooper and the Prosecutor that the purpose of the regulation is to prohibit spotting for sheep and then hunting. Again, the Trooper and Prosecutor say, “read the law.” Mr. Smith is now forced to hire an attorney to fight the charges....

Mr. Smith complied with all federal laws promulgated by the Federal Aviation Administration, yet he is subject to prosecution for violation of a state regulation for illegally flying. Federal law preempts this state regulation, but that brings little comfort to Mr. Smith, as he pays attorney fees to defend these charges.

### **Hypothetical #2**

On September 1, an out of state tourist travels to Talkeetna and heads to the airport. Tourist finds an air taxi service that is willing to take tourist and her family on a flight seeing tour. They fly over Denali and the Talkeetna Mountains. They see moose, caribou, sheep, and, of course, Mt. McKinley. The intended purpose of the flight was to see as many species of animals as possible, including sheep.

As with Mr. Smith above, the pilot for the air taxi is charged with a crime. He contacts the FAA and is told that the State of Alaska has no jurisdiction to charge him, yet the pilot is on his own to fight the State. Several thousands of dollars later, the United States District Court concludes that Federal Preemption applies. The state criminal case is dismissed.

### **Hypothetical #3**

Mr. Smith has an 11 year old daughter. She does not hunt, and has no interest in hunting. Mr. Smith and his daughter enjoy flying in the mountains, hiking in the mountains, and taking pictures in the mountains.

Mr. Smith and his daughter plan a sheep photography trip. Mr. Smith flies in with his daughter – it’s August 20. They fly around in the mountains, looking for sheep. Mr. Smith follows all Federal Aviation Administration rules and regulations regarding flight. He and his daughter spot several sheep in the mountains. They land and camp. Over the next several



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days, Mr. Smith and his daughter camp in the mountains and take photography of sheep, wolves, and wolverine, among others. They do not hunt.

Mr. Smith and his daughter have a great experience, until they land in Anchorage. The following day, Trooper Jones visits Mr. Smith and the same events as described in hypothetical #1 transpire. Again, although Mr. Smith followed all Federal Aviation Administration rules and regulations, and although neither Mr. Smith nor his daughter hunted, Mr. Smith's airplane is seized and he is forced to hire an attorney to fight the charges and raise the preemption issues.

The hypotheticals above demonstrate that application of Proposal 207 results in state law enforcement in an area where the State of Alaska has no jurisdiction.

When these issues were pointed out to one member of the Board of Game, post passage of Proposal 207, he wrote, "The litmus test for your activities would be; is this *'for the purpose of Dall Sheep hunting?'*" (Email from Nate Turner). He further explained, this is an attempt to increase "fair chase" and "same day airborne" hunting. *Id.*

Proposal 207 does not limit the prohibited activity to "sheep hunting." It states:

Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.

Notwithstanding the clear language of Proposal 207, an analysis of "for the purpose of Dall sheep hunting" is contained below, demonstrating that Proposal 207 still violates federal law.

**B. Proposal 207, Even If Modified To Specifically Relate To Sheep Hunting, Will Nevertheless Still Unlawfully Infringe Upon The FAA's Authority To Regulate Airspace.**

Prior to passage, the Board of Game failed to appreciate that Proposal 207 is a restriction on flight, rather than a restriction on hunting. While it is within the authority of the Board of Game to regulate hunting in Alaska, it is not within the authority of the Board of Game to regulate the flight of aircraft.

**Hypothetical #4**

It is August 10 and Mr. Smith decides to sheep hunt in the Alaska Range. He heads out and finds a place to land. It is a short, rough spot on the side of a mountain. The spot



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looks rough and short, so Mr. Smith decides to take a fly-by and take a look. Mr. Smith decides to fly by again, but he is not convinced that it is safe. So he takes another look, to get a slower, closer look. Mr. Smith ultimately decides, after 4 passes, that it is not a safe landing spot. So, Mr. Smith heads up the valley and finds another place to land. Ultimately, Mr. Smith lands and hunts. He is successful.

There was a hunter in the same valley, unbeknownst to Mr. Smith. This other hunter took an iPhone video of Mr. Smith's multiple passes over a spot in the mountains. This hunter calls the Troopers.

When Mr. Smith gets back to Anchorage a week later, he is visited by Trooper Jones. When Mr. Smith explains what happened, the Trooper explains that he has video evidence of Mr. Smith circling and taking several low passes at 4,000 feet, near sheep in the Alaska Range. An honest man, Mr. Smith acknowledges that there were sheep in the area (that's why he wanted to land at that spot), but denied "spotting" for sheep. Instead, Mr. Smith was acting as a reasonably prudent pilot, following the FARs as promulgated by the FAA.

Trooper Jones looks at the sheep that Mr. Smith shot and then he charges Mr. Smith with spotting for sheep. The Trooper seizes Mr. Smith's airplane, gun, tent, and sheep, since they were all used in the commission of the "crime." Mr. Smith calls an attorney to fight to get his plane and gear back. The attorney tells Mr. Smith that he can fight this matter in the State and Federal courts, in exchange for several thousands of dollars. Or perhaps Mr. Smith can save his money, plea to a lesser included offense, get his plane back, and perhaps pay fines, forfeit his sheep, and have his hunting privileges suspended. Under federal law, Mr. Smith did nothing wrong. Under state law, he was illegally flying. This is an impermissible conflict between state and federal law wherein state law is preempted.

### **Hypothetical #5**

Mr. Smith is sheep hunting in the Alaska Range. Mr. Smith heads out and finds a place to land. It is a short, rough spot on the side of a mountain. The spot looks rough and short, so Mr. Smith decides to take a fly-by and take a look. Mr. Smith decides to fly by again, but Mr. Smith is not yet convinced that it is safe. After two passes, Mr. Smith does not believe that he got a good enough look, but Mr. Smith knew that Proposal 207 was passed in 2015 and thus he is worried that if he circles again he might be accused of spotting for sheep (after all, this rough spot in the mountains is at 4,000 feet and there are sheep all around). Mr. Smith remembers reading the following quote from Board of Game member Nate Turner:

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[if there is a concern that my] “actions might be misinterpreted - it would probably not be a wise thing to do, especially when other hunters are in the valley looking for sheep.”

Email from Nate Turner, Board of Game.

Mr. Smith interprets Mr. Turner’s words to mean that even if you are lawfully flying, modify your flying because the state may decide to charge you and take your plane.

Mr. Smith convinces himself to land, even though his better judgment tells him to take more fly-bys, until he is satisfied that it is safe. Ultimately, Mr. Smith figures that two fly-bys are probably acceptable and he does not want to be wrongfully accused of spotting for sheep. Mr. Smith makes a mistake on landing - he did not see a nasty spot in the landing area ... he crashes. If Mr. Smith survives the crash, he will be subjected to an FAA enforcement action against his license because Mr. Smith admits that he should have flown over the landing area until reasonably comfortable with the decision to land. Mr. Smith admits that he compromised safety out of fear of state prosecution. In this example, Proposal 207 affected Mr. Smith’s decision and judgment regarding flight.

#### **Hypothetical #6 (Flight Consequences Associated With Proposal 207)**

Proposal 207 allows pilots to fly in the mountains before and after sheep hunting season, spotting for sheep, but not during the season. A consequence of this Proposal is an increased number of aircraft flying prior to August 10. As the United States Supreme Court has opined,

The Federal Aviation Administration has been given broad authority to regulate the use of the navigable airspace, in order to insure the safety of aircraft and the efficient utilization of such airspace and for the protection of persons and property on the ground.

*Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 626 (1973) (quoting § § 307 (a), (c) of the Federal Aviation Act, 49 U. S. C. §§ 1348 (a), (c)). The State of Alaska is preempted from making regulations that affect “the safety of aircraft and the efficient utilization of such airspace.” *Id.*

Since it is illegal to look for sheep between August 10 and September 20, private pilot sheep hunters will be “spotting for sheep” just before August 10. This is an impermissible restriction on flight reserved only for the Federal Aviation Administration.

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**Hypothetical #7 (Flight Consequences Associated With Weather, Caused By Proposal 207)**

Assume the following:

The weather is below VFR minimums on August 7. Assume that the weather is forecasted to be marginal, at best, on August 8 and 9. It is undisputed that pilot sheep hunters want to spot for sheep.

Prior to Proposal 207, the pilot sheep hunter leaves on August 10, spots for sheep, and then hunts on August 11.

After passage of Proposal 207, the sheep hunter is pressured to spot before August 10. He knows that if he does not spot before August 10, the chance of success is reduced. So, the pilot pushes the weather on either August 8 or 9, when he would not have otherwise pushed the weather.

Every year, Alaska suffers the loss of private pilots due to flying in bad weather. Too many times, pilots are pressured to fly due to some pressing deadline. The FAA has engaged in a campaign to encourage pilots to not fly in bad weather. Proposal 207 undermines the efforts of the FAA on this precise issue. Again, “the safety of aircraft and the efficient utilization of such airspace [is governed by the exclusive jurisdiction of the FAA].” *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 626 (1973).

***II. Proposal 207 Regulates Airspace And Is Beyond The Scope Of The Constitutional Authority To Control Land, Water, And Wildlife.***

As cited above, the Federal Aviation Administration is charged with the exclusive control over the airspace. The framers of the Alaska Constitution clearly articulated the control to be exercised by the State of Alaska, which is as follows:

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 its people.

Alaska Const. art. VIII, § 2.

Conspicuously absent from the list is “airspace.” Nowhere in the State Constitution does the State of Alaska have the authority to control the airspace. Instead, the State Constitution provides that the “legislature shall ...[control] the **land and waters.**” *Id.* (emphasis added).



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In the next section, the Alaska Constitution reads:

COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Alaska Const. art. VIII, § 3.

Again, conspicuously absent from the list is “airspace.”

In Section 4, the Alaska Constitution reads:

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.

Alaska Const. art. VIII, § 4.

Of no surprise, absent from the list is “airspace,” because the Federal Aviation Administration controls and manages the airspace.

Proposal 207 states:

From August 10 to September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting.

