

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

ALASKA WILDLIFE)
ALLIANCE)
Appellant,)
)
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,)
Appellees.)
_____)

Case No.: 3AN-23-07495CI

DECISION AND ORDER

I. INTRODUCTION AND SUMMARY DETERMINATION

Appellant, Alaska Wildlife Alliance (“AWA”), initiated litigation in this dispute following the large-scale killing of brown bears by the Alaska Department of Fish & Game (“ADF&G”) on state public lands in 2023. The acts by ADF&G in 2023 (and subsequent years), relating to the destruction of brown bears were purportedly authorized and can be traced to an administrative determination by the Alaska Board of Game (“BOG”), taken in 2022.

AWA has raised two constitutional claims in this litigation. First, that the BOG failed to provide procedural due process under Art I, Sec 7 of the Alaska Constitution; and, secondly, that the BOG did not adhere to constitutional requirements in Art. VIII, Sec 4 of the Alaska Constitution requiring that replenishable resources of the State be managed according to the sustained yield principle.

Appellees deny that either constitutional provisions were violated. Additionally, the appellees have challenged AWA’s standing to bring this action.

Having carefully reviewed and considered the briefing, record and arguments of counsel in this dispute, it is apparent to this court that AWA has standing to advance a claim in this case and that the BOG did not follow required constitutional standards when it adopted a regulation authorizing a program to kill brown bears during the Board’s deliberations on January 24, 2022.

The basis for the court’s determination that the BOG failed to adhere to mandatory constitutional mandates is set out in the analysis portion of this Decision and Order, at part IV, *infra*.

II. RELEVANT PROCEDURAL BACKGROUND

Plaintiffs filed a *Complaint for Declaratory and Equitable Relief* on July 27, 2023. The state filed an *Answer* to AWA’s Complaint on October 25, 2023. No *Notice of Appeal*, *Designation of Record* or *Points on Appeal* specified by the Appellate Rules¹ were filed in this lawsuit.

Following subsequent filings by the parties in 2023 and 2024, this court concluded that the action was “substantively an administrative appeal,”² and eventually directed the parties to file briefs in this dispute.³ In reaching the decision in this dispute, this court acknowledges and has relied on the factual and legal submissions provided by both parties as well as the discussion of the procedural history of the case included in the briefing of the parties.

This *Decision and Order* is rendered following oral arguments conducted on March 3, 2025.

III. STANDARD OF REVIEW

The primary issues raised by the parties in this case are grounded in the analysis and interpretation and application of constitutional provisions, including a review of the administrative record and the procedures of the BOG. The State also challenges AWA’s standing to advance the claims in this dispute. In addition, the applicability of provisions contained in the Alaska Administrative Procedures Act⁴ (“APA”), have been briefed and appear relevant to this court’s inquiry.

In this case, this court is required to use and exercise its independent judgment when evaluating the interpretation and application of constitutional and statutory provisions, including

¹ See, e.g., Appellate Rule 204 (b) & (c) and Appellate Rule 601, *et seq.*; see also, AS 44.62.300 (“Judicial Review” provision in Alaska Administrative Procedures Act).

² *Order* dated January 9, 2024.

³ *Order* dated May 6, 2024.

⁴ AS 44.62.010 *et seq.*, AS 44.62.200 (a) and (b), and AS 44.62.300.

the State’s contention that AWA is without standing to challenge the State’s acts in this case. *See, e.g., Wielechowski v. State, Alaska Permanent Fund Corp.*, 403 P. 3^d 1141,1146 (Alaska 2017).⁵

IV. ANALYSIS

A. STANDING

The State argues in their brief that AWA lacks standing in this dispute because AWA’s Complaint did not allege that it has suffered any actual injury by the BOG’s regulatory action.⁶ The state asserts that this failing by AWA requires dismissal.⁷

