IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA WILDLIFE ALLIANCE and CENTER FOR BIOLOGICAL DIVERSITY, Plaintiffs, v. STATE OF ALASKA, *et al.*, Defendants.	Case No. 3AN-25-10324CI

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Alaska Wildlife Alliance and Center for Biological Diversity are 501(c)(3) nonprofit organizations, with active membership in Alaska, which advocate for "stewardship of Alaska's wildlife for all user groups" and "natural diversity of wildlife and their habitats in Alaska."[1] On November 10, 2025, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief ("Complaint") against the State of Alaska, Alaska Board of Game ("Board"), Alaska Department of Fish and Game ("Department"), and Fish and Game Commissioner Douglas Vincent-Lang ("Commissioner") (collectively "the State").[2] Plaintiffs' Complaint alleged that the State violated the Alaska Constitution's sustained yield clause by failing to take a "hard look" at bear population

[1] Am. Compl. at ¶¶ 2-3, 12-13.
[2] Compl. (Plaintiffs filed an Amended Complaint on April 6, 2026).

data before approving an intensive management ("IM") plan that directs the removal of bears from the Western Mulchatna calving grounds by lethal means.[3]

On April 6, 2026, Plaintiffs filed a Motion for Preliminary Injunction ("Motion") requesting this Court enjoin the Department "from engaging in predator control activities targeting black and brown bears in the Mulchatna Control Area until after this Court has adjudicated the merits of the Wildlife Alliance's pending litigation."[4] The State opposed.[5] Because the State would likely begin killing bears pursuant to its IM plan in early May, this Court granted a Motion for Expedited Consideration of the Motion for Preliminary Injunction.[6] Oral Argument was held on Friday, May 1, 2026.

For the following reasons, Plaintiffs' Motion is **DENIED**.

Background

When predation of a big game prey population may significantly reduce the harvest of a preferred, consumptive use, the Alaska Board of Game must "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…"[7] The Mulchatna Caribou Herd ("MCH") is subject to this legislative mandate, as it once served as an important food source for consumptive users in Southwest Alaska.[8] During the early 2000s, the MCH population crashed

[3] Am. Compl. at ¶¶ 74-96.
[4] *Id.* at 23.
[5] Opp'n to Mot. for Prelim. Inj.
[6] Mot. for Expedited Consideration of Pls.' Mot. for Prelim. Inj.; Order Granting Pls.' Mot. for Expedited Consideration.
[7] AS 16.05.255(e).
[8] Opp'n to Mot. for Prelim. Inj., Ex. 1 (Board of Game Regulation Meeting) at 146-148 (In 2001, the MCH received "a positive intensive management finding delegating this herd as an important food resource for Alaskans.")

significantly.[9] In 2011, the Board adopted an IM plan that implemented wolf population control on the herd's western calving grounds to increase its population.[10]

In 2022, the Board adopted Proposal 21, which initially proposed changes only to wolf control, but was later amended to add bear control to the MCH IM plan.[11] The Department killed 180 brown and black bears in the Mulchatna Control Area pursuant to Proposal 21 from 2023-2024.[12]

In 2023, Plaintiff Alaska Wildlife Alliance filed an action in this Court alleging that Proposal 21 violated the due process and sustainable yield clauses of the Alaska Constitution.[13] On March 14, 2025, this Court ruled for the Plaintiff, holding that "the Board adopted Proposal 21 without due process and without consideration of bear population data, which is an 'important, relevant and material factor[] relating to the sustainability' of bear populations."[14]

After this Court's March 14, 2025 ruling, the Board reinstated Proposal 21 using its emergency rulemaking authority.[15] This Court then struck down the emergency regulations "as a bad faith attempt to circumvent the March 14 Order."[16] Before the

