

Joel F. Bennett &
Joseph W. Geldhof
2 Marine Way, Suite # 207
Juneau, Alaska 99801
Telephone: (907) 723-9901 [Mobile] (Geldhof's)
E mail: joeg@alaskan.com
Telephone: (907) 723-8961 [Mobile] (Bennett's)
E mail: joelbennett222@gmail.com
Counsel for Plaintiff Alaska Wildlife Alliance

**SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ALASKA WILDLIFE)
ALLIANCE)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA,)
ALASKA BOARD of GAME,)
DOUGLAS VINCENT-LANG,)
Commissioner of the Alaska)
Department of Fish & Game,)
in his capacity as an official of)
the State of Alaska,)
Defendants.)
_____)

3AN-23- 07495 Civil

COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF

Plaintiff, Alaska Wildlife Alliance (“AWA”), for its cause of action
alleges as follows:

INTRODUCTION

1. This lawsuit is brought in the public interest by AWA seeking to correct a failure of the government of the State of Alaska, specifically the Alaska Board of Game and the Alaska Department of Fish & Game, which has adopted, approved

and implemented a proposal to reduce brown and black bears within the range of the Mulchatna caribou herd in southwest Alaska, in a manner that is inconsistent with the requirements of the Alaska Constitution. AWA seeks relief according to the Alaska Constitution to compel adherence to the procedural and sustained-yield requirements applicable to the replenishable resources belonging to the citizens of Alaska.

NATURE OF THE CASE

2. This lawsuit is brought by AWA in the interest of the public to enforce express provisions of the Alaska Constitution requiring due process in regard the adoption of regulations relating to the replenishable natural resources of the State of Alaska which are required to be maintained and utilized according to the sustained yield principle. Sustained yield further requires that a state agency must engage in reasoned decision-making regarding replenishable natural resources and take a hard look at the salient factors which impact those resources when adopting regulations pertaining to public resources.

PARTIES

3. AWA is a wildlife advocacy group, based in Anchorage, Alaska. Its members actively use and enjoy wildlife resources of Alaska and have a special interest in conserving and protecting these resources.

4. The Alaska Board of Game (“BOG”), is an entity of the State of Alaska established by statute tasked with responsibility to adopt policies and regulations regarding the maintenance, utilization and development of Alaska’s replenishable game resources.

5. Douglas Vincent-Lang is currently the Commissioner of the Alaska Department of Fish & Game, an exempt position appointed by the Governor of the State of Alaska and confirmed by the Alaska Legislature. Mr. Vincent-Lang is sued in his official capacity as Commissioner of the Alaska Department of Fish & Game to obtain injunctive relief, as necessary.

6. The State of Alaska is a sovereign state of the United States of America and governed by the provisions the Alaska Constitution.

JURISDICTION

7. The Superior Court has jurisdiction to hear this dispute according to AS 22.10.020.

VENUE

8. Under AS 22.10.030 and Alaska Rules of Civil Procedure 3 (c), venue is proper in the Third Judicial District because the Plaintiff resides in the Third Judicial District.

CONSTITUTIONAL PROVISIONS AT ISSUE

9. Article I, Sec. 7 of the Alaska Constitution provides:

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

10. Article VIII, Sec. 4 of the Alaska Constitution provides:

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.

SCOPE OF THE DISPUTE

11. The substance of this suit is confined to the to the unlawful adoption by the BOG of an inadequately considered proposal to kill bears in the vicinity of the Mulchatna caribou herd in southwest Alaska. More specifically, a proposal addressing wolf management was improperly amended to include bears without necessary consideration and without regard to mandatory due process requirements for public notice and an opportunity for the public to be heard. The failure on the part of the BOG resulted in the elimination of ninety-four brown bears and five black bears, an eradication that was not properly authorized under law.

FACTS

12. The Mulchatna caribou herd (“MCH”) has declined from an estimated high population level of approximately 200,000 in 1996 to approximately 12,112 in 2022.

13. The MCH population decline was due to a variety of reasons, including habitat changes, disease, legal and illegal hunting and predation.

14. In 2011, the BOG adopted an Intensive Management Program (“IM”) under 5AAC 92-125 for Game Management Units (“GMU”) 9 (B) and GMU 17 (B) and (C), that provided for lethal control of wolves.