Consideration of disputes where standing is raised commences with acknowledgment of long-standing pronouncements by the Alaska Supreme Court holding that “this court has liberally construed the judicial limitation of standing and has favored increased accessibility to the courts.” *Sisters of Providence v. Dept. of Health, etc.*, 648 P.2d 970, 974 (Alaska 1982).⁸ The Alaska Supreme Court’s directive to liberally construe standing recognizes that “[s]tanding is a judicial rule of self-restraint necessary to assure ‘the adversity which is fundamental to judicial proceedings.’”⁹

“Whether a party has standing to obtain judicial resolution of a controversy depends on whether the party has a sufficient personal stake in the outcome of the controversy,”¹⁰ which has been described as being an “injury in fact,” a requirement the Alaska Supreme Court has explained is necessary “to assure the adversity which is fundamental to judicial proceedings.”¹¹ Another way a plaintiff can demonstrate standing is to show an interest-injury regarding the subject matter

⁵ Citing, *State v. Ketchikan Gateway Borough*, 366 P. 3d 86, 90 (Alaska 2016), (footnote omitted); quoting *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162, 1167 (Alaska 2009); citing *State v Schmidt*, 333 P.3d 647, 655 (Alaska 2014).

⁶ *Appellee’s Brief* at pg.1 & 11-12.

⁷ *Id.*, at pg. 11.

⁸ *See also, State v. Lewis*, 559 P. 2nd 630, 634 (Alaska 1977); *Coghill v. Boucher*, 511 P.2d 1297, 1303 (Alaska 1973); *K & L Distribs., Inc. v. Murkowski*, 486 P.2d 351, 353 – 54 (Alaska 1971); *United States Smelting, Ref. & Mining Co., v. Local Boundary Comm’n*, 489 P.2d 140, 144 (Alaska 1971)

⁹ *Sisters of Providence* at 974, citing *Moore v. State*, 553 P.2d 8, 23 (Alaska 1976).

¹⁰ *Moore v. State* at 23.

¹¹ *Id.* (citing *Wagstaff v. Superior Court, Family Division*, 535 P.2d 1220, 1225 (Alaska 1975).

of the case. AWA argues its member's commitment to wildlife conservation and protection, is a matter that invites the court to inquire whether AWA has a "sufficient personal stake in the outcome of the controversy to ensure the requisite adversity." *Kanuck v. State, Dept. of Nat. Res.*, 335 P. 3d 1088, 1092 (Alaska 2014).

The requirement that a party base their claims on injury includes more than economic injury. Harm to "non-traditional and intangible interests may be sufficient to create an 'injury in fact.'" *State v. Lewis*, 559 P.2d 630, 635 (Alaska 1977). "The basic idea that comes out in case law is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." ¹²

Significantly, the Complaint filed by AWA commencing this litigation clearly states AWA is an advocacy group based in Alaska that has a special interest in conserving and protecting its wildlife resources.¹³ Such an interest, it argues, is fundamental to its purpose.

Essentially, AWA contends that when the BOG acts improperly and unlawfully with regard to these resources, AWA's members experience harm; the injury is personal but not physical or financial. Fundamentally, AWA asserts that its members have a sufficient personal stake in the outcome of the controversy because of their commitment to the conservation of Alaska's wildlife.

AWA's position that an affected interest injury may be economic or intangible, such as an "aesthetic or environmental interest," is supported in case law.¹⁴ Additionally, this court notes that associational standing is recognized in Alaska, where the interests that groups like AWA express and seek to advance are either germane to the organization's purpose or its primary purpose. *See, e.g., Alaskans for a Common Language, Inc. v. Kritz*, 3 P. 3d 906, 915 (Alaska 2000).

The assertion by AWA that the BOG unlawfully acted to damage a valuable public wildlife resource and AWA's participation before the BOG illustrate sufficient interest and potential damage to the organization and its members. The record in this case reflects that AWA appeared before the BOG and offered testimony objecting to the proposed adoption of a regulation related to the harvest of wolves on federal land that was at issue before the Board prior to the Board's

¹² *State v. Lewis*, n. 13 (quoting *Wagstaff*, 535 P. 2d at 1225, n. 7).

