Al Barrette 28 April.2017

380Peger Rd.

Fairbanks, AK. 99709

907-452-6047

HB 105 version J

Co – Chairs and members of the committee.

I would ask you not to support HB 105 version J

If passed this would affect subsistence wolf opportunities. Do you support subsistence? Does an Alaskan induvial subsistence user have the same protection under law (AS 16.05.258), as those of a group or community of subsistence users? That is what this bill is asking you. HB 105 is asking you to support taking away several Alaskans lawful right to participate in a subsistence opportunity to trap wolves. I do not think this is a correct way of proceeding or should be enacted.

I base my reasons/logic with the intent, Alaska Supreme Court rulings and commentary of the Alaskan Constitution Article 8 Sec. 3 and 4 and AS 16.05.258 Subsistence Law.

I have inserted "Alaska's Constitution, a citizen's guide. 5th editions commentary" and AS 16.05.258 for your review and study. That shows an induvial Alaskan subsistence user has the same protections as groups or communities of subsistence users.

Article 8 Section 3. Common Use

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

This section enshrines in the Alaska Constitution the common law doctrine that natural resources must be managed by the state as a public trust for the benefit of the people as a whole, rather than for the benefit of the government, corporations, or private persons. Sections 15 and 17 of this article reinforce the public trust doctrine of natural resource management in Alaska, and they work in harmony with this section to prohibit the state from granting to any person or group privileged or monopolistic access to the wild fish, game, waters, or lands of Alaska. Sections 3, 15, and 17 are known as the "equal access clauses" of the natural resources article. The Alaska Supreme Court has said that "although the ramifications of these clauses are varied, they share at least one meaning: exclusive or special privileges to take fish and wildlife are prohibited" (McDowell v. State, 785 P.2d 1, 1989). Allegations of a violation of this section typically involve an allegation of a violation of the other two as well.

Tension exists between the equal access clauses and other provisions of this article that require natural resource management to honor principles of conservation (Sections 2 and 4) and that expect "preferences among beneficial uses" (Section 4). Regulating the harvest of fish, game, and other resources in the interest of conservation involves limiting access to them in some manner, as for example with bag limits and closed seasons. Where is the line that separates legitimate regulatory measures from unconstitutional denial of access guaranteed by Sections 3, 5 and 17? This is a question that is often before the courts.

The Alaska Supreme Court has upheld traditional regulatory tools of fish and game management such as registration requirements and limitations on the means and methods of taking. For example, the court upheld designation by the Board of Fisheries of "superexclusive" fishing districts in which people who register to fish are barred from other districts (State v. Herbert, 803 P.2d 863, 1990). It upheld designation by the Board of Game of urban areas as "nonsubsistence areas" in which no priority may be given to subsistence hunting (State v. Kenaitze Indian Tribe, 894 P.2d 632, 1995). It has also upheld regulations that selectively ban certain equipment in the taking of fish and game. For example, it upheld a ban on spotter airplanes in the Bristol Bay salmon fishery (Alaska Fish Spotter Assn v. State, 838 P.2d 798, 1992), and it upheld a ban on airplanes and airboats as a means of access to certain areas for hunting (Interior Alaska Airboat Association v. State, 18 P.3d 686, 2001).

The courts have also upheld regulations of the Alaska Board of Fisheries that allocate resources among user groups. For example, the supreme court upheld an allocation of salmon among commercial and recreational fishermen (Kenai Peninsula Fisherman's Co-op Association v. State, 628 P.2d 897, 1981). The court of appeals upheld an allocation among commercial fishermen using different types of fishing gear (Meier v. State Board of Fisheries, 739 P.2d 172, Alaska Ct. App., 1987). The supreme court upheld a fixed quota of king salmon to commercial trollers that was challenged by sportsmen who claimed the quota amounted to a special privilege and limited the ability of the vast majority of the public to fish for king salmon (Tongass Sport Fishing Assn v. State, 866 P.2d 1314, 1987).

To be free of constitutional problems, resource laws and regulations must have adequate justification; they must have a reasonable basis for distinctions they make among various users; they must put everyone on an equal footing within a group of users; and they may not prevent anyone from belonging to a particular user group. A regulation may make access to a resource more convenient for some people and less so for others, but convenience of access is not protected by the constitution.

However, a law or regulation in the name of conservation may treat groups unfairly or convey a special privilege in violation of the common use and anti-monopolistic safeguards of Sections 3, 15, and 17. One such law was a subsistence measure adopted by the legislature in 1986 that made access to subsistence uses of fish and game dependent upon place of residency. According to the law, people who lived in areas determined to be urban were denied access to subsistence activities, and those who lived in areas determined to be rural were permitted access. In a decision with far-reaching political impact, the Alaska Supreme Court said the state could legally allocate subsistence resources among different groups if necessary to protect the resource, but it could not use place of residency as criterion for making that allocation (McDowell v. State, 785 P.2d 1, 1989). As a consequence of this decision, the federal government found that state management of fish and game on federal land failed to conform to provisions of the federal Alaska National Interest Lands Conservation Act of 1980, which requires that rural residents have a subsistence preference, and took from the state control of fish and game management on federal land in Alaska.

Section 4. Sustained Yield

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

This section bolsters the commitment to conservation found in Section 2. The principle of sustained yield management is a basic tenet of conservation: the annual harvest of a biological resource should not exceed the annual regeneration of that resource. Maximum sustained yield is the largest harvest that can be maintained year after year. State law defines maximum sustained yield 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). At the time of the constitutional convention, stocks of Alaska's salmon had been reduced to a sad remnant of their past bounty by neglect of the sustained yield maxim. The qualifying phrase "subject to preferences among beneficial uses" signals recognition by the delegates that not all the demands made upon resources can be satisfied, and that prudent resource management based on modern conservation principles necessarily involves prioritizing competing uses.