This prohibits the use of aircraft between August 10 - September 20 to do anything other than what is listed. So, for example, Mr. Smith and his son go sheep hunting and get two sheep. On the way out, they decide to circle the kill site (several miles from the landing spot) and there are still sheep in the area. Trooper Jones, in his Super Cub, observes Mr. Smith circling the kill site and sheep. Mr. Smith is charged with a crime and his Super Cub is seized.

This conduct had nothing to do with hunting, but Proposal 207 makes this conduct illegal. Proposal 207 is a restriction on flying and a restriction on airspace.

When questioned on this hypothetical, Board Member Nate Turner states that pilots should have flight restrictions. He states, “it is inconsiderate to be doing it during the hunting season when you aren’t even planning to hunt anyway, and you could also plan to do your “checking out” any time in the summer leading up to the hunt.” (Email from Nate Turner).

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This comment demonstrates a clear intent to restrict the right to fly, which is within the exclusive jurisdiction of the Federal Aviation Administration.

The next sentence in Proposal 207 provides,

Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.

As discussed above, this is clear and unambiguous. This means that if Mr. Smith decides to fly in the Alaska Range to spot sheep, and perhaps take pictures, it is unlawful for him to do so between August 10 and September 20, regardless of his intentions. Again, this is the regulation and limitation on flight, not hunting.

One Board of Game member stated, “We recognize there are limits to the enforceability of such regulation, ... 90% of the people will follow the law just because it is the law.” (Nate Turner email).

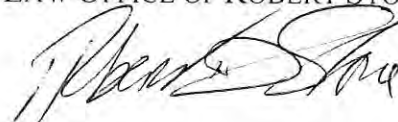
Even a Board of Game member that voted for Proposal 207 now recognizes the enforceability issues. Prior to passage, the Board of Game did not consider the preemption problems. It recognizes those problems now. Proposal 207 is unenforceable.

### ***III. Conclusion***

The Alaska Airmen Association wants to again thank the Department of Law for the opportunity to provide an educational briefing on how Board of Game Proposal 207, if enacted, will affect aviation in Alaska. It is clear that the Board of Game, while attempting to enact sheep hunting regulations, overlooked the impact Proposal 207 would have on the Federal Aviation Administration’s exclusive right to regulate the airspace of the United States. We trust that if the Board of Game would have looked at this issue, a different approach would have been employed. Although the overreach may have been unintended, Proposal 207 nevertheless violates the Supremacy Clause of the United States Constitution and therefore cannot be enacted, as a matter of law.

Sincerely,

LAW OFFICE OF ROBERT STONE, LLC



By: Robert D. Stone, *Esq.*

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April 10, 2015

Ms. Cheryl Brooking  
Assistant Attorney General  
Alaska Department of Law - Civil Division  
1031 W. 4th Avenue, Suite 200  
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**Re: Board of Game Proposal 207, as adopted.**

Dear Ms. Brooking:

This follows up on our recent conversations about Proposal 207. As proposed, it contained three options for restricting sheep hunting:

1. From August 10 to September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting. Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.
2. It is against the law to hunt or help someone else take a Dall sheep until 2 PM the day following the day you have flown.
3. It is against the law to hunt or help someone else take a Dall sheep within 5 miles of the site where you were flown-in, until 24 (48) hours after you have flown.

At a Board of Game meeting in February 2015, the Alaska Department of Public Safety, Division of Alaska Wildlife Troopers, submitted comments that “[o]ptions one and three would be “extremely difficult to enforce due to the wording and multiple requirements of each option.” See Alaska Wildlife Trooper Comments, at <http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo&date=02-13-2015&meeting=wasilla>. Nevertheless, I understand that the Board, at its March meeting, adopted the first option, which is:

From August 10 to September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting. Using an aircraft for the purpose of spotting sheep or locating Dall sheep during the open hunting season is prohibited.

In short, during the hunting season, Proposal 207, as adopted, restricts use of aircraft to placing sheep hunters, maintaining camps, and salvaging meat and trophies, and prohibits use of aircraft for spotting or locating Dall sheep.

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In doing so, Proposal 207, as adopted, raises issues of whether it contravenes the constitutional doctrine that penal statutes, regulations and ordinances must not be vague. In that respect, Proposal 207 is distinguishable from much clearer prohibitions of use of aircraft, such as in the case of (1) prohibition of hunting the same day that one is airborne, (2) prohibition of areal fish spotting to assist commercial fishers in Bristol Bay, and (3) controlled use areas where use of aircraft to access such areas for purposes of hunting is prohibited or restricted, or where the use of helicopters for sport fishing in certain Bristol Bay drainages is prohibited. These prohibitions are clearly and closely tailored to prohibit or restrict certain methods and means of hunting or fishing, and therefore are not unconstitutionally vague. The same cannot be said of Proposal 207.

I'll address first the issue of whether Proposal 207, as adopted, is void for vagueness. Then, I'll address whether it is arbitrary and capricious because it contravenes its own stated purposes, and whether it is preempted by federal law.

## DISCUSSION

Although the Alaska Wildlife Trooper focused on enforceability, it is only one off three considerations that comprise the void for vagueness doctrine.

### **A. The constitutional doctrine that penal statutes and regulations must not be vague contains three independent considerations.**

In *Stock v. State*, 526 P.2d 3, 7-8 (Alaska 1974), the Court discussed the void for vagueness doctrine. Any of three factors determine whether a statute or regulation is unconstitutionally vague: (1) whether the statute or regulation is so overbroad that it may be construed in a manner to restrict the exercise of First Amendment rights; (2) whether the statute or regulation gives adequate notice to ordinary citizen of what actions are prohibited; and (3) whether the statute or regulation gives undue discretion to prosecuting authorities in determining what constitutes the crime. *Id.* at 7-8.

#### **1. A penal statute or regulation must not be so overbroad as to be construed to restrict first amendment rights.**

With respect to the first consideration, if a penal statute or regulation is overbroad so that it may be construed in a manner to restrict the exercise of first amendment rights, then it may be found to be invalid. *Id.* at 7-8 (citation omitted). It may be overbroad and invalid either because “the outer contours of the statute [or regulation] may lack specificity”, or because although ‘clear and precise’ it prohibits constitutionally protected conduct. *Id.* at 7 n. 7 (citations omitted). A statute may not create a threat of criminal penalties which might inhibit the exercise of those basic rights so essential to our form of government such as freedom of speech, press, religion and to assemble peaceably.

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**2. A penal statute or regulation must give adequate notice of what is prohibited.**

With respect to the second consideration, a penal statute or regulation must give adequate notice to the ordinary citizen of what is prohibited. *Id.* at 8. This principle involves basic fairness and was long ago enunciated by the United States Supreme Court in *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926), stating:

That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

*Stock* at 8 (citing *Connally*). When a statute or regulation is “so indefinite that the perimeters of the prohibited zone of conduct are unclear”, it may be unconstitutionally vague even though no activities specifically protected by the Constitution are outlawed. *Marks v. City of Anchorage*, 500 P.2d 644, 646 (Alaska 1972). “A vague statute violates the due process clause both because it fails to give adequate notice to the ordinary citizen of what is prohibited and because its indefinite contours confer unbridled discretion on government officials and thereby raise the possibility of uneven and discriminatory enforcement.” *Id.*

**3. A penal statute or regulation must not be so inexact as to lead to arbitrary enforcement.**

When a vague statute violates the due process clause, its indefinite contours confer unbridled discretion on government officials and thereby raise the possibility of uneven and discriminatory enforcement. Thus, the third element of analysis in vagueness problems is whether the statute gives undue discretion to prosecuting authorities in determining what constitutes the crime. *Stock* at 8. This can lead to arbitrary enforcement against persons who incur the ire of those empowered to determine who shall be prosecuted. *Id.* There is, of course, wide discretion inherent in any criminal statute as to who shall be prosecuted. Thus, one police officer may give a warning to a person travelling 60 m. p. h. in a 55 m. p. h. zone, while another may arrest a driver travelling at a like speed. Such lack of uniformity is not based on any difficulty in statutory language, but is innate in any criminal justice system involving human rather than computer controls. *Id.* (citations omitted). But when inexactitude of statutory language has invited arbitrary enforcement so that there has been a history or a strong likelihood of uneven application, laws have been stricken as unconstitutional. *Id.* (citations omitted).

**B. A dozen hypothetical examples show that the second and third considerations apply to Proposal 207.**

It is unnecessary to consider whether the first consideration applies to Proposal 207 because the second and third considerations do. To see that this is so, I'll offer a dozen examples

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of persons, purposes and activities for which some citations would be appropriate and some inappropriate. In so doing, I'll demonstrate that Proposal 207 is not comparable to the prohibition of fish spotting, which seems to be its closest analogy.

Proposal 207 appears to include the following persons, purposes and activities during the hunting season:

1. a sheep hunter ("Sheep Hunter No. 1 herein) who flies to a remote mountainous area having a remote strip, and circles the remote area and strip several times *for purposes of spotting sheep to hunt*, and thereafter hunts and is cited, *appropriately* because he flew with the purpose of spotting sheep;
2. a sheep hunter ("Sheep Hunter No. 2 herein) who in same manner as Sheep Hunter No. 1 circles the same remote mountainous area and strip several times, but does so *for purposes of safety and without a purpose of spotting sheep*, to check out the condition of the strip and determine wind conditions, and thereby appears to be spotting sheep, and who in fact spots sheep while circling for purposes of safety, and is thereafter cited, *inappropriately* because he flew without any intention or purpose of spotting sheep;
3. a sheep hunter ("Sheep Hunter No. 3 herein) who, *for purposes of spotting sheep*, selects only the clearest days to fly so that he or she can spot sheep without appearing to do so, and who engages in no activity such as circling that might otherwise distinguish that hunter from those who do not seek to spot sheep, and who thereafter hunts and is cited, *appropriately* because he flew with the purpose of spotting sheep;
4. a sheep hunter ("Sheep Hunter No. 4 herein) who, *for purposes of seeing the country or investigating the terrain and without a purpose spotting sheep*, selects a clear day to fly and in so doing spots sheep, but who engages in no activity such as circling that might otherwise distinguish that hunter from those who do not seek to spot sheep, who thereafter hunts and is cited, *inappropriately* because he flew without any intention or purpose of spotting sheep;
5. a sheep hunter ("Sheep Hunter No. 5) who also has a permit for moose, and who flies to a remote mountainous area having a remote strip, and circles the remote area and strip several times *for purposes of spotting moose to hunt in compliance with same-day-airborne rules, but who instead spots sheep*, and thereafter hunts moose and sheep and is cited, *inappropriately* because he flew without any intention or purpose of spotting sheep;
6. a pilot ("Pilot Wildlife Viewer No. 6" herein) who is a wildlife viewer and conspires with her companion who is a sheep hunter, by informing him where she spotted sheep, and who is cited, *appropriately* because she conspired with her companion and had reason to be on notice that flying for the purpose of spotting sheep to assist him would be criminal;
7. a pilot ("Pilot Wildlife Viewer No. 7" herein) who is a wildlife viewer and who does not conspire with her companion who is a sheep hunter, but she has no reason to know the hunting regulations and simply informs him where she spotted sheep, and she is therefore cited, *inappropriately* because she never conspired or had notice that flying to spot sheep to assist a hunter is criminal;
8. a pilot ("Pilot Wildlife Viewer No. 8" herein) who is a wildlife viewer who, accompanied by her children, uses her aircraft for purposes of pointing out sheep to them during the