¹³ *See, e.g., Complaint for Declaratory and Injunctive Relief* at pg. 2; Exc. 50.

¹⁴ *See, e.g., Kanuck* at 1092, citing *Friends of Willow Lake, Inc. v. State, Department of Transportation*, 280 P. 3d 542, 547 Alaska 2012).

amended version of that regulation.¹⁵ This court views AWA's objections to the proposed regulatory measure as indicative of adversity.

Wholly apart from the question of whether the Board's substantive decisions created a specific harm to AWA, the harm caused by the Board's alleged due process violations must also be considered. The notice provisions applicable to the Board give the general public rights of notice and participation in its regulatory process. Actions by the Board in derogation of those rights create a unique harm, independent of whether a particular group or citizen stands to suffer an injury as a result of the regulation itself. Citizens attempting to participate in Board hearings and rule-making must be deemed to have standing to bring due process challenges to the manner in which the Board conducts its public business.

In view of the foregoing, and based on precedent that in Alaska standing shall be liberally construed, this court finds that AWA has sufficient adverse interest and standing to challenge the regulatory regime adopted by the BOG in this case.

B. DUE PROCESS

1. Notice

AWA asserts the BOG committed two due process violations. First, that the BOG failed to provide AWA and the public with sufficient notice related to the adoption of a regulation addressing public resources. Specifically, whether the notice of the BOG meeting that was published was sufficiently informative regarding the subject of the Board's proposed regulatory action. The issue about notice in this case is whether AWA would be reasonably aware of how a proposed act to be considered by the BOG would impact its interests in wildlife.

The crux of due process involves the right to adequately protect one's interests. Adequate notice is the common vehicle by which these rights are guaranteed. *Matanuska Maid, Inc. v. State*, 620 P. 2nd 182, 192, 193 (Alaska 1980).¹⁶

AWA contends that both the BOG generic meeting notice¹⁷ and the specific regulatory Proposal 21 notice submitted to the BOG that is the source of contention in this dispute are

¹⁵ Exc. 16-17.

¹⁶ See also, AS 44.62.200 (a)(3) (requirement that an amendment to a regulation must include an informative summary of the proposed subject of agency action).

¹⁷ R. 49-50; Exc. 3-4.

deficient.¹⁸ The noticed proposal published by the BOG and made available to AWA indicates that wolves were the only species to be part of the control program. This proposal was designated as Proposal 21 and originated by the ADF&G. It is also noteworthy that the notice pertaining to Proposal 21 contemplated application on federal land only.¹⁹

The lengthy published explanation provided by ADF&G explaining the proposed regulatory regime informed AWA and the public that Proposal 21 was directed at wolves on federal land. No mention was made by ADF&G about bears or extending a bear removal program on state managed lands.

Based on the actual notice provided by the BOG to AWA regarding Proposal 21, this court finds that the notice provided to AWA by the BOG about the intended regulatory action of the BOG was not sufficiently informative and failed to comply with required due process standards under Art. I, Sec. 7 of the Alaska Constitution, as amplified in specific procedural due process standards set out in the Alaska Administrative Procedures Act.²⁰ The notice provided by the BOG contemplating extension of an existing wolf control program to lands managed by the federal government that was altered to include a bear removal program on state lands substantially changed the subject matter of the proposal. These changes went far beyond varying, clarifying or altering the specific matter of the proposal addressed in the original notice. As a result, the BOG failed to adhere to mandatory due process standards.

2. Opportunity to be Heard.

The second due process violation AWA asserts is that it was denied a reasonable and meaningful opportunity to be heard prior to the BOG adoption of the amended proposal that changed the subject matter of the regulatory proposal at issue.²¹

The state disagrees, arguing that AWA had presented written comments and oral testimony prior to the amendment of the proposal at issue, and could have submitted additional written

18 R. 1-2; Exc.44-45.

19 *Id.*

20 *See, e.g.*, AS 44.62.200 (a) and (b).