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[9] Opp'n to Mot. for Prelim Inj. at 3-4.
[10] *Id.*
[11] *Id.*
[12] Pls.' Mot. for Prelim. Inj. at 15-16 (citing Ex. B at 1, 3; Ex. C at 4-6).
[13] Am. Compl. at ¶¶ 2-3, 12-13.
[14] *Id.* at ¶ 3 (quoting Decision & Order, *Alaska Wildlife All. v. State*, Case No. 3AN-23-07495CI (Alaska Super. Ct. 2025)).
[15] *Id.* at ¶ 4 (citing Order on Renewed Appl. TRO at 2, *Alaska Wildlife All. v. State*, Case No. 3AN-23-07495CI (Alaska Super. Ct. 2025)).
[16] TRO Order 2 at 13, *Alaska Wildlife All. v. State*, Case No. 3AN-23-07495CI (Alaska Super. Ct. 2025) ("That the State intends to move forward with predator control after the Court found that it failed in that regard demonstrates that compliance was not the goal of the Emergency Regulation—continuing predator control by any means was the goal.")

emergency regulations were struck down, the Department killed eleven brown bears over the course of one weekend.[17]

On July 15, 2025, the Board adopted a new proposal ("Proposal 1"), which Plaintiffs allege "is fundamentally the same predator control program that the Court struck down as unconstitutional in its March 14 Order."[18] On November 10, 2025, Plaintiffs filed their Complaint in the instant action, alleging that Proposal 1 "fails to meet the sustained yield requirements in Article VIII, Section 4 of the Alaska Constitution" because it "was adopted by the Board without tak[ing] a hard look at credible scientific evidence documenting brown and black bear populations and authorized the unchecked killing of bears throughout the nearly 40,000 square-mile Mulchatna Control Area."[19]

On March 25, 2026, the Department of Law presented "RC 46" to the Board of Game, which purportedly "incorporated slight modifications to Proposal 1…to conform [it] to regulation drafting conventions."[20] The Board readopted Proposal 1 as modified by RC 46 upon receiving recommendations to do so from the Department of Law.[21] The Lieutenant Governor filed the proposal on April 3, 2026, and the change in regulations went into effect on May 3, 2026.[22]

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[17] Pls.' Mot. for Prelim. Inj. at 16.
[18] Am. Compl. at ¶ 5.
[19] *Id.* at ¶ 7.
[20] *Id.* at ¶ 6.
[21] *Id.*
[22] *Id.*; AS 44.62.180 (providing that a proposed change in regulations become effective 30 days after it is filed by the lieutenant governor).

Legal Standard

1. Motions for preliminary injunction

There are two standards under which a party may establish the Court's discretion to grant a preliminary injunction: the balance of hardships standard and the probable-success-on-the-merits standard.[23] Which standard applies depends on the circumstances at issue and the nature of the requested relief.

The balance of hardships standard weighs the harm denial of the injunction will cause the requesting party against the harm granting the injunction will cause the enjoined party.[24] It applies when the requesting party "faces the danger of irreparable harm if the relief is denied and the opposing party is adequately protected from harm if the relief is granted."[25] When these two elements are met, the requesting party need only "raise serious and substantial questions going to the merits of the case, that is, the issues cannot be frivolous or obviously without merit" for the balance of hardships to tip in favor of the requesting party.[26] When the requesting party fails to establish adequate protection for the opposing party's interests, the probable-success-on-the-merits standard applies, and the

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[23] *State v. Galvin*, 491 P.3d 325, 332 n. 17-18 (Alaska 2021) (noting a party is not entitled to an injunction as a matter of right even when all the elements are met) (citing *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014)); *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005); *A. J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 541-42 (Alaska 1970), *modified in other respects*, 483 P.2d 198 (Alaska 1971).

[24] *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272-73 (Alaska 1992).

[25] *Id.*; *State v. Galvin*, 491 P.3d at 332–33 (internal quotations omitted) (citing *State, Div. of Elections v. Metcalfe*, 110 P.3d at 978; *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991)); A. J. Indus. *v. A. J. Indus., Inc. v. Alaska Pub. Serv. Comm'n*, 470 P.2d at 540.

[26] *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d at 1272-73 (quoting *Messerli v. Dep't of Natural Resources, State of Alaska*, 768 P.2d 1112 (Alaska 1989) (internal quotations omitted) (citing *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough,* 534 P.2d 549, 554 (Alaska 1975)).

requesting party must demonstrate "a clear probability of success on the merits" before the Court may grant a request for a preliminary injunction.[27]

When issuing an injunction against an agency, the Court should "weigh[] the demands of justice in the individual case against the interest in avoiding undue interference with the administrative process."[28] The Court should be wary that excessive use of injunctions, to the extent that agencies are "deprived of any real discretion in the matter[,]" may result in agencies foregoing their own procedural safeguards when enacting regulations.[29] Injunctions that mandate the State take action should be granted with particular caution, as they present a heightened risk of infringement upon legislative and agency powers.[30]

2. *Sustained yield clause and limitations on State game management*

Article VIII, Section 4 of the Alaska Constitution provides that,

> Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield[31] principle, subject to preferences among beneficial uses.