15. The size of the IM scheme for MCH Predation Management Area was 39,683 square miles, but active predation control of wolves was authorized by the BOG for only 10,000 square miles.

16. In 2012, the BOG expanded the IM MCH Predation Management Area to include GMU 19 (A) and (B).

17. In 2011, the Alaska Department of Fish and Game (“ADF&G”) developed and adopted an *IM Protocol* for the purpose of the practical implementation of IM programs in Alaska.

18. The *IM Protocol* consists of two primary components: A. Principles & Guidelines, and B. Implementation tools.

19. The principles of the *IM Protocol* for intensive management “are the basis for managing wildlife populations and their habitat for diverse uses by present and future generations and informed public involvement in the state regulatory process.”

20. A principle of the *IM Protocol* is that IM programs should be “based on scientific information.”

21. A principle of the *IM Protocol* is that IM programs should be “socially sustainable.” The rationale for this principle is that:

IM programs are closely scrutinized by the public because they involve practices invoking personal values on wildlife or land use. Broad, long-term public support for IM programs is essential to achieve and maintain elevated ungulate populations and harvest. Public understanding of all facets of IM programs is critical to informed engagement in the regulatory and political process.

A subsection of this principle states:

IM programs should define clear objectives, including population size, desired harvest levels of sex and age class of ungulates and other measurable parameters that can define success in terms of public satisfaction and biological constraints.

22. From 2011 to 2022, the IM program predator control authorized by the BOG for Game Management Units related to the MCH and relevant to this dispute only involved the control of wolves.

23. From 2012 to 2022, all the ADF&G annual reports relating to IM for the MCH pertained only to wolves, and all the ADF&G annual reports relating to IM for the MCH referred only to the Mulchatna wolf control area.

24. In 2022, at a regularly scheduled BOG meeting, the BOG considered Proposal 21, a proposed regulation authored by ADF&G.

25. The proposal contained in Proposal 21 contemplated establishment of a second predation control area on federal lands and an expansion of the area in which wolves could be removed under the IM program, as follows:

5AAC 92. 111. Intensive Management Plans I: Establish a second predation control area for Mulchatna caribou on federal lands in GMU's 17 and 18.

26. The issue identified in Proposal 21 was the expansion of the existing active wolf predation control area to federal land within the MCH range. As stated:

This proposal seeks to establish additional predation control areas by expanding the current authorized limit of 10,000 square miles for implementation on federal lands (Togiak National Wildlife Refuge).

27. Proposal 21 did not refer to or include brown and black bears as part of the MCH active predation control efforts.

28. Proposal 21 did not include authorization for ADF&G to conduct lethal removal of brown and black bears as part of the MCH control efforts by aerial,

land and shoot, or ground-based removal using state-owned, privately owned, or chartered equipment, including helicopters.

29. At the BOG meeting in January 2022, Proposal 21 was considered by the Board for approximately 23 minutes and then shortly before noon it was tabled, with the agreement by the BOG to consider new language in the form of an amendment.

30. The record of the BOG proceedings indicates the amendment to Proposal 21 purporting to authorize killing bears within the MCH area was drafted by ADF&G during “a huddle during the lunch break,” as stated by the Region IV Supervisor.

31. The BOG adopted Proposal 21, as amended, (by RC 47) which, among other things, authorized ADF&G employees to kill brown and black bears within predator control areas of the MCH using aircraft, including helicopters.

32. Employment of aerial shooting and land-and-shoot killing of bears by ADF&G employees as part of IM predator control program is an extraordinary step to take and not without establishing specific plan objectives, including documentation of population estimates of bears and their distribution within and adjacent to the predation management area, prior to the control implementation.

33. Brown bears are classified as big game animals which are highly valued as trophy animals for hunters and commercial game guides, as well as for non-consumptive users who view and photograph brown bears.

34. Tourism is a major part of the economy in Alaska.

35. Brown bears are highly desirable for tourists and state residents to experience, especially in places like McNeil River State Game Sanctuary and Katmai National Park.

36. McNeil River State Game Sanctuary and Katmai National Park are close enough to the MCH predation control area that brown bears frequenting the Sanctuary and Park could travel to the MCH predation control area and be killed as part of the lethal bear control operation.