21 *Appellant's Brief* at pgs. 9-12.

testimony after the adoption of the amendment and before the conclusion of the BOG meeting.²² The state also argues that AWA had other opportunities to appear and make its views known at a subsequent BOG meeting before the control program was implemented.²³

In response to the State's position, AWA contends that this supposed opportunity after the adoption of the regulatory proposal is not a reasonable and meaningful time to be heard.²⁴

In an administrative proceeding in Alaska, being heard at a meaningful time and in a meaningful manner is the cornerstone of procedural due process. *Keyes v. Humana Hospital Alaska, Inc.*, 750 P. 2nd 343, 353 (Alaska 1988).²⁵ This court is not persuaded by the state's speculative contention that AWA might have had a meaningful opportunity to comment after a regulatory proposal has been adopted, and that this would be sufficient to address due process. AWA and the public have the right to comment on regulatory proposals that impact them before they are adopted. The BOG substantially changed the subject matter of a proposal without allowing AWA further reasonable opportunity to be heard. As a result, AWA's due process rights were violated.

C. SUSTAINED YIELD

The second constitutional claim advanced by AWA is based on Art. VIII, Sec. 4 of the Alaska Constitution, a provision requiring replenishable resources belonging to the public be maintained according to the sustained yield principle.

The essence of AWA's argument regarding this claim is that when the BOG altered a proposal to expand an existing wolf control program applicable on federal lands and instead authorized a bear removal regime on state land, the BOG failed to comply with Alaska's constitutional mandate requiring the BOG to address bear sustainability. AWA contends the BOG failed to consider all of the important, relevant and material factors relating to the sustainability of the bear population.²⁶

22 *Appellee's Brief* at pgs. 17 and 19.

23 *Appellee's Brief* at pgs. 7-8.

24 *Appellant's Brief* at pgs. 9-12.

25 Citing, *Mathew v. Eldridge*, 424 U. S. 319, 333 96 S. Ct 893, 901, 47 L. ED 2nd 18, 32 (1976).

26 *Appellant's Brief* at pgs. 1 and 15-20.

In Alaska, when an agency decision about natural resources is challenged, the role of the judiciary is limited to “ensuring that the agency has taken a hard look at all factors material and relevant to the public interest.” *Sagoonick v. State*, 503 P. 3d 777, 788 (Alaska 2022).²⁷ Alaska’s Supreme Court has instructed that the court “exercises this aspect of its supervisory role with particular vigilance if it becomes aware, especially from a combination of danger signals, that the agency has not really taken a ‘hard look’ at salient problems and has not genuinely engaged in reasoned decision making.” *Southeast Alaska Conservation Council, Inc. v State*, 665 P. 2nd 544, 549 (1983).

In the dispute at bar, this court’s task is to ensure that the BOG took a hard look at salient factors relating to bear sustainability before embarking on a program that could impact bear sustainability. The court is required to undertake this review by using the hard look standard. Using the deferential “hard look” inquiry, this court must ascertain whether the BOG failed to engage in the basic reasoned decision-making required by the Alaska Supreme Court.

This court is persuaded, based on a thorough review of the BOG proceedings that took place during January of 2022, that the BOG failed to engage in the kind of analysis required by the Alaska Constitution and established by the Alaska judiciary. Having carefully reviewed the record and the arguments advanced by the State, it is apparent that the State did not have adequate, relevant population studies or any genuine data about bear sustainability in the area of the control program prior to adopting a proposal that would have an obvious impact on a constitutionally protected public resource.

The issue of the bear population and distribution is an obvious salient issue touching on sustainability. Addressing the sustainability of a constitutionally protected resource like bears almost certainly requires the BOG to engage in more than a rudimentary discussion about a bear population or engage in conclusionary opinions when considering a proposal to initiate a program calling for the unrestricted killing of bears.

The State’s contention regarding bear population and sustainability is that the BOG acted on the information it had.²⁸ AWA contends this information was legally deficient.

²⁷ Quoting *Sullivan v. REDOIL*, 311 P.3d 625, 635 n. 46 (Alaska 2013).

²⁸ Appellee’s Brief at pg. 5.