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[27] *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough,* 534 P.2d 549, 554 (Alaska 1975).
[28] *Id.* at 553.
[29] *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1274 n.9 (Alaska 1992); *see also Alaska Public Utilities Comm'n,* 534 P.2d at 553, (postulating that frequent use of injunctions "might cause the administrative commission automatically to grant such increases" while affirming an injunction allowing the Alaska Public Utility Commission to temporarily increase user rates because its "denial of the interim rate increase was arbitrary") (citing *Mountain States Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 176 Colo. 457, 464, 491 P.2d 582, 586 (1971) (denying a preliminary injunction that would permit charging user rates higher than those authorized by the Public Utilities Commission when it "would dilute the rate making prerogative of the [Public Utilities Commission], and the statutes relating to public utility rate making and regulation would be effectively bypassed")).
[30] *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d at 1274 n.9.
[31] The Legislature defines "sustained yield" in the context of public lands as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use[.]" AS 38.04.910(12).

Referred to as "the sustained yield clause," Article VIII Section 4 imposes upon the State an obligation to promote "a harmonious balance between consumption, preservation, and expansion of natural resources."[32] The clause limits the judiciary's role in challenges to agency decisions on natural resource management to "ensuring that constitutional principles are followed," and precludes the Court from instructing the State on how it satisfies the constitutional mandate.[33]

To comply with constitutional principles applicable to natural resource management, an agency must "take[] a 'hard look' at all factors material and relevant to the public interest" before issuing a decision.[34] The Court should exercise its supervisory role "with particular vigilance" when "it becomes aware, especially from a combination of danger signals, that the agency has not really taken a 'hard look' at the salient problems and has not genuinely engaged in reasoned decision making."[35]

Depending on the complexity and nature of the issues being challenged, the "hard look" standard may be softened by deference to agency decisions. In *Sitka Tribe of Alaska v. Alaska Department of Fish & Game*, the Supreme Court explained,

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[32] *Sagoonick v. State*, 503 P.3d 777, 783 (Alaska 2022) (internal quotations omitted) (quoting 6 Proceedings of the Alaska Constitutional Convention (PACC) App. II at 3 (Nov. 8, 1955) (address of Cong. Del. E.L. Bartlett)); *see also* VICTOR FISCHER, ALASKA'S CONSTITUTIONAL CONVENTION 130 (1975).
[33] *Id.* at 788 (citing *Sullivan v. REDOIL*, 311 P.3d 625, 634-35 (Alaska 2013)).
[34] *Id.* (quoting *Kachemak Bay Conservation Soc'y v. State, Dep't of Nat. Res.*, 6 P.3d 270, 294 (Alaska 2000)).
[35] *Southeast Alaska Conservation Council, Inc., v. State*, 665 P.2d 544, 548-49 (Alaska 1983) ("Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary") (citing *State v. 0.644 Acres, More or Less*, 613 P.2d 829, 833 (Alaska 1980)).

> When an agency decision ... involves administrative expertise as to either complex subject matter or fundamental policy formulations, the reviewing court need only determine whether the decision had a reasonable basis and was not arbitrary, capricious, or unreasonable. An agency decision is arbitrary if the agency fail[ed] to consider an important factor in making its decision.[36]

Satisfying the "hard look" requirement "necessarily includes considering the cumulative impacts" of a decision.[37] The State need not speculate about possible future effects of a decision before information is known, but once it is discovered, it must be considered.[38]

Discussion

1. *Plaintiffs must show a clear probability of success on the merits because the requested relief may cause the State irreparable harm that is significant and cannot be adequately protected.*

Plaintiffs argue that the balance of the hardships standard should apply because "any risk of harm to the State is minimal and outweighed by the harm to the Wildlife Alliance."[39] Regardless, they claim their request for a preliminary injunction should be granted because it passes both the balance of the hardships and the probable success on the merits standards.[40] Citing *Kluti Kaah*, Defendants argue "the Supreme Court has already decided that the probability of success on the merits standard applies to requests