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- hunting season, and who intends to meet her husband, who is a sheep hunter, and upon doing so her children exclaim “Dad, we saw bunches of sheep with big round horns the other side of that mountain,” after which she and children are cited, *inappropriately* because none of them flew with the intent of spotting sheep for purposes of hunting and none of them had reason to be on notice that such conduct is criminal;
9. a pilot who is a wildlife viewer (“Pilot Wildlife Viewer No. 9” herein) who uses her aircraft for purposes of spotting sheep during the hunting season, and who is cited, *inappropriately* because she flew without any intention or purpose of spotting sheep to hunt and had no reason to be on notice that such conduct could be criminal;
  10. a pilot for an air charter service (“Air Charter Pilot No. 10” herein), who flies Sheep Hunter No. 1 who asks the pilot to fly *for purposes of spotting sheep*, whereupon the pilot is cited, *appropriately* because he aids and abets a sheep hunter’s efforts to fly for purposes of spotting sheep;
  11. a pilot for an air charter service (“Air Charter Pilot No. 11” herein) who flies Sheep Hunter No. 1 who, *for the purpose of spotting sheep but without declaring his purpose*, asks the pilot to fly a particular route through the same remote mountainous area and then declares that the strip looks poor and asks the pilot to circle it to be sure it is acceptable, whereupon the pilot is cited, *inappropriately* because he was *duped* and lacked any intent to fly for the purpose of spotting sheep or knowledge that Sheep Hunter No. 1 had that purpose in mind;
  12. a pilot for an air charter service (“Air Charter Pilot No. 12” herein) who flies Sheep Hunter No. 3 who, *for purposes of spotting sheep during the hunting season and without declaring the purpose*, selects only the clearest days to fly so that he or she can spot sheep without appearing to do so; whereupon the pilot is cited, *inappropriately* because he was *duped* and lacked any intent to fly for the purpose of spotting sheep or knowledge that Sheep Hunter No. 3 had that purpose in mind.

These examples demonstrate that Proposal 207 triggers not only the third consideration as the Troopers commented, but also triggers the second consideration. That is, Proposal 207 is so inexact as to lead to arbitrary enforcement, and it is so vague that it does not give notice to the ordinary citizen of what is prohibited.

**1. The foregoing examples show that Proposal 207, as adopted, is so inexact that it leads to arbitrary enforcement.**

Several of these examples show that Proposal 207, as adopted, is so vague that it leads to arbitrary enforcement. Sheep Hunters No. 1 and No. 2 are so indistinguishable that both circled the same area, and spotted sheep, and may be cited. Yet, Sheep Hunter No. 1 has the requisite intention or purposes, while No. 2 does not. The difference is in the mental state, or *mens rea*, of each. No. 1 has the requisite mental state. No. 2 does not. This makes enforcement for the same behaviors, one of which is criminal and one not, arbitrary. The same can be said of Sheep Hunters No. 3 and No. 4. They too look indistinguishable, because they both selected clear days to fly, but the latter lacks the criminal intent. Again, because the overt behaviors are indistinguishable, enforcement is arbitrary. Similarly, Sheep Hunter No. 5, who is also a moose hunter, flies to spot moose, not sheep, but spots sheep, and is cited even though he lacks the

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requisite criminal intent. Again, enforcement is arbitrary. The same can be said of all other examples where the citation is inappropriate. Furthermore, when the *mens rea* is so vague, the entire regulation must be stricken. See *Marks v. City of Anchorage*, at 646.

In the above examples, the behavior of Sheep Hunter No. 1 who flies with the purpose of spotting or locating sheep is indistinguishable from the behavior of Sheep Hunter No. 2 who does not fly with such a purpose even though he spots sheep. Yet, both could be cited, because the *mens rea* of Proposal 207 is the vague state of mind of the defendant.

A comparison to fish spotters enlightens matters. Commercial fishers in Bristol Bay used fish spotters. The intent of fish spotting behavior is clear. It is so that a commercial fishing boat can go immediately to a concentration of fish and net them. That cannot happen in sheep hunting because same-day-airborne hunting is prohibited. Radio transmissions of a fish spotter prove the intent, but that a sheep hunter who flies to spot sheep does not have to engage in such transmissions. So, the prohibition of fish spotting, of same day airborne hunting, and of controlled use areas are clear and do not invite arbitrary enforcement. According to the Wildlife Troopers, the same cannot be said of Proposal 207 as adopted.

**2. Proposal 207, as adopted, does not give adequate notice to the ordinary person of what is prohibited.**

Several of these examples also show that Proposal 207 is so vague that it does not give adequate notice to an ordinary person of what is prohibited. Pilot Wildlife Viewer No. 6 who conspires to inform a hunter where she spotted sheep would have reason to be on notice that flying to spot sheep is criminal, but Pilot Wildlife Viewer Nos. 7, 8 and 9 would not have reason to be on notice that flying to spot sheep is criminal.

Similarly, Air Charter Pilot No. 10, who flies a hunter to spot sheep as requested by the hunter has reason to be on notice that such conduct is criminal. However, while Air Charter Pilot Nos. 11 and 12 may have reason to know that flying to spot sheep for hunting is criminal, they have do not have reason to be on notice that they are doing so, because they are duped into doing so and lacked any intent to fly to spot sheep for purposes of hunting.

**C. Proposal 207, as adopted, is arbitrary and capricious because it is counterproductive to the objectives it purportedly seeks to accomplish.**

The Board of Game proposed Proposal 207 after the Board had received several proposals requesting changes to sheep seasons statewide. According to the Board, hunters have been “expressing dissatisfaction with Dall sheep harvest opportunities,” and “[m]any of the concerns expressed have noted increasing conflict among Alaska resident sheep hunters, hunting guides, transporters, and non-resident sheep hunters.” See Proposal 207 at <http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.proposalbook>.

However, because Proposal 207 prohibits flying to spot sheep during the hunting season, hunters will do so just before the season. That will shift pressure to the earliest part of the season



Cheryl Brooking, Ass't A.G., ADOL  
April 10, 2015  
Re: Proposal 207 as adopted

Page 7

so that hunters can take advantage of the benefit of having spotted sheep just prior to the season. The effect will be to increase hunting pressures and conflicts during the early part of the season. That is squarely counterproductive to the Board's objective of decreasing conflict. Furthermore, although the Board intended to help residents, they are least able to benefit from Proposal 207 as adopted, because non-residents have to be guided and guides and charter operators are more likely to have spotted sheep just ahead of the season than residents.

**D. Proposal 207, as adopted, raises preemption issues because Congress clearly intended to preempt States from regulating aircraft in flight.**

I have spoken with Robert D. Stone, who is preparing a letter to you on behalf of the Alaska Airmen's Association, and I understand from Mr. Stone that the Association wants him to address only the issues of federal preemption but not hunting issues. I am not so constrained.

The Federal Aviation Administration (FAA) has broad authority to regulate the use of the navigable airspace, in order to insure the safety of aircraft and the efficient utilization of such airspace. *Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 627 (1973). Proposal 207, as adopted, raises issues of air safety exclusively within federal jurisdiction. See *French v. Pan Am Express, Inc.*, 869 F.2d 1, 3 (1<sup>st</sup> Cir. 1989). Any state regulation that infringes on the authority of the FAA to regulate air safety would be preempted. *Id.*, see also *Burbank* at 644 ("Congress clearly intended to pre-empt the States from regulating aircraft in flight").

Turning to the foregoing hypothetical examples, Sheep Hunter No. 2 circles a remote mountainous area and strip several times, *for purposes of safety and without a purpose of spotting sheep*, to check out the condition of the strip and determine wind conditions. Proposal 207, as adopted, interferes with the ability of Sheep Hunter No. 2 to operate an aircraft safely by subjecting Sheep Hunter No. 2 to risk of criminal prosecution for a non-criminal act.

In that respect, Proposal 207 as adopted appears to be pre-empted by the exclusive authority of FAA to regulate aircraft in flight, airspace, and pilot conduct for purposes of safety. Further, in these respects, too, Proposal 207 as adopted is readily distinguishable from state prohibitions that do not interfere with safety or aircraft in flight, such as (1) prohibition of hunting the same day that one is airborne, (2) prohibition of areal fish spotting to assist commercial fishers in Bristol Bay, and (3) controlled use areas where use of aircraft to access such areas for purposes of hunting is prohibited or restricted, or where the use of helicopters for sport fishing in certain Bristol Bay drainages is prohibited. None of those prohibitions interfere with public safety in the operation of aircraft.

## CONCLUSION

Although Proposal 207, as adopted, is probably unlawful for the reasons discussed above, it helps to return to the comments of the Alaska Wildlife Troopers. Their comments not only pointed out that "[o]ptions one and three would be extremely difficult to enforce" due to the multiple requirement of each of these options. They also pointed out that option two "extends the normal restrictions on same day airborne" hunting and would be the "easiest and most

Cheryl Brooking, Ass't A.G., ADOL  
April 10, 2015  
Re: Proposal 207 as adopted

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concise of the three options to enforce.” See Alaska Wildlife Trooper Comments, at <http://www.adfg.alaska.gov/index.cfm?adfg=gameboard.meetinginfo&date=02-13-2015&meeting=wasilla>. That comment offers the means to avoid the issues that confront Proposal 207 as adopted.