37. The inclusion of bears via the RC 47 amendment to Proposal 21, was an unprecedented and substantive change in the management program for the MCH that since 2011 had only involved the lethal control of wolves.

38. Regulations regarding brown bear management and bear predation control are among the most controversial and contentious regulations in Alaska's public regulatory process involving wildlife.

39. Standard BOG procedure allows the public an opportunity to provide written comments to the BOG regarding specific proposals to be considered by the Board, prior to a Board meeting.

40. Standard BOG procedure allows the public an opportunity to give oral testimony to the BOG regarding specific proposals before the Board during a Board meeting.

41. Public participation at BOG meetings regarding regulatory proposals concerning brown bear management and bear predation control often includes many comments specific to proposals to be considered at the Board meeting, as well as considerable public testimony to the Board at the meeting, as compared to comments and public testimony regarding regulatory proposals about other wildlife.

42. No notice was given to the public prior to the BOG meeting in 2022, by either the BOG or by ADF&G, that brown and black bears were to be considered for lethal removal by aerial means, as an addition to the MCH predation management program.

43. There was no opportunity for written public comment on the amendment (RC 47) that added bears to Proposal 21 prior to the BOG meeting in 2022, or for oral public testimony regarding the amendment at the Board meeting in 2022, before Proposal 21, as amended, was adopted by the BOG in 2022.

44. According to a statement made by Ryan Scott, Acting Director of the ADF&G, Division of Wildlife Conservation (DWC), “public input came in the years leading up to the BOG action on Proposal 21, as amended.”

45. Proposal 21, as amended, included language in Section (C), stating that “reducing bear predation would likely be effective and feasible using recognized and prudent management techniques and based on scientific information.”

46. No scientific information that included current and up to date brown or black bear survey information and population estimates within the range of MCH was presented to the BOG at the meeting in January 2022, before the amendment (RC 47) to Proposal 21 was adopted.

47. No information that included possible caps or quotas on the number of bears to be killed in the MCH predation control area was presented to the BOG at the meeting in January 2022, before the amendment (RC 47) to Proposal 21 was adopted.

48. No information that included material about the ways and means of implementing a sound and humane management plan regarding bears to be killed in the MCH predation control area and management program were presented to the BOG at the meeting in January 2022, before the amendment (RC 47) to Proposal 21 was adopted.

49. No recent or up-to-date brown bear population estimates and distribution information for GMU 17 (an area of 20,347 square miles), had been made by ADF&G prior to the commencement of the lethal bear removal operation in GMU 17 (B) in the spring of 2023.

50. No recent or up to date brown bear population estimates were available to the BOG before they adopted Proposal 21, as amended, which authorized lethal removal of bears within GMU 17 (B), and which in fact resulted in the removal of bears in that unit.

51. Only limited and out-of-date brown bear density estimates from the years 2001 and 2010, by the ADF&G were available to the BOG in 2022, and those were for areas west of the bear removal area contemplated by the MCH lethal control operation embodied in Proposal 21, as amended by RC 47.

52. The record of the BOG proceedings where RC 47 amended Proposal 21 to add bears for lethal control did not contain mention or discussion regarding the limited and out-of-date brown bear density estimates referred to from the years 2001 and 2010.

53. The MCH Predation Management Area includes GMU 19 (B), which is adjacent to GMU 17 (B).

54. ADF&G routinely prepares *Management Reports*, including *Brown Bear Management Reports*, to present information valuable to the BOG about wildlife fieldwork, work accomplishments, harvest information and wildlife population sizes and distribution.

55. No current measurement of brown bear abundance was conducted within the MCH Predation Management Area by ADF&G, and no up to date

Brown Bear Management Report was prepared by ADF&G and available to the BOG regarding the MCH Predation Management Area in GMU 19(B), or other relevant areas before the commencement of the control operation to kill bears in the spring of 2023.

56. Before the BOG adopted Proposal 21, as amended, the Board did not have a current measurement of brown bear abundance by ADF&G for the MCH Predation Management Area or a recent up-to-date *Brown Bear Management Report* to consider.

57. The most recent GMU 17 *Brown Bear Management Report* that Board that was available for the Board to consider was for the period July 2012 - June 2014.