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[36] *Sitka Tribe of Alaska v. Alaska Dep't of Fish & Game*, 540 P.3d 893, 901 (Alaska 2023) (quoting *Sagoonick*, 503 P.3d at 803 (quoting *Alaska Ctr. for the Env't v. State*, 80 P.3d 231, 241 (Alaska 2003)) (internal quotations omitted).
[37] *Sullivan v. REDOIL*, 311 P.3d 625, 635 (Alaska 2013) (holding that the Department of Natural Resources has a duty to consider potential cumulative impacts at each subsequent phase of an oil and gas project as more information becomes available).
[38] *Id.*
[39] Pls.' Mot. for Prelim. Inj. at 18-23.
[40] *Id.* at 8-13.

for injunctions in cases challenging wildlife management[,]" and claim that "Plaintiffs significantly understate the risk of harm to the State if an injunction is issued."[41]

This Court refrains from adopting the reasoning of either party because both oversimplify the issue; Plaintiffs discount the harms of stifling growth and delaying consumptive harvests of the MCH, and the State overextends the holding in *Kluti Kaah*. Rather, this Court holds that because the State's interests cannot be adequately protected if the injunction is granted, the probable-success-on-the-merits standard applies.

a. Plaintiffs face danger of irreparable harm.

> Irreparable harm is an injury which should not be inflicted and which, because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law.[42]

Plaintiffs claim they will suffer irreparable harm if relief is denied because the State will "permanently remove individual bears from the environment and impair Southwest Alaska's ecosystem, irreparably harming the interests of the Wildlife Alliance and its members."[43] They argue that injuries caused by the killing of bears cannot be redressed in court.[44] Plaintiffs cite the Department's 2022-2028 Operational Plan for

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[41] Opp'n to Mot. for Prelim. Inj. at 6-7.
[42] *State v. Galvin*, 491 P.3d 325, 332–33 (Alaska 2021) (internal quotations omitted) (citing *Metcalfe*, 110 P.3d at 978; *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 (Alaska 1992); *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991); *A. J. Indus.*, 470 P.2d at 540.
[43] Pls.' Mot. for Prelim. Inj. at 14-18 (explaining that Wildlife Alliance staff and members work and recreate in and around the Mulchatna Control Area, study and view the bears in the area, and further rely on bear sightings for a guide business) (noting that "[b]ear populations are slow to recover due to low rates of reproduction, low likelihood of cub survival, and late maturation.")
[44] *Id.*

game units at issue, which states that "the objective is to remove all bears within the Bear Predation Control Area[,] [although] it is unlikely that all bears will be removed[.]"[45]

The State disagrees, claiming that because "the record affirmatively refutes the claim that population-level impacts to bears will result" from Proposal 1, "Plaintiffs fail to demonstrate irreparable injury to their interest in bears remaining part of the ecology of southwest Alaska."[46]

Even assuming the State is correct, Plaintiffs may still suffer irreparable harm from the loss of bears. While Plaintiffs heavily emphasize general sustainability and environmental concerns regarding broad effects of Proposal 1 on bear populations in the control area, their claimed interests also include concrete individual interests such as bear-viewing and the study of bears. The State asserts Plaintiffs will experience no change to bear viewing because it has not observed a decrease in bear population since initiation of the intensive management program in 2023.[47] Bear viewing aside, it is difficult to conceive how any intensive game management program involving the removal of bears would not irreparably impact studies of the bear populations in that area.

At the very least, Proposal 1 would clearly and irreparably impact Plaintiffs' interest in studying these particular bear populations in southwest Alaska. Therefore,

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[45] *Id.* at 15 (citing Ex. A at 19).
[46] Opp'n to Mot. for Prelim. Inj. at 8.
[47] *Id.*; At oral argument, the State explained that the Department directly observed relatively the same amount of bears in the control area after taking bears pursuant to the IM plan.

Plaintiffs effectively established irreparable harm will occur should the preliminary injunction be denied.

b. The State's interests cannot be adequately protected if the preliminary injunction is granted.