I hope these comments are helpful.

Sincerely,

Geoffrey Y. Parker



Cheryl Brooking  
1031 West 4<sup>th</sup> Avenue #200  
Anchorage, AK 99501

Dear Ms. Brooking,

The Experimental Aircraft Association (EAA) is submitting this letter on behalf of its membership in Alaska in response to a policy recently adopted by the Alaska Board of Game. This policy places a restriction on aerial sheep spotting for hunting purposes between 10 August and 20 September.

EAA members have raised concerns that the language in this policy leaves it open to wide interpretation. It is important to note that while the authority of the Alaska Board of Game is to regulate hunting, we wish to reinforce that the FAA has sole jurisdiction over all activities within the National Airspace System. EAA seeks to ensure that pilots who have no intention to hunt and are flying in areas highly populated by sheep will not be cited by Alaskan authorities. Flying in Alaska involves complex challenges that other pilots flying elsewhere in the United States do not experience. Operating aircraft in and out of Alaska's unforgiving terrain requires careful planning. EAA members in Alaska wish to be assured that the processes they use to identify safe take off and landing zones will not be misconstrued as attempts to spot sheep.

EAA strongly encourages the Alaska Attorney General's office to carefully review this policy and consider its implications to Alaska's flying community. The process used to implement this policy should be developed to ensure that it in no way inhibits general aviation in Alaska.

We thank the Alaska Attorney General's office for considering our feedback regarding the implementation of this policy.

Respectfully,

A handwritten signature in black ink, appearing to read "Sean Elliott". The signature is fluid and cursive, with a large initial "S" and "E".

Sean Elliott  
Vice President, Advocacy and Safety  
Experimental Aircraft Association



THE STATE  
of ALASKA  
GOVERNOR BILL WALKER

## Mat Valley Fish & Game Advisory Committee

Jehnifer Ehmann, Chair  
PO Box 2144  
Palmer, AK 99645  
Home: 907-354-0059

Email: jehnifer.ehmann@gmail.com

Chairman Spraker,

The Matanuska Valley Fish & Game Advisory Committee requests that the Board of Game provides reasons for not following our recommendations on Proposal 207 as per - *Alaska Statute Title 16 Sec. 16.05.260. Advisory committees*-Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations'.

Below are reasons BOG members gave during the deliberation before voting in support of proposal 207. "This is a very simple case, Boone and Crockett submitted a letter of support of this..." "It levels the playing, that's where I'm coming from..." "Is this legislating ethics?, it might be somewhat..." "This levels the playing field for people that don't own aircraft..."

We request reasons that are consistent and based on the following. Wildlife populations and objectives, conservation and development of the resource, providing more hunting opportunity, basically the specific WHY this restrictive regulation is needed and how is it going to solve the crowding issue that sheep hunters are dissatisfied about?

Our Advisory Committee feels that proposal 207 does not follow, and are against the intent of- 13-34-JB Criteria for Development of Board-Generated Proposal

- Is it in the public's best interest (e.g., access to resource, consistent intent, public process)? To our knowledge there have not been any proposals from the public or ADF&G in the past to suggest a proposal similar to 207 was wanted or needed.
- Is there urgency in considering the issue (e.g., potential for fish and wildlife objective not being met or sustainability in question)? To our knowledge there is no state wide Dall sheep objective not being met or Dall sheep sustainability questions.
- Are current processes insufficient to bring the subject to the board's attention (e.g. reconsideration policy, normal cycle proposal submittal, ACR, petitions,)? No, the current processes have given many opportunities for the public to submit a proposal like 207.
- Will there be reasonable and adequate opportunity for public comment (e.g. how far do affected users have to travel to participate, amount of time for affected users to respond)? Proposal 207 was not in "the book", many remote A.C.s and members of the public only see and get their information from it.

*Alaska Statute Title 16 Sec. 16.05.310. Special board meetings.* "A board may meet at any time upon the call of the commissioner or upon the request of two board members."

We request that the BOG reconsider their vote on supporting 207 prior to its implementation into regulation. Proposal 207 is not necessary for conservation of the resource.

We look forward to your timely response and please feel free to contact us.

Jehnifer Ehmann

- 2 -

4/6/15

Sincerely,

Jehnifer Ehmann

CC:

Commissioner Sam Cotten  
Nate Turner, Vice-Chairman  
Stosh Hoffman  
Teresa Sager Albaugh  
Robert Mumford  
Pete Probasco  
David Brown  
Sherry Wright  
Kristy Tibbles

Submitted By  
Jack Reakoff  
Submitted On  
4/22/2015 2:49:26 PM  
Affiliation  
Koyukuk River AC Chair

Phone  
907-678-2007  
Email  
[wisemanwolf@aol.com](mailto:wisemanwolf@aol.com)  
Address  
114 Newhouse St  
Wiseman Village, Alaska 99790

Dear honorable BOG members,

I am responding to the short notice comment request, I just have just received today regarding Dall sheep management issues.

The Koyukuk River Advisory Committee met on January 27, 2015 via teleconference. The KRAC members that were on the call **Supported BOG proposal 207**, to prohibit the use of aircraft to spot or locate dall sheep during the open hunting season. The comment language the Committee members fully agreed upon was:

"This is critical to equitable participation of all sheep hunters. Hunters that have aircraft at their disposal fly all of the hills to locate sheep. If they screw up the first stalk, they fly until they find the rams again and land near by for consecutive hunts until the sheep are taken. With the dwindling sheep populations and very limited number of legal rams available, fair chase hunters have little chance to compete. There are a large percentage of hunters in the sheep survey that feel there is a need to address the combat aspect of sheep hunting today. We are in agreement with hunters that feel there is a need to address the user conflicts."

As an avid sheep hunter living in the Brooks Range, I personally feel the BOG **should not repeal** adoption of Board generated proposal 207. I and the KRAC members felt the Board should have also adopted your proposal 208, to require a drawing permit for non-resident hunters on State, BLM, and Private lands.

The Board's action in March to restrict guided non-resident and resident hunters use of aircraft to spot sheep all season, is the minimum needed for this coming season. This measure brings some kind of equity to all sheep hunters. **DO not schedule a meeting to repeal BOG proposal 207**. Proposal 207 still does not address the guiding feeding frenzy occurring on the State, BLM and Private lands without regulated guide use areas.

**Do implement a sheep hunter working group.** A state wide sheep management plan is needed. The Board needs to decide sooner than later to implement a sheep hunter working group. The hunter development of management direction for conservation of sheep, and sheep harvest strategies state wide is preferred.

If you do not implement a sheep management planning group; there is a critical need to adopt a proposals in the problem sheep areas like 19C, 20A, 24A, and 26B that would address the current combat guiding practices in the un-regulated lands. Proposals to take the number of legal rams, divide out a smaller non-resident drawing allocation, giving preference to the resident hunter's priority. **Do expand the call to include proposals state wide for sheep hunting seasons and baglimits and extend the deadline.**

I will be listening online to the BOG call on Friday April 24, 2015 at 8:30 AM.

Thanks for your attention to this issue and all you are doing for Alaska's wildlife management,

Jack Reakoff Koyukuk River AC Chair

Wiseman, Alaska

Submitted By  
Jake Sprankle  
Submitted On  
4/23/2015 8:31:33 AM  
Affiliation

Dear Alaska Board of Game Committee members,

Of course you should include proposals related to statewide hunting seasons and bag limits for sheep in this call for proposals! Why would you even consider not doing so? You have been politically appointed to serve the State of Alaska and most especially, the Alaska resident. You are mandated by statute to consider the Alaska resident's concerns expressed through the proposal process and to act on them accordingly. This is after all, the main purpose for having a Board of Game and a Board management structure in managing our game resources. Failure to do so, and especially failure in allowing Alaska residents to bring forth proposals that deal with seasons, allocation, and bag limits is simply not acceptable. You work for us-- the Alaska resident. Please remember that.

Furthermore, proposals 207 and 208 should both be rescinded immediately. To be blunt, they are horrible ideas and quite frankly, I cannot even fathom why the Board would even make proposals such as these. Proposals should be coming from the public, not the Board itself. That's not how the system is supposed to work and there is already too much conflict of interest as it is. Management of our game resources should be driven by the Alaskan resident, not political appointees. We are the owners after all and our game should be managed for our collective benefit.

Please put Alaska and Alaskans first and allow and consider ALL proposals put forth.

Sincerely,

Jake Sprankle  
Fairbanks, AK



Submitted By  
Jehniifer Ehmann  
Submitted On  
4/23/2015 8:56:02 AM  
Affiliation  
Matsu Resident, Chair Mat Valley Fish and Game AC

Phone  
907-354-0059  
Email  
[jehniifer.ehmann@gmail.com](mailto:jehniifer.ehmann@gmail.com)  
Address  
Po box 2144  
Palmer, Alaska 99645

Hello,  
  
I am the Chair of the Mat Valley Fish and Game AC although speaking on my own behalf today. I respectfully urge the Board of Game hold a special meeting to rescind 207.

Kindly,  
  
Jehniifer Ehmann





Submitted By  
john smith  
Submitted On  
4/23/2015 9:43:02 AM  
Affiliation

Phone  
9079478226

Email  
[jesmith984@gmail.com](mailto:jesmith984@gmail.com)

Address  
4321 trapline dr  
anchorage, Alaska 99516

I am not a pilot, but as a resident hunter I believe the board of game should meet to repeal prop 207 before it has a negative impact on the safety of my pilot friends and over loads the first week of the season with hunters.

Submitted By  
Jon Bush  
Submitted On  
4/23/2015 10:29:12 AM  
Affiliation

Phone  
907-230-1517  
Email  
[jonb@davisconstructors.com](mailto:jonb@davisconstructors.com)  
Address  
po box 110892  
anchorage, Alaska 99511

Please rescind proposal 207

This proposal is going to create field day in the courtroom with the state having the burden to prove a pilot had the intent to spot and the pilot has the burden to prove the opposite. All of the claims against pilot will come from an observer on the ground calling in the pilots tail number. The state is going to have to set up a new hotline just to take in this future tidal wave of new phone calls. Anyone with a sat phone and the set of binoculars on the side of a mountain is going to be calling in tail numbers. I want to present a couple scenarios that the state and entire aviation community will be plagued with if this proposal remains in effect.

