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

DEFENDERS OF WILDLIFE, a nonprofit)
corporation, and THE ALASKA)
WILDLIFE ALLIANCE, a nonprofit)
corporation,)

Plaintiffs,

vs.

STATE OF ALASKA, BOARD OF)
GAME, AND COMMISSIONER OF)
FISH AND GAME,)

Defendants.)

Case No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

For their Complaint plaintiffs allege as follows:

NATURE OF THE CASE

1. The Alaska Legislature has enacted laws concerning the "intensive management" of certain game species for human consumption. To implement

these laws, the State of Alaska's Board of Game ("Board") adopted regulations governing its decision-making about the intensive management of game. Some of these regulations are, however, inconsistent with the laws the Legislature enacted and are, therefore, invalid. In addition, recently the Board amended two regulations in order to eliminate most of the standards that would apply during the consideration of proposed predator control implementation plans, but in doing so the Board violated procedures for the adoption of regulations mandated by the Alaska Administrative Procedure Act. Therefore, these two regulations are also invalid.

2. In May 2006, the Board adopted certain predator control implementation plans. These plans, now codified in regulations, authorize the commissioner of the Alaska Department of Fish and Game ("ADF&G") or his designee[s] to conduct population reduction or regulation programs for wolves and bears within a number of Alaska's Game Management Units ("GMUs"). When it adopted these plans, the Board relied upon the aforementioned invalid regulations. It also failed to apply the sustained yield principle as is required by the applicable statutes, regulations and the Alaska Constitution. Therefore, the plans are invalid.

3. Thus, plaintiffs bring this civil action in order to seek a declaratory judgment that the aforementioned regulations are invalid and the entry of an injunction barring the killing of wolves and bears under these regulations.

JURISDICTION AND VENUE

4. The Superior Court has jurisdiction under Alaska Statute ("AS") 22.10.020(a) - (c).

5. Under AS 44.62.300, the Superior Court has authority to determine the validity of the Board's regulations in a civil action. Under AS 22.10.020(g), the Superior Court may declare the rights and legal relations of the plaintiffs and to

enter necessary or proper relief based on a declaratory judgment or decree against the defendants.

6. Venue is proper in this court under Alaska Rule of Civil Procedure 3(c) and AS 22.10.030.

PLAINTIFFS

7. Plaintiff Defenders of Wildlife is a nationally recognized wildlife conservation organization with over 800,000 members and supporters nationwide, including about 2,100 members and supporters in Alaska. It is a not-for-profit corporation organized under Delaware law. As part of its mission, over the last 30 years it has been actively involved in advocacy concerning issues relating to the management of predators in Alaska and the methods and means for their management. It advocates the use of science and scientific knowledge in this management.

8. Plaintiff Alaska Wildlife Alliance is an Alaska conservation organization with about 2500 resident and non-resident members. It is a not-for-profit corporation organized under Alaska law. Its mission is the conservation of Alaska's natural wildlife for its intrinsic value as well as for the benefit of present and future generations. It advocates for a natural predator-prey balance, based on the most current scientific findings. It supports healthy ecosystems and stewardship of Alaska's wildlife for all user groups.

DEFENDANTS

9. Defendant State of Alaska is a sovereign state of the United States of America.

10. Established by AS 16.05.221(b), the Board is an agency of the State of Alaska. Established by AS 44.17.005(11), ADF&G is a department of State government.

11. Under AS 44.39.010, the commissioner of ADF&G is ADF&G's principle executive officer.

12. Under AS 16.05.241 and 16.05.255, the Board has exclusive authority to adopt regulations governing the taking of game, although under AS 16.05.270 the Board may delegate this authority to the commissioner of ADF&G.

COUNT I

Adoption of Amendments to 5 AAC §§ 92.110 and 92.115 in Violation of the Alaska Administrative Procedure Act

13. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-12 above.

14. In January 2006, the Board adopted amendments to 5 Alaska Administrative Code ("AAC") §§ 92.110 and 92.115. These amendments deleted the procedural and substantive regulatory standards applicable to the adoption of wolf and bear population reduction or regulation programs.

15. The Board adopted the amendments to 5 AAC §§ 92.110 and 92.115 without adequate public notice and an adequate opportunity for the public to comment, in violation of AS 44.62.200 and 44.62.210.

16. Therefore, 5 AAC §§ 92.110 and 92.115 are invalid.

COUNT II

Adoption of Predator Control Implementation Plans Using Invalid 5 AAC §§ 92.110 and 92.115

17. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-16 above.