> Adequate protection generally means that the party opposing the injunction can be indemnified by a bond when financial harm is at stake; can be otherwise protected by some action; or, at a minimum, is facing only relatively slight harm compared to the potential harm facing the party seeking relief.[48]

Plaintiffs argue that any harm to the MCH caused by a preliminary injunction would be minimal because (1) the herd population has been relatively stable since 2019,[49] (2) "bear predation was not a substantial factor in the MCH's population decline[,]" and (3) "the Department does not know to what degree bear predation affects the MCH's population or whether killing bears will increase it."[50]

The State disagrees, claiming that intensive management of bears resulted in an increase to the MCH population, and should they be prevented from removing bears in the area, it would likely result in "a continued harvest closure for several years to promote herd recovery."[51] The State emphasized the importance of subsistence use of the MCH as a food source, and claimed that herd numbers have increased 18-19% since bear removal efforts began in 2023 and "calf to cow ratios were the highest recorded since

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[48] *State v. Galvin*, 491 P.3d 325, 332–33 (Alaska 2021) (internal quotations omitted) (citing *Metcalfe*, 110 P.3d at 978; *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 (Alaska 1992); *State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991); *A. J. Indus.*, 470 P.2d at 540 (Alaska 1970).
[49] Pls.' Mot. for Prelim. Inj. at 18, 21 (a preliminary injunction…would maintain the status quo for both bears and the MCH.")
[50] *Id.* at 19-20.
[51] Opp'n to Mot. for Prelim. Inj. at 8.

1999."[52] The State further claimed that "bear predation on calves returned to pre-treatment levels" after this Court issued the TRO limiting bear removal in 2025.[53]

There is no dispute as to the importance of the interests of consumptive users of the MCH, which are represented by the State. Plaintiffs argue the harm the State would suffer is slight not because of the nature of the harm, but because it is unlikely to actually occur and because the preliminary injunction effectively maintains the status quo. However, Plaintiff's arguments regarding "stability" of the population or maintaining the "status quo" neither address the heart of the issue nor the harm the State will suffer if an injunction is granted; the State is not under an imperative to *maintain* the MCH population, it is under an imperative to *increase* it to a level sustainable for and consistent with consumptive use.

The State claims the injunction will cause continued harvest closures of the MCH, delaying the herd population's recovery and the State's imperative "to resume a limited subsistence harvest of bull caribou[.]"[54] An injunction that "interferes with [the State's] role as protector" of game resources and implicates interests of other subsistence users cannot be indemnified with a bond.[55] Therefore, the State cannot be adequately protected

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[52] *Id.* at 7.
[53] *Id.* at 7-8.
[54] *Id.* at 8.
[55] *State v. Kluti Kaah Native Vill. of Copper Ctr.* 831 P.2d at 1273, 1275 (finding that although the advantage conferred to Defendants by the injunction was de minimis, the State was not adequately protected because it represents the interests of all subsistence users including those not parties to the case, and non-party subsistence users were inadequately protected by the order extending a moose hunting season exclusively for members of the Kluti Kaah) (vacating the injunction because "the state's interests were significantly harmed by the injunction" and "the trial court should have also required Kluti Kaah to make a clear showing of probable success on the merits.")

should the injunction be granted, because it effectively alleges that consumptive interests will be substantially harmed, and these interests cannot be indemnified.

Accordingly, Plaintiffs must demonstrate a clear probability of success in their claim that the State failed to take a "hard look" at factors important to the sustained yield of brown and black bears within the control area of Proposal 1 to establish this Court's discretion to grant their request for an injunction.

2. *Plaintiffs fail to establish a clear probability of success on the merits.*

Plaintiffs claim to establish a clear probability of success on the merits because the Court's March 14 Order clearly stated that "the Board needs adequate, relevant population data for the brown and black bears targeted by the Mulchatna predator control program in order to comply with the sustained yield clause in the Alaska Constitution[,]" and the State again failed to establish such data in promulgating Proposal 1.[56] The State disagrees, arguing that "[i]nstead of focusing on the record supporting the Board's 2025 action to authorize intensive management for the Mulchatna Caribou Herd, Plaintiffs continue to focus on an old case that has been augmented by new research."[57]

This Court holds that, in great part due to the subject matter expertise needed to produce and analyze bear population data and the Court's obligation to defer to the