Scenario 1: A pilot decides to spend a day in the mountains working on his mountain landing techniques. A hunter hiking around in the mountains sees the pilot circling around in the mountains and calls in the tail number of the pilot because there are sheep in those mountains and they believe the pilot is spotting those sheep during the hunting season. So does the state need to chase down a case against every pilot flying in the mountains during sheep season? The pilot may be spotting the sheep for a hunt 3 days later or they may be simply looking for cool landing spots...

Scenario 2: A pilot flies into the mountains with the intent to hunt mountain goat. The pilot see a white spot from the plane as he is up much higher and cannot determine if it is a mountain goat, a patch of snow, a large white rock or a sheep. The pilot circles down to determine what the white spot really is. He finally determines it is a white rock. But within a few hundred yards of the white rock is a lone sheep in a rock outcropping that the pilot cannot see. The pilot leaves the area after realizing there is not a mountain goat there. Meanwhile a hunter tucked into another rock outcropping calls in the tail number of the pilot. The pilot flies another half mile along the mountains never seeing the 1st sheep and then finds a small group of mountain goat. The pilot lands in between the 1st sheep he never saw and the small group of goats. The pilot sets up camp and starts to hunt goat the next day. The pilot is visited by a state trooper the next day. The trooper is now investigating the pilot under the assumption he is aerial spotting prior to hunting sheep. The pilot says he is hunting goat... Is the pilot lying about the goat hunt? Was he really hunting sheep? If he is legally allowed to hunt sheep, has the necessary tags in that area and then finds the sheep 2 days later while on a goat hunt can he not take the sheep because he was looking for the goat earlier? I would be afraid to shoot a sheep because of any circles I might have made in flight in those mountains out of fear it would be considered spotting...

Scenario 3: Pilot heads into the mountains with the intent to hunt sheep. Pilot is aware of proposal 207 so they do everything they can to avoid any white spots out of fear they may be sheep and they are afraid of being called in for spotting during the sheep season. Pilot accidentally see some white spots on his way into the mountains. Should the pilot then fly to another part of mountains because they spotted the white spots in flight? Should we be flying away from every white rock and snow patch in the snow covered mountains to avoid being called in?

Scenario 4: Pilot heads into the mountains with the intent to hunt sheep. The pilot see's sheep in route but decides he hasn't technically spotted them from the air because he didn't crop dust them from 100'. Pilot now wants to land with the intent to hunt the following day. A good pilot should scout the mountains for the safest landing options. The pilot is afraid of circling around the mountains looking for a landing spot because it might get called in. So now we have a bunch of pilots out there just trying to land the 1st spot they see trying to avoid looking like there spotting. This is a deadly recipe for pilot and crew.

The only way pilots can avoid being called in during sheep season is to not fly in the mountains at all.

Solution –

Do not specifically target the aviation community for sheep hunting and create a monumental legal conundrum for the courtroom and enforcement officers with proposal 207. If the intent is reduce sheep harvest to sustain the population there are many other ways to accomplish this. Keep it fair to all Alaska hunters, close off an area entirely to hunting till populations rebound, make an area a drawing hunt. We need to fairly protect this valuable resource for Alaska residents first!

Sincerely,

Jon Bush



**From:** [Pa18drv](#)  
**To:** [Rintala, Jessalynn F \(DFG\)](#)  
**Subject:** Re: Alaska Board of Game Special Meeting Notice  
**Date:** Wednesday, April 22, 2015 9:53:24 PM

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I urge the board to meet and remove Prop 207 from regulation. I understand this is just to consider whether to meet to discuss but I'd urge them to do away with 207 completely at the first available opportunity. The unintended consequences are many and obviously do more damage than good. (I can go into pages of specifics but I don't think this is the place) Public testimony will no doubt show this as such. AST input was such. Secondly the way that this prop was generated and passed was more than a little suspect. I won't get into the details here but its pretty obvious things were less than "above board". The board owes it to the public to do it right the first time and if that doesn't happen the problem should be rectified ASAP. Here is the chance for that. I urge the board to move forward with getting rid of prop 207 and I personally commend Mr Probasco for speaking up when he made a mistake and hope others will as well.

Kevin Asher

Submitted By  
Lance Kronberger  
Submitted On  
4/23/2015 9:59:57 AM  
Affiliation

April 23rd, 2015

Dear Board of Game,

I would like to thank you for your knowledge and dedication to the wildlife of Alaska. Without your level of effort our game populations would be exploited and depleted to non-sustainable levels, and hunting would no longer be what it is today. I applaud you for doing the right thing and passing proposal 207. This was not only the right thing to do for the resource, but also the right thing to do for the ethics of hunting.

I am a master guide in Alaska and have been guiding for over 20 years all over North America. Guiding sheep hunters is one of my family's main sources of income along with being one of our passions. I have guided or accompanied sheep hunters in Alaska, Arizona, Idaho, Utah, Nevada, Texas, Montana, British Colombia, Mexico and Tajikistan. I have personally been on the ground and in the mountains accompanying hunters on over 80 different sheep hunts. I have seen the good and the bad of sheep hunting. The guiding industry is the sole source of income for my family, and we live and breath outfitting everyday.

Hunting and hunters have lost their focus! Hunters have become a product of our society and now expect instant success, with the least amount of effort. For the most part, very few want to work at hunting, or put in the time it takes to be successful. It has turned into killing, not hunting! There are multiple Alaskan guides that verbally advertize that hunters do not put their boots on the ground until their ram is located from the air. Sheep application services have different types of guides they apply hunters with, the ones that hunt from the air, and the ones that hunt from the ground. There are also very well known Alaska resident sheep hunters that have no issue with the fact that they use their plane to locate sheep before they set out hunting. Hunters want easy success, and we see it all over the hunting industry with the use of radio's, drones, powered parachutes, and airplanes.

The use of airplanes and the skills of the pilots are at an all-time high, and the sheep are taking it on the chin. Look at the number of supercubs, the equipment on the airplanes, the amount of flying, and then our sheep populations. I'm not saying that is the only factor in our sheep populations, but it is defiantly a factor. Plus we have no idea how much stress it puts on the sheep every time a plane gets right down on top of them and disrupts their daily routine. Sheep buzzing from the plane is not just a hunting season activity!

Now we get into the ethical part of hunting. Yes hunting, not killing! I know the airplane guys are saying we have been doing this for a long time. People have been lying since the beginning of time, but that doesn't make it right. Spotting game from an airplane with the intent of pursuing has never been Fair Chase. This is not something new, it is just that the hunting industry has turned their head as the pressure has mounted to allow hunting to become easier.

Boone and Crockett has made it very clear that **"Spotting or herding game from the air, followed by landing in its vicinity for the purpose of pursuit and shooting"** is not eligible for the Boone and Crockett record book. I have heard the opposition argue that if it is legal by the state then Boone and Crockett will accept it for their record book. This is false! Arizona, and other states, allow the use of radios to pursue game, but Boone & Crockett states that an animal is ineligible for entry if **"Use of electronic communication devices to guide hunters to game"** yet this practice is legal within the state of Arizona. The reason these methods are not allowed for the B&C record books is because they are not Fair Chase, and they give the hunter **"an improper advantage"** the basis of Fair Chase hunting.

I am a member of Wild Sheep Foundation and participate in the sheep awards. To qualify for their sheep awards the ram must be scored B&C. No other scoring method is allowed showing the importance they put on Fair Chase. I am also a member of APHA, and I am very disappointed with their stance on Proposal 207. It's very disheartening to belong to an organization that doesn't stand by their code of ethics. One of APHA's ethics is **"to promote Fair Chase hunting."** By not supporting Proposal 207 the board of APHA is saying that keeping the status quo is more important than doing the right thing. APHA is making a stand that hunting sheep from a plane is more important than Fair Chase, Ethics, or quality of experience. It is all about being successful with the least amount of physical effort. APHA uses the title "Professional Hunter", nowhere in the definition of hunter is an airplane mentioned. Airplanes are for transportation not hunting.

We have a sheep population issue in Alaska and airplane restrictions are the first step in giving the sheep a fair chance. I understand this is an unpopular stance, and I am sure BOG members are receiving a lot of public pressure to overturn Proposal 207, but I encourage you to stick to what Fair Chase hunting was founded on. I encourage you to do what is right for hunting sheep in Alaska, and what is right for the sheep.

Also, I believe a sheep-working group is by far the best way to try and move forward with a new sheep management plan. The issues are so complex, and sheep hunting efforts are at an all time high and mature rams are at a low. The BOG process is a very good process, but I believe that a working group is the best way to come up with a plan that is the best for our states sheep management. The most basic issue with our sheep right now is that we have too much demand for not enough supply, and trying to figure out how to deal with that is very,



very complex. It is very difficult for BOG to make decisions on proposals regarding allocation, draws, season dates, next of k... issues, in the timeframe of a BOG meeting. These issues need to be hashed out with all the stakeholders so that some give and take can be accomplished. We are all going to have to give in some, or our sheep are going to continue to be exploited.

Thank you for your time and effort. If any members have any questions please do not hesitate to contact me.

Lance Kronberger ~ Master Guide #221

Lance & Nikki Kronberger \* 4005 Delores Drive, Eagle River, AK 99577 \* (907)854-2822

[www.FreelanceOutdoorAdventures.com](http://www.FreelanceOutdoorAdventures.com) \* [FreelanceOA@mac.com](mailto:FreelanceOA@mac.com)



Submitted By  
Leif Lunoe  
Submitted On  
4/22/2015 3:34:22 PM  
Affiliation

please schedule meeting to rescind proposition 207. this proposal is anti-aviation with grave unintended, poorly thought out implications for the many resident aviators in Alaska.