18. At its May 2006 meeting, the Board adopted predator control implementation plans. These plans are now codified in 5 AAC § 92.125.

19. When considering whether to adopt these plans, the Board applied 5 AAC §§ 92.110 and 92.115.

20. As explained in Count I above, however, 5 AAC §§ 92.110 and 92.115 are invalid. Nonetheless, the Board relied upon these regulations in adopting the predator control implementation plans in 5 AAC § 92.125.

21. Therefore, the predator control implementation plans in 5 AAC § 92.125 are invalid.

COUNT III
Violation of AS 16.05.783

22. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-21 above.

23. Under AS 16.05.783(a), the Board "may authorize a predator control program" that allows airborne shooting of wolves only "as part of a game management plan."

24. The predator control implementation plans in 5 AAC § 92.125 are predator control programs that authorize "airborne or same day airborne shooting" of wolves.

25. These predator control implementation plans are not, however, "part of a game management plan" or plans adopted either by the Board or by ADF&G.

26. Thus, the predator control implementation plans in 5 AAC § 92.125 are inconsistent with AS 16.05.783(a) and are, therefore, invalid.

COUNT IV

Illegal Failure to Consider Harvestable Surplus When Adopting Prey Population and Harvest Goals and Seasons for Intensive Management

27. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-26 above.

28. Alaska Statute 16.05.255(g) mandates that the Board "establish prey population and harvest goals and seasons for intensive management of identified big game prey populations to achieve a high level of human harvest."

29. "Big game" is defined in 5 AAC § 92.990 to include "black bear, brown bear ... caribou ... moose ... [and] wolf"

30. The phrase "high level of human harvest" in AS 16.05.255(g) is defined in AS 16.05.255(j)(2) to mean "the allocation of a sufficient portion of the harvestable surplus of a game population to achieve a high probability of success for human harvest of the game population based on biological capabilities of the population and considering hunter demand"

31. The phrase "harvestable surplus" used in the definition of "high level of human harvest" is defined in AS 16.05.255(j)(1) to mean the "number of animals that is estimated to equal the number of offspring born in a game population during a year less the number of animals required for recruitment for population maintenance and enhancement, when necessary, and the number of animals in the

population that die from all causes, other than predation or human harvest, during that year... ."

32. When considering whether it should adopt population and harvest objectives, now codified in 5 AAC § 92.108, under AS 16.05.255(e)-(g) the Board was required to consider what the "high level of human harvest" should be as defined by reference to the "harvestable surplus." The Board did not do so, however.

33. Consequently, the population and harvest objectives the Board adopted in 5 AAC § 92.108 are inconsistent with AS 16.05.255(e)-(g). They are, therefore, invalid.

COUNT V

Adoption of Predator Control Implementation Plans Based on Application of Invalid 5 AAC § 92.108

34. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-33 above.

35. When considering whether it should adopt predator control implementation plans, now codified in 5 AAC § 92.125, the Board used the population and harvest objectives in 5 AAC § 92.108.

36. As explained in Count IV above, the population and harvest objectives in 5 AAC § 92.108 do not comply with AS 16.05.255(e)-(g) and are, therefore, invalid.

37. Because the population and harvest objectives in 5 AAC § 92.108 are invalid, the predator control implementation plans the Board adopted using those objectives are invalid as well.

COUNT VI

Illegal Failure to Consider Harvestable Surplus When Adopting Predator Control Implementation Plans

38. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-37 above.

39. Before the Board may approve a predator control implementation plan, AS 16.05.255 requires that the Board consider what the "harvestable surplus," as defined AS 16.05.255(j)(1), of the prey population is in the GMU to be covered by the plan.

40. Before adopting the predator control implementation plans in 5 AAC § 92.125, however, the Board did not consider what the "harvestable surplus" of the prey populations is in the GMUs at issue.

41. Because the Board did not adopt the predator control implementation plans in 5 AAC § 92.125 in accordance with AS 16.05.255, the plans are inconsistent with the statute and are, therefore, invalid.

COUNT VII

Illegal Failure To Make Abundance or Productivity Finding Required by AS 16.05.255(e)(1)-(3); Invalidity of 5 AAC § 92.106(3)

42. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-41 above.

43. Whenever the Board has made the three specific determinations about a big game prey population set out in AS 16.05.255(e)(1)-(3), then AS 16.05.255(e) requires the Board to "adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals of the board" in the area.

44. Under AS 16.05.255(e)(2), the second of those three determinations is that the "depletion of the big game prey population or reduction of the productivity of the big game prey population has occurred and may result in a significant reduction in the allowable human harvest of the population... ."