[56] Pls.' Mot. for Prelim. Inj. at 9-10; *see also* Decision & Order at 8-10, *Alaska Wildlife All. v. State*, Case No. 3AN-23-07495CI (Alaska Super. Ct. 2025) (concluding that "[a]dressing the sustainability of a constitutionally protected resource like bears almost certainly requires the BOG to engage in more than a rudimentary discussion about a near population or engage in conclusionary opinions when considering a proposal to initiate a program calling for the unrestricted killing of bears").
[57] Opp'n to Mot. for Prelim. Inj. at 26.

agency, Plaintiffs fail to meet the demanding bar of demonstrating probable-success-on-the-merits.

a. The Board considered additional relevant and genuine bear population data before adopting Proposal 1.

In both their pleadings and at oral argument, Plaintiffs claim that the State considered "no new information" at the July 2025 Board meeting when Proposal 1 was considered and adopted. They argue that the information considered by the Board was merely a "repackaging" of information the Board considered previously, which this Court held to be insufficient in prior orders. Specifically, Plaintiffs argue the State considered the same bear density estimates and public harvest data in promulgating Proposal 1 as it did in promulgating Proposal 21, which this Court previously found unconstitutional because it was unreasonably predicated on a lack of adequate, relevant bear population data.[58]

While the Board did rely on the same population estimates previously found insufficient by this Court, Plaintiffs' argument overlooks the fact that the prior court order took specific issue with the lack of information on the bear population within the control area, and the State gathered and considered such information through its catch-per-unit data, which was obtained *after* Proposal 21 went into effect.[59]

Even if the Board failed to consider this new information regarding the bear population within the game units subject to Proposal 1, this Court finds that its prior order

[58] Pls.' Reply in Supp. of Mot. for Prelim. Inj. at 10, 13-14.
[59] *Id.* at 12.

finding that these population estimates were neither "adequate" nor "relevant" fails to account for the subject matter expertise necessary in determining both the veracity and applicability of neighboring bear population estimates.

i. *Bear density estimates*

Plaintiffs characterize the two bear density estimates relied upon by the Board as "outdated, geographically distinct, and unreliable[.]"[60] They state that "[s]ince 2023, the Department has relied on the same two inapplicable studies to estimate the Control Area's brown bear populations because it lacked any actual data about brown bears within the control area."[61]

The first bear density estimate was conducted in 1990 "in the northern portion of Togiak National Wildlife Refuge" which "encompassed the current calving grounds used the last three years[,]" and the second was conducted in 2003-2004 in the southern Kuskokwim mountains.[62] At the 2025 Board meeting, the Department's Wildlife Biologist relied on the second study in the early 2000's and applied its estimate of 103 bears per 1,000 square miles to calculate a population of approximately 2,800 bears, ranging from 2,200 to 3,900, over the range of the West Mulchatna.[63]

This calculation by the Department's Wildlife Biologist is the exact type of technical analysis this Court is in no position to doubt, because this Court does not possess the technical knowledge to do so, which is why the Court must give deference to

[60] Pls.' Mot. for Prelim. Inj. at 12-13.
[61] *Id.* at 12.
[62] Opp'n to Mot. for Prelim. Inj., Ex. 1 (Board of Game Regulation Meeting, July 14, 2025) at 147-48.
[63] *Id.* at 149.

the agency on its decision. Whether population estimates of a given bear population constitutes adequate, relevant data for the population in an adjacent control area is a question for State Biologists, not State Judges. The Department analyzed these figures, and in their technical capacity made the determination that the proposed predator control program was a sustainable program for the bear population. The Department appears to have balanced the need for an increase in caribou numbers while at the same time not substantially harming the overall bear population.

ii. *Catch per unit effort*

The Department also applied catch-per-unit-effort principles to estimate the bear population in the western MCH calving grounds.[64] Catch-per-unit-effort, typically used to measure fish, estimates a given population "by comparing the number of animals caught in an area per standardized unit of effort."[65]

Since the IM plan for the western MCH first included bears in 2023, the Department has measured the number of bears it has taken from the area.[66] Additionally, the Department completed surveys of bear populations in the larger surrounding area post-removal.[67] In May of 2025, shortly after this Court prohibited the Department from removing bears, the Department continued gathering data on the bear population in the control area at issue by counting bears on the western calving grounds.[68]

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[64] Opp'n to Mot. for Prelim. Inj. at 21-22.
[65] *Id.*
[66] *Id.* at 21-22.
[67] Opp'n to Mot. for Prelim. Inj., Ex. 1 (Board of Game Regulation Meeting, July 14, 2025) at 144.
[68] *Id.* at 143-44 (The Department also counted bears on the federal portion of the calving grounds, which is not subject to Proposal 1, and observed 71 unique brown bears on the calving grounds in spring of 2025).