From: Mark Stiller  
10734 flagship Cir  
Anchorage, AK 99515  
(907)441-6949

BOG members,

My name is Mark Stiller. I am a 40 year resident of Alaska. I am writing you today to ask that you please **rescind** proposition 207. I know that there are issues with dall sheep hunting in Alaska but this proposition is full of problems and does not address the real problem, sheep populations. It will especially make the first part of the season overly crowded, let alone unsafe because of the sheer number of pilots and hunters in the field at the same time. This is what prop 207 was supposed to stop! I have pursued sheep in Alaska for over 20 years and do use an airplane to find areas where old sheep live and other people are not hunting. If I see a camp or people I leave and either come back later or look elsewhere. While looking for good areas, most sheep are unconcerned about aircraft in their area. They have seen lots of them, year round.

It is already illegal to harass game from a plane. If done properly, sheep and people will be unimpaired by flying as they have since planes were originally used. State troopers will be flooded with cases to "investigate", in essence taking them away from their real job, catching poachers and people that break the law. 207 will make flying in the mountains around [August 10th](#) extremely dangerous. This proposal is, I believe, unalaskan!

In closing, this proposal negatively effects local resident pilots the most. It is simply put, discrimination against locals that have worked hard to get and use airplanes ethically. Guides will still be allowed to fly in and out of there area without suspicion. They will know before the season starts where they are going to put clients. Under 207, If I leave to hunt sheep in ANWR [on September 1st](#). I will have to fly blindly into valley "X" and hunt quite possibly in an area that the area guide has clients. Neither party wants this. Prop 207 makes no sense.

Please do the right thing and stop this poorly written proposal and work on better alternatives that spread the "sacrifice" out amongst all user groups! Thanks for listening.

Mark Stiller



Submitted By

Matt Michetti

Submitted On

4/22/2015 2:05:59 PM

Affiliation

I am not in favor of Proposal 207. Alternative methods of game management that do not involve the regulation of aircraft flight should be considered.

Thank you



**From:** [Melvin Grove](#)  
**To:** [DFG, BOG Comments \(DFG sponsored\)](#)  
**Cc:** [Tom DeLand](#); [Daniel Montgomery](#); [Dave Young](#); [Herman Griese](#); [Randy Talvj](#); [Mike Buirge](#); [Terry Nininger](#); [Folsom Bill](#); [Andrew Couch](#); [Tuttle Jeff](#); [Tony](#); [Jehnifer Ehmman](#); [Bartelli Stephen](#)  
**Subject:** BOG comment  
**Date:** Thursday, April 23, 2015 7:56:26 AM

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To whom it may concern.

I would like to comment on the BOG special meeting concerning Prop 207. I tried submitting online but there is no meeting listed under the tab selection.

I am affiliated with the Mat Valley AC, AOAA, AOC, and PWSCBA.

My personal comment is as follows:

I request that the BOG hold a special meeting to reconsider rescinding its decision to approve proposal 207. There are numerous objections and problems with this proposal, from how it was created and passed through the board process, how it will be enforced, and to what purpose it serves in the management of our sheep population.

Sincerely

Mel Grove  
907-440-9148/907-200-2202  
2281 East Sun Mountain Ave. Ste B.  
Wasilla, Alaska 99654

Submitted By  
Paul Flint  
Submitted On  
4/22/2015 8:30:43 PM  
Affiliation

Phone  
907-441-1250  
Email  
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Address  
12901 Lupine Road  
Anchorage, Alaska 99516

Repeal 207

This is a poorly crafted proposal that is unclear and vague and will not achieve the desired goal. The issue is conflict among hunters. This proposal will concentrate activity at the opener of the season (because planes can operate before season). Not all "searching" by plane is looking for sheep. I spend time looking for other camps and hunters so I don't hint that same area where others are located. Under this rule I cannot do that, so I am more likely to conflict with other hunters in the same valley. Aerial views are also used to find safe routes up and down mountains, again this is not allowed under this proposal decreasing hunter safety. There is likely a way to achieve the broader goals here, but this proposal will not be effective. Repeal this proposal and let's pursue other options.

Cheers Paul



**From:** [Randy Apling](#)  
**To:** [DFG, BOG Comments \(DFG sponsored\)](#)  
**Subject:** proposal 207  
**Date:** Thursday, April 23, 2015 8:25:13 AM

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Alaska board of game,

Please consider rescinding board action on proposal 207.

I am not an active sheep hunter, I have not killed a sheep on any of my hunts yet, but I am an active off strip pilot and spend a considerable amount of time in the fall fossil hunting, berry picking and ptarmigan hunting in areas that sheep are in. If this proposal 207 stands will I be able to do these activity's without worry of someone calling in my tail number and be visited by a game officer? If the sheep numbers are down let's do something to help them, let's go to a drawing permit hunt and really control the take on them to return them to a healthy population!

Thank you for your consideration,

Randall L. Apling  
3360 N. Travelair Dr.  
Wasilla, AK 99654  
907-244-7505



Submitted By  
Richard  
Submitted On  
4/22/2015 2:41:01 PM  
Affiliation

Phone  
907-457-1941

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[sharon@quicksilverair.com](mailto:sharon@quicksilverair.com)

Address  
2721 Cormorant Street  
Fairbanks, Alaska 99709

I support having a meeting to rescind 207



Submitted By

Rod Van Saun

Submitted On

4/23/2015 10:01:50 AM

Affiliation

I oppose Board of Game proposal 207. It is ambiguous in nature. It is unenforceable. This proposal will cause more problems than it solves.

Submitted By  
Ron  
Submitted On  
4/23/2015 8:35:30 AM  
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Wasilla, Alaska 99687

I support to rescind proposal 207. I feel that it is almost impossible to regulate and does not benefit the sheep in any way. I don't go around buzzing sheep, nor do any of us that are trying to hunt sheep legally. I certainly look for areas that have sheep in it. I don't always have an exact destination in mind, or always know the area very well. Sometimes I have to fly a valley to find a safe place to land, and it can take several passes to do so. A lot of times there is nowhere to land, so I have to move on to the next valley or mountaintop. Is someone going to turn me in for looking for a landing zone? I, like most of us that have an airplane have worked very hard to be able to afford one. I choose to fly, just like a lot of others choose to ride wheelers, boats, and snowmachines. I fly in the mountains a lot, and I'm not always hunting. I go sight seeing, blueberry picking, hiking, and fishing. Because I work, and because the weather don't always cooperate, it is possible that I wouldn't even have an opportunity to look for sheep before season. That would mean that I would be going in totally blind, wasting my time, and money. I would rather see the whole state go to permit only. I also support residence preference, and elimination of all out of state guides. We have enough guides that live here, and don't need anymore. I will say that I am an assistant guide myself, so I do support the guiding industry, just not the out of state ones. Thank you for your consideration

Ron Kuzina

A

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Submitted By

Sharon Swisher

Submitted On

4/22/2015 2:43:32 PM

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Fairbanks, Alaska 99709

I support having a meeting to rescind 207



Submitted By  
Shawn Holly  
Submitted On  
4/23/2015 8:58:16 AM  
Affiliation

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Soldotna, Alaska 99669

I support having a meeting to recend proposition 207. I believe this proposition is a horrible idea and that it was quietly pushed through with very little public knowledge of it. There are already current laws in place to prevent harassing game from the air. All this law does now is opens the door for unlawful seizure of aircraft for a massively brod spectrum of people. According to prop 207 you don't have to even be hunting or even have to have a hunting license to be in violation. You could be just flying through a pass on your way to your next destination and notice some sheep as you fly by and you are now in violation. It doesn't matter if you are an anti hunting activist, you are in violation. How can anybody safely fly anywhere in that game unit during hunting season and not risk being in violation. What about a medivac helicopter or a fire fighting plane, they would be in violation too if they happen to see sheep on their flight. This is the most rediculous power grab I have ever seen in this state. If you are worried about our sheep population how about limiting out of state hunters. As I understand over 50% of the sheep taken in alaska are taken by nonresident hunters. This seems like a no brainer I urge you please reconsider this proposition..



Submitted By  
Stephen Bartelli  
Submitted On  
4/23/2015 10:45:33 AM  
Affiliation  
Mat Valley AC  
  
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Wasilla, Alaska 99654

As an avid hunter and pilot I am adamantly opposed to prop 207. This unprecedented suggestion will result in pilots unnecessarily modifying their flight paths and or altitudes to avoid the perception of "spotting" for sheep, almost certainly resulting in pilots sacrificing some degree of safety to do so. These are the pilots that are aware of this new law. For pilots that are unaware of this law and could care less about sheep hunting and are just out sight-seeing, they will be subjected to sheep hunters calling in their tail numbers to report the "perception" of spotting from a hunter that they never even saw due to their camouflage. Troopers will be obligated to call and make contact with these pilots regardless of intent as a possible enforcement issue. Folks who are innocent of same day spotting will regard this as harassment.

I am sure you have heard the entire spectrum of issues with this flawed proposal but I would like to leave you with this: This proposal is just another feel-good non-solution to a perceived problem. Hunters always look for ways to provide themselves exclusivity for their chosen species they pursue. To obtain this exclusivity by statute just stinks.

I fully support any effort for a vote of reconsideration on this proposal and further discussion. This should have never passes with opposition for almost all of the AC's involved.

Regards,

Stephen Bartelli



Submitted By  
Ted Bryant  
Submitted On  
4/23/2015 10:01:35 AM  
Affiliation

I am against proposal 207. This is a very poorly worded proposal that could have dire consequences for anyone flying an airplane during sheep season (hunters or non-hunters). It is also almost completely unenforceable. If you are flying to a sheep camp and happen to see sheep along the way, then what? Are you going to have troopers in a orbit waiting for planes to fly by? Are you going to have troopers on the ground sitting there waiting for a plane to fly by? It is ridiculous. This is clearly not well thought out or researched. Do not pass this proposal.



Submitted By  
Terry Goides  
Submitted On  
4/23/2015 9:21:04 AM  
Affiliation

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36720 Starlight Dr  
Soldotna , Alaska 99669

I give my full support to rescind 207.

Limit the number of Out-of-State hunters that can take sheep is what I would support!



Submitted By  
Terry Nininger  
Submitted On  
4/23/2015 9:20:07 AM  
Affiliation  
Mat Valley AC

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Wasilla, Alaska 99687

Dear Members of the Alaska Board of Game:

I strongly oppose Proposal # 207. In addition to the manner in which the proposal was brought forward and approved, the proposal allows for unethical practices, is unsafe and unenforceable. I encourage you to schedule a BOG meeting to rescind Proposal # 207.