From a judicial review perspective, the State has conceded it had an inadequate basis for measuring the bear population, an obvious material factor related to sustainability, before the BOG adopted the regulatory proposal.²⁹ This concession about the lack of relevant information was also published on ADF&G's website, stating that "we (the Department), lack estimates of black or brown bear densities in Unit 17 and 18."³⁰

The State's admission that the BOG lacked sufficient bear population and distribution information illustrates the BOG failed to consider all the factors that are important and relevant to assure sustainability of the bear population. The State's position misapprehends clear directives contained in case law. Other than the anecdotal evidence in the record when the BOG heard testimony suggesting that "brown bears are widely distributed in Unit 17 in abundance," there is no credible scientific evidence in the record or discussion by the BOG to support the conclusion that bears could be killed sustainably.³¹

This court is bound to adhere to the pronouncements of the Alaska Supreme Court, including: "When an executive agency decision about natural resources is challenged under Article VIII, the role of the judiciary is to ensure that the agency has 'taken a hard look' at all the factors material and relevant to the public interest."³² Put another way, the task for this court when reviewing the BOG's adoption of the regulatory proposal to remove bears from state land "is to ensure the agency has given reasoned discussion to *all the material facts and issues.* (*emphasis added*).³³

Applying the requisite review standards to the deliberations of the BOG prior to the adoption of the amended regulatory proposal authorizing the unlimited harvest of bears, it is

²⁹ *Appellee's Brief* at pg. 29; Exc. 244; R. 244.

³⁰ *Id.* at pg. 29.

³¹ Exc. 21-48 (Board Meeting January 24, 2022).

³² *Sagoonick* at 788; *see also, Manning v. State, Dept. of Fish & Game*, 355 P.3d 530, 535 (Alaska 2015); *Interior Airboat Association v. State, Bd. of Game*, 18 P.3d 690 (Alaska 2001) (explaining that a court reviewing agency action to ensure whether it is reasonable and not arbitrary "consists primarily that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making."); *see also, West v. Board of Game*, 248 P.3d. 689, 701 (Alaska 2010) (discussing failure to consider an important factor when an agency makes a decision).

³³ *Southeast Alaska Conservation Council* at pg. 549.

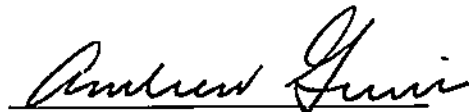
apparent that the kind of deliberative discussion and consideration of important, material factors related to bear sustainability was not undertaken by the BOG on January 24, 2022, resulting in a violation of Art. VIII, Sec. 4 of the Alaska Constitution.

V. CONCLUSION

For the reasons set forth above, and those outlined in the briefing of Appellant AWA, the court concludes that (1) AWA has sufficient interest and adversity to obtain standing in this litigation; and, (2) the Alaska BOG violated Appellant AWA's right to due process of law, by failing to provide AWA with adequate notice or a meaningful opportunity to be heard about a regulatory proposal, as is required by Art. 1, Sec 7 of the Alaska Constitution and amplified by provisions in the Alaska Administrative Procedures Act; and (3) the Alaska BOG failed to comply with the sustained yield provision of Art VIII, Sec. 4, of the Alaska Constitution by failing to consider all the important, relevant and material factors relating to the sustainability of a replenishable public wildlife resource prior to adoption of a regulatory proposal impacting a replenishable public resource.

As a result, for the reasons stated above, this Court hereby **DECLARES** that the Proposal 21, adopted as 5 AAC 92.111 (c), by the Alaska BOG on January 24, 2022, was unlawfully adopted and, therefore, void and without legal effect. The matter is remanded to the Alaska BOG for further proceedings consistent with this opinion.

DATED this 14th day of March, 2025 at Anchorage, Alaska.



Andrew Guidi,
Superior Court Judge

I certify that on 3/14/25 a copy
of the following was mailed/ faxed/ hand-delivered
to each of the following at their addresses of
record. Gel and F, 5 Bennett, R Del Frcte, SOA


Administrative Assistant