The Department attempted to apply the catch-per-unit-effort method to the data it gathered from 2023-2025 to calculate a population estimate of the control area subject to Proposal 1, however, it stated that "we couldn't apply that method because there was no reduction in that [population], which indicates we weren't reducing the populations to a level."[69]

Plaintiffs argue that the Department's documented observations and taking of bears presented through its catch-per-unit data "amounts to anecdotal reports of bear sightings" and "advance[s] the same unscientific approach already rejected by this Court."[70]

While Plaintiffs label this information as "anecdotal," the Department's scientists ultimately utilized this information to support its conclusion that the IM plan was necessary to fulfill its duty to increase the Mulchatna caribou population. The Court is in no position to second guess the Department's biologists in their technical conclusions. The Court must give deference to the Department on these technical game management decisions.

iii. *Public harvest data*

The Board also considered historic pubic harvest (hunting) data of this bear population.[71] The State argues that "the Department has not observed reduction in brown bear harvest in the area since 2022[,]" before it engaged in intensive management.[72] Additionally, the Department compared public harvest rates with the taking of bears

[69] *Id.*, Ex. 2 (Board of Game Regulation Meeting, July 15, 2025) at 75.
[70] Pls.' Reply in Supp. of Mot. for Prelim. Inj. at 14.
[71] Opp'n to Mot. for Prelim. Inj. at 21.
[72] *Id.*

through its IM program, and found that the number of bears removed as part of the IM plan "fall[s] short of the reported peak harvest, and fall[s]below the harvest levels determined to be sustainable in scientific literature."[73]

Plaintiffs contest that "it is impossible to calculate the actual harvest rate because doing so requires adequate, relevant population data, which the State does not have."[74] They again characterize annual harvest rates as "anecdotal" and "unscientific."[75] For the same reasons as stated above, the Court disagrees with this characterization of the information considered by the Board, because it conflicts with conclusions made by subject matter experts at Fish and Game which this Court is obligated to accept to the extent they are within reason and not arbitrary.

iv. *Other considerations*

The Board accounted for limitations to Proposal 1 in its finding that it does not violate the State's constitutional obligation to ensure sustainable yield of the bear population subject to its IM plan. Specifically, the Board considered the surrounding refugia, or environment not subject to removal efforts, the size of the game management units subject to Proposal 1, and the time limitations provided under Proposal 1.[76] In considering these factors, the Department found that "[d]ue to these temporal and spatial constraints, the predator removals are unlikely to decrease the predator populations at the unit level. If any decreases at the unit level do occur, then those decreases are likely to be

[73] *Id.* (internal quotations omitted).
[74] Pls. Reply in Supp. of Mot. for Prelim. Inj. at 15.
[75] *Id.* at 14.
[76] Opp'n to Mot. for Prelim. Inj. at 22-23.

small, with the population being able to rebound in a few years."[77] Again, these conclusions appear to be made by the Department based on its specialized technical expertise.

The Board also relied upon information from recent local village meetings, Fish and Game Meetings, and federal subsistence regional advisory council meetings in which people in the area reported concerns of increased brown bear populations.[78] Plaintiffs maintain that the consideration of anecdotal data regarding the bear population is insufficient to satisfy the "hard look" required by the sustained yield clause because, as explained in prior Court actions, bear population data is an important factor that must be considered, and "[t]he State cannot overcome the lack of bear population data with other information."[79] Nevertheless, this information is in fact additional information considered by the Board.

b. The information considered by the Board in 2025 likely satisfies its constitutional obligation to take a hard look at Proposal 1's impacts to the sustainable yield of bears on the Western Mulchatna calving grounds.