58. The BOG adopted Proposal 21, as amended, without even discussing the GMU17 *Brown Bear Management Report* available for the period July 2012 - June 2014.

59. The BOG adopted Proposal 21, as amended, without discussing the possibility or need to assess where bears might come from if they came from outside the area of MCH, and what the implications would be in killing bears from outside the geographical area to which the MCH IM program applied.

60. The BOG adopted Proposal 21, as amended, following testimony by two ADF&G biologists who presented information from their studies of the MCH

that predation by bears on neonatal caribou calves in the first two weeks of life was likely compensatory (calves in a weakened state from other causes that would have died anyway), and not additive, and that bears were not a significant source of predation on caribou after that time.

61. The BOG adopted Proposal 21, as amended, after ADF&G biologists presented information to the Board based on ADF&G conducted studies of MCH that the two major contributing factors for the decline in the MCH were adverse habitat changes and disease.

62. The BOG adopted Proposal 21, as amended, after ADF&G biologists presented information based on department sponsored studies of MCH that other significant contributing factors for the decline in the MCH was mortality from legal and illegal hunting.

63. The BOG adopted Proposal 21, as amended, after ADF&G biologists presented a recommendation to the BOG that a thorough review of the GMU 17 IM program be conducted.

64. General information produced by ADF&G biologists at the 2022 BOG meeting regarding the MCH indicated that bear predation was only one factor in the predator prey dynamics for MCH, and that further study of MCH predator/prey dynamics and other biological concerns would be continuing during the remaining year and a half of an ongoing three-year study.

65. Before the BOG adopted Proposal 21, as amended, Ryan Scott, the Acting Director of the Division of Wildlife Conservation (DVC), informed the BOG that the lethal control of bears could not begin immediately and that before it could begin, ADF&G “had a lot of biological questions to think about.”

66. In response to a question from BOG member Stosh Hoffman about whether the lethal control of bears could start in the spring of 2022, Ryan Scott of DVC told Board member Hoffman and the BOG:

We moved pretty fast today in the regulatory aspect of it – there’s a lot of biological questions to ask before we go out there and start physically removing animals. I actually think it would be irresponsible for us to start without delving into, not only the biology of the caribou and caribou calves, but also we need to know, we need to try to understand a little bit about where we’re starting with, you know, bears and wolves and these new places and then think about the thresholds of where we’d stop.

67. The BOG adopted Proposal 21, as amended, without discussing or evaluating the need and necessity of obtaining a current and up to date ***Brown Bear Management Report*** for GMU 17 and the lethal bear control area, and the possible impacts on the bears in that unit and adjacent areas.

68. Regardless of the testimony by Ryan Scott from the DWC at the BOG meeting that ADF&G needed to think about and better understand “more about the biological application and the numbers associated with bears and other things

in these areas,” the BOG failed to discuss or consider a threshold or limit to the numbers of bears that could be killed in the MCH predator control areas.

69. Regardless of the testimony of Ryan Scott of DWC at the BOG meeting that the ADFG needed to think about and better understand “more about the biological application and the numbers associated with bears and other things in these areas,” the BOG failed to discuss or consider any meaningful measures for monitoring the impact of killing an unlimited number of bears in the MCH predator control areas.

70. Proposal 21, as amended and adopted by the BOG, authorized the ADF&G to kill bears and wolves in the predation control areas of the MCH Management Area through July 1, 2028, with no limit or cap on the number of bears that can be killed.

71. Before the BOG adopted Proposal 21, as amended, ADF&G biologists estimated that the likely number of bears that would be killed in the calving area of the MCH Management control area was fifteen to the “low 20’s.”

72. After the BOG adopted Proposal 21, as amended, ADF&G commenced preparation of an *Operations Plan for Intensive Management of Caribou in GMU’s 9B, 17,18,19A and 19B During the Regulatory Years 2022-2028*. (“Operations Plan”).

73. Following preparation and adoption of the Operations Plan by ADF&G in 2023, lethal predator removal was conducted within MCH from May 10 - June 4, 2023, which resulted in the killing of ninety-four brown bears, including eleven cubs, five black bears, and five wolves, using fixed wing aircraft and helicopters.