45. In an attempt to further define the second determination requirement in AS 16.05.255(e)(2), the Board adopted 5 AAC § 92.106(3).

46. This regulation requires that the Board find that depletion of a big game prey population or reduction of the productivity of a big game prey population has occurred whenever

(A) the number of animals, estimated by the department, that can be removed by human harvest from a population or portion of a population, on an annual basis ... is less than the harvest objective for the population; and

(B) the population size is less than the population objective for the population... .

5 AAC § 92.106(3)(A)-(B).

47. 5 AAC § 92.106(3) conflates the concept of the depletion of a prey population with the concept of a reduction in the prey population's productivity.

48. Because, however, the depletion of a population and a reduction in the productivity of a population are not equivalent concepts under AS 16.05.255(e)(2), 5 AAC § 92.106(3) is inconsistent with AS 16.05.255(e)(2) and is, therefore, invalid.

COUNT VIII

Adoption of Predator Control Implementation Plans Based on Application of Invalid 5 AAC § 92.106(3)

49. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-48 above.

50. The Board applied 5 AAC § 92.106(3) when it adopted the predator control implementation plans in 5 AAC § 92.125.

51. Because, as explained in Count VII above, 5 AAC § 92.106(3) is invalid, the predator control implementation plans that the Board adopted using that regulation are also invalid.

COUNT IX

Illegal Failure to Manage Wolves and Grizzly Bears in Accordance with the Sustained Yield Principle

52. Plaintiffs repeat and incorporate by reference the allegations and statements made in paragraphs 1-51 above.

53. Alaska Statute 16.05.255 requires that game be managed in accordance with the sustained yield principle.

54. "Game" is defined in AS 16.05.940(19) to include, among other mammals, wolves and bears.

55. For the purposes of AS 16.05.255, AS 16.05.255(j)(5) defines "sustained yield" to mean "the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis."

56. The Alaska Constitution, Article VIII, Section 4, requires that "all replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."

57. Alaska game is a replenishable resource and therefore must be utilized, developed, and maintained in accordance with the Alaska Constitution's sustained yield principle.

58. In addition to the above, under game management policies that the Board has adopted wolves and bears must be managed in accordance with the sustained yield principle.

59. When it adopted the predator control implementation plans in 5 AAC § 92.125, however, the Board failed to apply the sustained yield principle with respect to wolves and bears. Thus, the plans in 5 AAC § 92.125 are invalid.

PRAYER FOR RELIEF

Therefore, plaintiffs request that the Superior Court:

1. Find and declare that the Board's January 2006 amendments to 5 AAC §§ 92.110 and 92.115 are invalid because the Board failed to follow the Alaska Administrative Procedure Act when adopting the amendments;
2. Find and declare that 5 AAC §§ 92.106 and 92.108 are invalid because they are inconsistent with AS 16.05.255;
3. Find and declare that the predator control implementation plans in 5 AAC § 92.125 are invalid because the Board relied upon invalid regulations when it approved the plans and otherwise did not approve the plans in accordance with the requirements of AS 16.05.783;
4. Find and declare that all active public aerial shooting permits or public land and shoot permits issued by the ADF&G commissioner under the invalid predator control implementation plans and under AS 16.05.783 are void and of no effect;
5. Enter an Order directing the ADF&G commissioner to notify immediately any holder of a public aerial shooting permit or a public land and shoot permit that the permit is void and of no effect and that the aerial shooting of wolves and the same day landing and shooting of wolves is prohibited;
6. Enter an Order enjoining the ADF&G commissioner from issuing any new public aerial shooting or public land and shoot permits as a method of predator reduction or regulation under the invalid predator control implementation plans in 5 AAC § 92.125;

7. Enter an Order enjoining the use of any other predator reduction, regulation or control measure the Board has authorized for wolves and bears as part of the invalid predator control implementation plans in 5 AAC § 92.125;

8. Enter other appropriate Orders enjoining the defendants from taking any further action that might otherwise be authorized under the invalid predator control implementation plans and invalid regulations;

9. Award to the plaintiffs their costs, including attorneys' fees, under Alaska Rules of Civil Procedure 79 and 82 and AS 09.60.010 (LexisNexis 2002); and

10. Award such other and further relief as the Superior Court deems just and reasonable under the circumstances.

Dated and signed the 25th day of August, 2006, in Anchorage, Alaska.

Respectfully submitted,

TRUSTEES FOR ALASKA

By: _____

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