At our last Valley AC meeting we have over 50 folks testify in opposition to this proposal. I have sent you all, individually, an email that included copies of the minutes from that meeting with comments from some of those present.

Terry Nininger (Individually)

Mat Su Valley Fish & Game Advisory Committee

Submitted By  
Tim Delarm  
Submitted On  
4/23/2015 8:34:16 AM  
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Alaska Outdoors Television  
  
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Anchorage , Alaska 99523

Experienced sheep hunters realize how dangerous Alaska dall sheep hunting is and that spotting sheep in a mountain range does NOT give the hunter an unfair advantage. Fact; It can take days to reach the sheep's last known location. Spotting from air provides opportunities to 'JUDGE' for legal rams, not just to 'FIND' sheep in general. Hunters are NOT allowed to same day fly and hunt for sheep giving sheep ample time to cover vast distances across mountain ranges before hunters can reach the area. The goal for 'air spotting' is to first find sheep and then judge for legal rams. This encourages hunters from entering an area with only sub-legal rams and lessens the possibility of taking illegal sized sheep.

This proposal significantly restricts airplane flight, regardless of whether you are hunting. It also puts restrictions on pilots that will lead to more dangerous flying and landing decisions. Controlling airspace is the responsibility of the FAA not the Alaska BOG.

If sheep count numbers are truly the concern and not a 'fair chase' issue BOG should simply consider closing that units season thereby preventing any chance of sub-legal rams being taken by hunters hunting only areas containing less than full curl sheep. And, should BOG/ADF&G close a unit to sheep hunting do that 60 days prior to season opening, unlike how they handled the NW Brooks Range closure last season with only a 24 hour notice, therefore placing sheep hunters in a position of illegally hunting after already being placed in the field. Tho that strategy was intentionally affective in taking those hunters out of position for hunting other areas, it also puts hunters and pilots in dangours situations of re-adjustment.

Sincerely,

Tim Delarm

Alaska Outdoors Television

Submitted By  
Tom Lamal  
Submitted On  
4/23/2015 10:43:58 AM  
Affiliation

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Dear Alaska Board of Game Members,

The Board of Game should include proposals relating to season dates, permits & allocation, and bag limits for statewide consideration. The board should clearly state what proposals it will accept and **not** accept for the statewide meeting next March. The comment period should be extended because the process has been very confusing for people wanting to submit proposals.

The Board should rescind proposal 207. Since Proposal 207 is unenforceable, it is a waste of the State's money during a time of budget shortfalls.

If a sheep working group is formed, it should consist of current biologists from the Alaska Department of Fish and Game and knowledgeable residents. It should not consist of members who make money off the resource who will make decisions benefiting their bank portfolio.

The board should look at requests from the public and not generate their own proposals. I have never seen a proposal that mirrors Proposals 207 & 208. Where do these ideas come from?

Sincerely,

Tom Lamal

Submitted By  
Tony Marchini  
Submitted On  
4/23/2015 9:58:05 AM  
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[tmarchini@hotmail.com](mailto:tmarchini@hotmail.com)  
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P.O. Box 4185  
palmer, Alaska 99645

To whom it may concern:

I am writing this in concerns of Prop 207. As I am sure so many are in opposition to 207. I have recently over the past 6 months become involved with my local AC. If you don't volunteer you can't complain right? This prop is wrong on so many levels. First off I do not agree with the process in which this was passed. The reason there are AC's are so that the people have a representation to the board. It is very much set up like the democratic system that we have for the nation. I have attended all the meetings since this was conceived not once have I heard anyone in favor of this prop. I attended the special sheep meeting (which apparently the board ignored everything said there) and no guide or resident was in favor of this prop. In fact the general feeling to me was that this was so far out in left field no one thought it was remotely a chance of passing.

Aside from the process in which this was conceived there are so many reasons this is not a good prop. Let me first state that I don't not own a plane and am not a pilot!! I am a life long Alaskan and avid sheep hunter either taking or assisting friends in taking 24 sheep so far in my 27 years of hunting them. Also I am not a guide. With the sheep survey the number one concern was overcrowding, this prop will make it so much worse for that first 10 days. I usually hunt late in the season so that I don't have to deal with other hunters, now I will hunt the opener. Sheep hunting is hard in Alaska to begin with with out any idea where they are the first portion of the season will be the only time you will stand a chance.

Next if you are flying in a plane and happen to make a "low" pass by someone in the valleys determination then they can call your plane in and you have to defend yourself???? Basically this is unenforceable (as many troopers have stated at meetings) and could be completely unwarranted if you aren't hunting in the first place.

If you are hunting do you want your pilot thinking about this prop while he is trying to find a suitable landing spot? For a safety concern this is a HORRIBLE prop. Alaska is deadly for pilots and nothing should be in a pilots head except for making it to and from the field safe. Are they not going to shoot one more approach and not see that huge hole in the strip because of fear of being turned in for violation of PROP 207?

What about all of the tags that start half way through the season? do these hunters now not get the same advantage and tools to their benefit simple because they drew a tag that doesn't even start until after 8/10 ?

In closing this was not a very well thought out proposition. I am ashamed of how it was conceived, passed and made law. It totally ignored all public input and actually made the publics number one concern a larger problem. The board of game should be ashamed and repeal this prop and take its time and take some PUB LIC input and come up with something else if they feel this is such a problem. This reeks of personal agendas and back-room politics, but that is for another conversation and time. One last thing as I am not sure who all will read this, if the BOG is going to operate in this manner perhaps the Lt. Governor should take a look at getting some fresh blood in there!!

Respectfully & disappointed,

Tony Marchini - (907) 378-2676



Submitted By  
Tony Russ  
Submitted On  
4/22/2015 2:39:37 PM  
Affiliation  
none

I want to comment on the recently passed Board action to eliminate spotting sheep from aircraft during the sheep season. First, I can't imagine this rule is enforceable, and although I don't have a plane and don't typically spot sheep that I plan to hunt, this type of action to limit one user group should not be created by the Board. Several reasonable options were discussed at the February meeting in Wasilla. None of those were adopted --- again, except this one which should be rescinded. I said at the February Board meetings this was not feasible or enforceable, and that is what I still think. If the Board just did not want to do anything about the sheep issues-again, they should say so, and not pass this type of unreasonable rule that the Board expected would be unpopular and end up being rescinded, so the responsibility is placed on us hunters.

Thank you for your time, and all your effort. I know it is not an easy, nor thankful task.



Submitted By  
W. Schock  
Submitted On  
4/23/2015 10:28:31 AM  
Affiliation  
Alaska resident

I am a Cub owner who has used my plane to hunt sheep in the past.

I wanted to let you know that I **fully support the passage of proposal 207**. August 10- September 20 aircraft may only be used to place hunters and camps, maintain existing camps, and salvage meat and trophies while used for the purpose of Dall sheep hunting. Aircraft may not be used to spot or locate Dall sheep during the open season.

I suspect that many guides are up-set by the passage of this proposal. This is the right thing to do for the average Alaskan hunter. Alaskan hunter interests should be your top priority. Tell the guides and their clients to park their planes, strap on their boots and stop whining.

This law might be difficult to enforce, but it is still the right thing to do.

Submitted By  
Wayne Heimer  
Submitted On  
4/23/2015 10:40:05 AM  
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To: Board of Game

From: Wayne E. Heimer, Dall sheep biologist

Since we last spoke, I have been thinking about Dall sheep management plans, and have spent a little time “tinkering” with the sheep management plans from 1976. The result is a brief list of the specific plans with a few notes about how things have changed in the last 40 years. I can “spiffen” that “up” a little and provide you with it at your request. In comparing those plans with what management plans have become since, I’ve come up with some thoughts about what it would take to get things moving toward a fruitful revision. Here are my ideas in brief:

**First, before anyone moves to “update or improve a management plan,” we need a definition of what “management” is.**

I reason that because revision/improvement of the existing management plans is necessary, it would be good to know what we’re trying to accomplish in the bigger picture before planning begins. Forty years ago, we really didn’t have much of an idea beyond planning to “keep doing the right thing” as we understood it then. Because we thought what was happening then was “the right thing,” we planned to continue letting it happen by saying our plan was to maintain the hunting options which represented the status quo—which required little beyond setting of seasons and bag limits and establishing permit systems as required to assure some opportunities for “aesthetic and trophy hunting.” Of course, we didn’t know National Monuments, ANILCA, subsistence, increases in Alaska’s human population, decreases in the sheep hunting population, bad sheep weather, ATVs, the Owischek decision, the full curl rule, coyotes invading sheep country, and eagle population recovery would occur. We also had no way of knowing that wolf harvesting would dramatically decrease from levels associated with the high and stable sheep populations extant when we made those plans in 1976. Hence, we obviously didn’t plan for or about any of these things.

More basically, we really didn’t have a functional definition of what “management” was (beyond instinctively doing the right thing). While I think the original plans were rather realistic (primarily because they were designed with “experience-based” objectives), subsequent trends in management planning compromised their effectiveness. Because the plans were “non-standard” they were subject to arbitrary “modernization” by planners in the Division, and others with their own perceptions of what “management” is—or should be. Consequently, changes to the 1976 plans reflected the “environment” which drove changes to the original plans. These changes included incorporating unstated assumptions derived loosely from Aldo Leopold’s legacy as the “father of wildlife management.”

Leopold’s legacy vaguely prescribes “damping natural oscillations” in wildlife populations to produce or maintain a stable harvestable surplus in equilibrium (or below carrying capacity) with available nutrition. That ethereal definition involves the corollary concepts of carrying capacity, compensatory mortality, and the associated assumptions. Most of these influences are of questionable relevance to most Alaskan wildlife because environmental resistance is high and variable. Because of their specific adaptations to environment, Dall sheep are particularly difficult to cram into a model designed around cervid adaptations. There’s precious little we can (or are willing to) do about natural fluctuations in Dall sheep populations.