This Court finds after both a review of the record and deliberation of oral argument that these questions regarding the sustained yield of a bear population subject to an IM plan are highly technical and cannot be resolved without relying on subject matter expertise. For example, parties fundamentally disagree on what constitutes adequate and relevant population data. This Court is neither qualified nor empowered to determine whether bear population data is sufficient to this degree of particularity.

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[77] *Id.*, Ex. 1 (Board of Game Regulation Meeting, July 14, 2025) at 142.
[78] *Id.* at 148.
[79] Pls.' Reply in Supp. of Mot. for Prelim. Inj. at 14.

Accordingly, it defers to agency expertise, and reviews the Board's decision only to "determine whether the decision had a reasonable basis and was not arbitrary, capricious, or unreasonable."[80]

Citing the March 14, 2025 order on a Proposal not currently before this Court and with a different administrative record, Plaintiffs repeatedly claim that the State failed to consider bear population data that is sufficiently "relevant" and "adequate." Plaintiffs seem to argue that this Court should adopt a new standard, which requires the Department complete new population studies when information specific to a given control area is not available. However, the sustained yield clause does not demand the State come up with a specific number to meet its constitutional obligations, especially in light of scientific uncertainty.[81]

Plaintiffs' rigid application of the sustained yield clause conflicts with the Framer's intent. "The plain language of the provision requires resource managers to apply sustained yield principles; it does not mandate the use of a predetermined formula, quantitative or qualitative."[82] The framers explicitly contemplated the State's challenge in measuring some resources, stating,

> As to forests, timber volume, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors by which a calculated sustained yield could be determined. Yet the term "sustained yield principle" is used in connection with management of such resources. When so used it denotes conscious application insofar as practicable of

[80] *Sitka Tribe of Alaska v. Alaska Dep't of Fish & Game*, 540 P.3d 893, 901 (Alaska 2023).
[81] *Native Village of Elim v. State*, 990 P.2d 1, 7-8 (Alaska 1999).
[82] *Id.* at 7.

> principles of management intended to sustain the yield of the resource being managed. That broad meaning is the meaning of the term as used in the Article.[83]

Plaintiffs identify a slew of issues with the bear population data the Board relied upon in adopting Proposal 1: (1) the bear density estimates do not cover the control area and are over twenty years old; (2) the Department was unable to use the catch-per-unit-effort data to calculate an actual estimate of the overall bear population, and; (3) considerations of limitations on the program as well as anecdotal evidence fail to address the important factor of bear population which is necessary to take a hard look at the Proposal's impact to the sustained yield of these bears.

Critically, Plaintiffs' argument rests on this Court agreeing with Plaintiffs' claim that the Board failed to consider "adequate population data." This claim directly conflicts with the opinion of the State's subject matter experts who are owed deference by this Court. The Department's Biologist claimed that the estimates it relied upon could be used to estimate the bear population in the control area, and it is not this Court's place to tell the State how to best measure the bear population at issue or the parameters under which a given scientific study might be acceptable.[84]

Conclusion

While it is possible that Plaintiffs may prevail in their ultimate claim that the Board violated its obligations under Alaska's sustained yield clause, this Court finds that

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[83] *Id.*, n. 17 (quoting *Papers of Alaska Constitutional Convention, 1955–1956,* Folder 210, Terms).

[84] Opp'n to Mot. for Prelim Inj. at 24, n. 117 ("The passage of time alone is not a good metric of whether old science remains good science. The department, utilizing specialized knowledge and expertise, has the discretion to evaluate the usefulness of existing studies given the overall quantum of information available")

at this point in the proceedings, Plaintiffs failed to demonstrate a clear probability of success on the merits of their claim. The information considered by the Board at the July 2025 meeting could be problematic or incorrect. However, the Court is not in the position, nor does it have the authority, to make that determination at this point in the proceedings. The Court simply does not possess the technical and specialized skills to do so. Furthermore, Plaintiffs strictly construe sustained yield principles, when they are designed to be flexible. Therefore, the Court finds the Plaintiffs failed to establish a clear probability that the State had no reasonable basis for their decision to adopt Proposal 1.

The Court understands the parties' passionate positions on this issue – and appreciates the impact of decisions such as these by the Courts. But, for the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction is **DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 6th day of May, 2026.

ADOLF V. ZEMAN
Superior Court Judge

Alaska Trial Courts

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