In a challenge to the legality of the state's predator control program, which sought to reduce the number of wolves and bears in certain areas so that more moose and caribou would be available to hunters, the Alaska Supreme Court determined that the constitutional mandate to manage wildlife on a sustained yield basis applied to predators as well as game animals, and that the phrase "subject to preferences among beneficial uses" allowed the board of game to give priority to prey over predators (West v. State, Board of Game, 248 P.3d 689, 2010). In this case, the court ruled that the plaintiffs failed to show that the department of fish and game had ignored considerations of sustained yield.

Per the Alaska Supreme Court rulings, Alaska legislature created **AS 16.05.258 Subsistence use and allocation of fish and game.**

(a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

(4) if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) distinguish among subsistence users, through limitations based on

(i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(ii) the proximity of the domicile of the subsistence user to the stock or population; and

(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

(1) the social and economic structure;

(2) the stability of the economy;

(3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;

(4) the amount and distribution of cash income among those domiciled in the area or community;

(5) the cost and availability of goods and services to those domiciled in the area or community;

(6) the variety of fish and game species used by those domiciled in the area or community;

(7) the seasonal cycle of economic activity;

(8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;

(9) the harvest levels of fish and game by those domiciled in the area or community;

(10) the cultural, social, and economic values associated with the taking and use of fish and game;

(11) the geographic locations where those domiciled in the area or community hunt and fish;

(12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;

(13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.

(d) Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.

(e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(f) For purposes of this section, "reasonable opportunity" means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.

Section (b) of this Bill should also raise some concern. As it states ***"reserved from all uses incompatible with its primary function to protect wolves from hunting and trapping".*** The Bill's author claims subsistence trappers will still be allowed to trap in the prescribed area for other fur bearers than wolves.

Let me point out what I feel will happen if this language is codified. Animal traps and snare are indiscriminate when it comes to capturing game. There are vast, vast examples of wolves being caught in a trap or snare that were not intended for a wolf. (It happens every year in the state)

So the first time a wolf is "incidental caught". I perceive the law will prevail, and all trapping will be closed in this area to "protect wolves from being trapped". With an exception maybe to martin trapping.

I must also point out. That not allowing subsistence trapping of wolves in this area, would affect those individual subsistence trappers, "reasonable opportunity" and "economy of effort and cost" (AS 16.05.258(f) and 5 AAC 99.010(3)). This would even further impact subsistence trapping if the entire prescribed area was close to all trapping, because a wolf or two was incidentally trapped. Making those individuals trapping in the prescribed area. Having to move to move outside the prescribed area, to have their subsistence needs meet. Costing those trappers time, money and effort. Thus it would affect and impact existing subsistence opportunity to those who have established trap lines outside the prescribed area currently. (Snowball effect)

The prime merit of HB 105 stated by the Bill's sponsor and invited guests, is that of tourism. Dollars to the State.

This is not a viable argument. State Parks and Recreational Division reported/testified to House Resource Committee this month. That State Parks and Recreational had 5 million visitors this last year. That is more than 5 times the amount of Alaskan residents.

Also if you could take a moment and visit the web site for Denali National Park. https://www.nps.gov/dena/learn/management/statistics.htm

You will see persons vising the park (DNP) have only increased for the last 20 years. Having a buffer zone or not, did not affect people wanting to visit it, according to visitation statistics.

With DNP visitation exceeding record attendance and predicting more visitation this year.

It would pose the questions that should be asked in the next hearing.

What is DNP visitor's capacity? Annually and daily. 2. How many days is the park full and visitors have to wait or not be able to go in the park at all?

We also know driving into the park is limited already to drawing permits only. So there is a capacity of visitors using motor vehicles.

Furthermore there has been tens of millions of privet dollars invested in or around the area just outside the park entrance, including Healy, in the last decade to present. Commonly known as Glitter Gulch. I asked some of the business owners why they were investing their monies in this area? Number one answer, people visiting. More people visiting in the future. I also asked them, "how did all the wolf issues effect your decision to invest in area"? Number one answer. Not at all. They told me business owners/investors rely on numbers of people. Not the politics of wolf management.

Tourism has impacted the Alaska economy. For the positive and for the future with or without wolf issues. Clearly from the tens of millions of privet dollars invested in this small part of Alaska. And the 5 million visitors to State Parks, Alaska has a lot to offer to visitors coming to Alaska.

It was noted, by the sponsor and guests "this is an easy decision". If the issue has been around for 100 years and they could get not an area they wanted. What has changed? Wolf populations? Wolf populations change all the time, they go up in great habitat and decline with habitat. Sightabilty wolves? This concept of seeing wolves in DNP has only been documented in the past 20 years. With more emphases the last decade. For political and fact comparing. Like comparing DNP wolf sightings to Yellow Stone National Park. Just look at how many roads Yellow Stone has in compresence to the one road DNP has! What about the habitat. Yellow Stone has white tail, mule deer, elk, antelope, and sheep for large ungulates. DNP has only sheep, caribou, and moose, currently all down in population and densities estimates. This directly effects wolf population and densities.

Scientists and the sponsor have claimed a certain historical wolf pack is gone because of trapping or hunting. They are miss leading you. The wolves that may have been using that denning area last, may be gone, true. But the genealogy still exists. This can be verified by DNA samples.

End closing, the sponsor nor invited guests can show you any data on how many potential tourist the state may have lost, or may lose in the future. But entrepreneurs have shown you clearly, they are

investing in are going to continue to invest in Alaska. Not because of the one egg in the basket (wolves) but because all the grand juries our State has to offer. Wolves made it thought the days of Frank Glacier and government trapping and poising, and they will continue to exist without buffer zones.