So, I propose that we step away from the vague and highly subjective definition derived from Leopold’s legacy. It is definitely “last century,” and assumes a lower (and more predictable) environmental resistance than exists in Alaska. In today’s system, particularly among species with biology that doesn’t fit Leopold’s density-dependent nutritional model, we need a broader definition of management. I propose that we begin planning by consideration of a uniquely Alaskan definition. I suggest:

**“MANAGEMENT IS INTERVENING IN AN ESTABLISHED SYSTEM TO CREATE, PRODUCE, MAINTAIN, OR EXPAND A PRE-DEFINED BENEFIT.”** Our “present system” (the total Dall sheep environment with all its component parts) is established, and does not necessarily serve our pre-defined benefit.

As I have suggested before, the Alaska Constitution and Statutes establish our pre-defined benefit. It is not a target carrying capacity, harvest number, or percentage of an imagined harvestable surplus. Alaska’s pre-defined benefit amounts to providing maximal opportunity to harvest Alaska’s wildlife according to the sustained yield principle (“for human food” seems implied) in the best interests of the economy of Alaska and the general well-being of Alaskans.

## **Second, we need to decide whether Dall sheep in Alaska can be traditionally managed.**

Dall sheep have a unique set of adaptations to their environment. Most basically, they are adapted to seasonally nutrition-pulsed climax plant communities. Consequently, as we reason *post hoc*, Dall sheep adaptations include (among other things) a behaviorally delayed onset of reproduction, single lamb births, and generally high fidelity to established seasonal ranges. Dall sheep populations appear to have a slow growth rate because they exist in areas of high and variable environmental resistance to population growth. These adaptations (among others) render them difficult-if-not-impossible to manage via traditional methodology. Consequently, Dall sheep management to create produce, maintain or expand human harvest opportunities has never been seriously considered by the responsible managers. Standardizing the bag limit at full-curl rams is the notable exception. That management action was justified to increase ram harvests. Ram harvests increased significantly in study populations following establishment of full curl bag limits.

Why hasn’t management of sheep been a priority? Perhaps Leopoldian management tradition drives the management culture of the Department and Board, or perhaps because of reluctance to embrace the adaptations of Dall sheep as management-relevant, Alaskan management traditions have reflected no willingness to actually manage Dall sheep numbers and availability. Alternately, it might just be too hard to intervene in Dall sheep ecosystems to produce more sheep. Traditionally, Dall sheep have not been considered “worthy” of predator control or even intensive management. Intensive management already sucks all the oxygen out of the abundance management effort, and sheep aren’t even listed as “IM” species. So, what is possible?

All that can be done to increase population sizes is to reduce environmental resistance to population growth. Since habitat improvement of a climax ecosystem to benefit a climax-adapted species is rationally out of the question, the remaining possibility is to reduce environmental resistance to population growth through reduction of predation mortality. Human harvest of mature rams as practiced in Alaska has been shown to have no measurable effect on population performance, but ewe harvests are virtually certain to lower overall population productivity where environmental resistance is high. Empirically, the regulatory trend has been to decrease availability of Dall rams for harvest (via ANILCA and other “territorial” considerations) while increasing availability of ewes for harvest as subsistence activity.

The lynchpin of traditional/numerical management is knowing how many critters are on the landscape with respect to food availability (nutritional carrying capacity) and what the sustainable harvest is (again with respect to carrying capacity). Knowing “how many” is particularly difficult for Dall sheep. Sheep population estimation has been traditionally married to aerial observations. Unfortunately, the techniques and variability of aerial survey and population estimates are simply inadequate to facilitate traditional population-based harvest quotas. On-ground techniques have produced better indications, but require greater personnel effort. Ground-based methods have never been embraced by the Division. Knowing the broad-scale population size and trend is prohibitively expensive, so practical management “by the numbers” must rely on acceptance of a trend-area as indicative of broader area population performance.

If we can’t or don’t have the will to manage for maximizing harvest opportunities for mature rams by curtailing non-human predation (or limiting human harvests of ewes) we will need a different sort of management planning basis from the traditional/numerical population and harvest objective-driven plans currently in vogue at ADF&G.

I have some suggestions about this, but won’t go into them here for the sake of brevity.

**Third, no management plan is worth the effort to draft it if managers and regulators don’t follow it.**

The history of Dall sheep management in Alaska is a striking example. I think the 1976 management plans were advanced for the right reasons, but few managers or regulators took them seriously. It wasn't long till the "opportunity or experience objectives" (which were public-desire-driven and recognized the fact that numerical goals and objectives were impossible in open hunting areas) were replaced by numerical population and harvest objectives called for by the philosophical shift toward numerical objectives in management planning. This quantitative "improvement" resulted in a system that is difficult to rationalize with Dall sheep biology and management. There's no way (given the marriage of Dall sheep population estimation to aircraft observations of one kind or another) it is possible to rationally assess whether a manager is meeting numerical population objectives or whether harvest objectives are balanced with population production and survival over the eight-years it takes for a lamb to become a legal ram. Nevertheless, various planners lacking appreciation of Dall sheep reality "rewrote" management objectives with arcane standards like: "*Maintain a population capable of producing \_\_\_ harvestable rams per year.*" OR simply stating the harvest goal (aside from any knowledge of population size or trend or environmental variables) was to: "*Provide for the harvest of \_\_\_ rams per year.*"

In concept, objectives like those were little different from the "opportunity objectives" of the 1976 plans. They were similar in that they planned to continue the status quo at the time the plans were drafted. The underlying assumption, which must drive objectives like these is that "nothing will change." These "improved" numerical/quantitative objectives seemed sophisticated, but the only way to attain numerical objectives like these when things change "for the worse," is to lower the numerical objectives (given that we lack the will or capacity to lower environmental resistance to population growth).

Additionally, the established "experience objectives" of the original plans (maximum opportunity, limited aesthetic hunting opportunity, and limited trophy harvest opportunity) were altered over time by various Boards of Game via "simple" proposed regulation changes. For example, establishing a "permit hunt" over top of a "maximum opportunity" objective obviously changes the management objective. Logically, if policy drove the original management objective, any "simple" regulatory change affecting opportunity also changes state policy. Seldom, if ever, have changes of this type been placed within the concept of changing state policy. They have always just been considered alterations of "seasons and bag limits" without consideration of existing state policies or Dall sheep management objectives. (Splitting the TMA season to pursue the secondary objective of "aesthetics" was a notable exception.) That notwithstanding, management plan objectives (and policies) have been changed for *ad hoc* reasons. Lack of coordination among areas and regions has seemingly displaced or curtailed sheep hunting in some areas as a result of "simple" regulatory changes. Unintended consequences have resulted.

#### **Fourth, effective management plans must be policy-driven, and have the force of legislatively established policy.**

History shows that the Department and Board of Game have considered management plans only as general (and archaic with respect to Dall sheep) guidelines for regulation-making. Neither the Department nor the Board (not to mention the public, which is invited to submit special interest *ad hoc* proposals for change) seems to have shown a historic respect for policy. This has resulted in a regulatory framework that may or may not be policy-compliant, but has been unstable over time. So, before we get much farther, we should face the question, "**Is management stability desired?**"

If stable management isn't desired, management planning is a pointless exercise. If stability is desirable, the question of whether "Board approval" is sufficient to establish management stability must be answered. Past evidence indicates Board approval is insufficient to establish stability in the face of public or departmental sentiment favoring "simple" regulatory change. This means that *ad hoc* special interest proposals can alter state policy. Constitutionally, only the legislature can establish policy. We need to know "who is in charge," and I argue the Alaska Constitution says it's the legislature. Whether the legislature can delegate its policy-making responsibility to the Board of Game is a question I've not heard answered. I can't imagine any legislature purposefully doing so.

Hence, a higher level of authority and accountability is required if consistency and awareness of the purpose and intent of management plans is desirable. I am willing to suggest the legislature should approve an overall master plan with experience objectives that may be applied (perhaps) via Board process. I think we probably need "legislative policy permission" to deviate from the pre-defined benefit of maximum use under the sustained yield principle. One way to achieve this is for the legislature to define permit-requiring opportunities as "preferred uses" in areas slated for special (i.e. aesthetic or trophy hunting) opportunities.

Restrictions from "common use" are constitutionally allowable, but I question the Board's authority to restrict opportunity via permit systems if the legislature hasn't established "permit-restricted hunting for aesthetics or trophy harvests" as a preferred "beneficial exception" to "common use." Individual hunt or area plans could then be tailored to the established preferred beneficial uses once they have been defined in statute.



The original sheep management plans had “experience opportunity objectives” but these objectives have been set aside by Departmental planners, the philosophies of area management biologists, and altered by public whim. In most cases, these changes occurred because neither the public, the Department staff, nor the Board recognized that plans existed for “once-relevant” reasons. Certainly, it is OK to change management plans, but the “domino effects” and rationales (not to mention the constitutionally-indicated congruence with species biology) must be considered in light of what conditions were when existing objectives were established. A coordinated approach would seem an advance beyond the special purpose or area-specific regulations or allocations designed to serve localized or special interests in the present system.

**In Summary: There’s a great deal more to management planning than arguing over methods and means, seasons and bag limits, and allocation strategies. If we aren’t thoughtful “going into” this process, we’ll pay a price in the future. I suggest the basics need to be worked out prior to establishing a “planning process.” After all, the process will greatly influence the product. This is neither as simple nor as complex as folks on both ends of the “planning spectrum” seem to argue.**

**And there’s “an elephant in the room.”** The divergence of opinion over the relevance of existing data on basic sheep biology and adaption to management continues to exist. Reviews of these data and agreement to hearken to or set them aside seem basic to beginning a management planning process.

Mature ram (i.e. full-curl) harvests either are protective and advantageous to sheep populations and hunters or they aren’t. That question needs to be settled one way or the other—I suggest review of the data.

Also, there has been a notable disagreement over whether mature ram harvests alter genetics (or not). This expresses itself in proposals for “any ram” bag limits etc.

Additionally, a decision whether to believe harvest data (particularly those relevant to harvest rate) is necessary. Either we’re harvesting at a light rate, or we’re not. The direction planners take on these questions will determine the outcome of the planning process. You always have to start from where you are. Summary statements on these components exist in a published Dall sheep working management hypothesis. That would be a good place to start.

**All this (and perhaps much, much more) should be decided prior to getting to the “working group” review level, and even more basically at the Department level. Either we can agree on these basics or we can’t. If not, spending the allotted time and effort on management planning will not serve any great or useful purpose.**