74. The lethal removal of ninety-nine bears by ADF&G within the predation control area of the MCH was an action that was not proportionate or commensurate with the amount harm or threat to the MCH that was attributable to bear predation.

75. After the Operations Plan was implemented in 2023 which resulted in killing ninety-nine bears, an ADF&G official stated, regarding bears in the calving area of MCA: *“in further analysis we should be able to see if bears are part of the problem.”* [Emphasis added].

ALLEGATIONS

76. The BOG unlawfully took action in January, 2022 by improperly and unilaterally amending a proposal confined to wolf predation in a particular area of Alaska by adding two species of bears to a program designed to eradicate wolves without required notification to the public or affording the public an opportunity to be heard; said amendment constituting a material and substantive alteration to the proposal under consideration by the BOG, and adopted by the Board without

adhering to the due process requirements of Article 1, Sec 7 in the Alaska Constitution.

77. The BOG has failed to utilize, develop, and maintain the bear population in the area inhabited by the Mulchatna caribou herd located in the State of Alaska according to the sustained yield principle of Article VIII, Sec. 4 of the Alaska Constitution.

78. The BOG has failed to observe and follow the mandatory protocols applicable to replenishable resources for the bear population in the area inhabited by the Mulchatna caribou located in the State of Alaska according to the sustained yield principle of Article VIII, Sec. 4 of the Alaska Constitution.

79. The BOG has failed to take a hard look at salient factors impacting the bear population in the area used by the Mulchatna caribou herd and engage in reasoned decision-making regarding the adoption of Proposal 21, as amended, a requirement established by legal precedent, in accord with the sustained yield principle of Article VIII, Sec. 4 of the Alaska Constitution.

80. The adoption of Proposal 21, as amended, by the BOG is inconsistent with the sustained yield mandates of Article VIII, Sec 4 of the Alaska Constitution.

81. The BOG purports to engage in science-guided management of the bear population inhabiting the area used by the Mulchatna caribou herd but there is no credible scientific basis for the massive reduction of the bear population that

supports the contention that the killing of bears will significantly increase the caribou population, therefore the BOG adoption of Proposal 21, as amended, is in violation of the sustained yield mandates of Article VIII, Sec. 4 of the Alaska Constitution.

82. No underlying scientific information was made available to the BOG regarding current and up to date brown or black bear population estimates for the areas of MCH where the lethal control of bears was conducted, therefore the BOG's adoption of proposal 21, as amended, is in violation of the sustained yield mandates of Article VIII, Sec. 4 of the Alaska Constitution.

83. Article VIII, Sec. 4 of the Alaska Constitution requires that the bears living in the vicinity of the Mulchatna caribou herd be utilized and maintained on the sustained yield principle, a mandate that has primacy over any preference among beneficial uses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. Declaratory relief that the Alaska BOG failed to adhere to mandatory due process requirements related to the adoption of regulations concerning the replenishable natural resources of Alaska, according to the express provisions of Article 1, Sec. 7 of the Alaska Constitution.

B. Declaratory relief that the BOG adopted, via a regulation, a lethal predator control program to indiscriminately kill bears in an area used by the

Mulchatna caribou herd in a manner inconsistent with constitutional sustained yield mandates contained in Article VIII, Sec. 4 of the Alaska Constitution.

C. Declaratory relief that the ADF&G failed to provide the BOG with relevant and significant information related to the sustainability of bears in the area used by the MCH and then improperly implemented a lethal predator control program to indiscriminately kill in a manner inconsistent with sustained yield mandates contained in Article VIII, Sec. 4 of the Alaska Constitution.

D. Injunctive relief, if necessary, designed to fulfill the sustained yield mandate for the management and maintenance of the bears in the vicinity of the MCH, including an injunction invalidating the regulatory adoption of Proposal 21, as amended.

E. An award of costs and reasonable fees associated with maintaining this public interest lawsuit, and.

E. Any other relief necessary to protect the rights of the Plaintiff and the citizens of Alaska under the Alaska Constitution.

DATED this 27th day of July 2023 at Juneau, Alaska.

Joel F. Bennett

Joel F. Bennett
Alaska Bar # 7605010

Joe G.

Joseph W. Geldhof
Alaska Bar # 8111097