

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5974 HOUSE RESOURCES

378



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 485-3715

## M E M O R A N D U M

TO: All Members  
House Resources Committee

FROM: Representative Cliff Davidson  
Representative Curt Menard  
Co-Chairman, House Resources Committee

DATE: April 12, 1989

SUBJECT: Executive Session on House Bill 33

On Friday, March 14th there will be an executive session on House Bill 33, "An Act amending and extending the fisheries business tax credit".

Because of the confidential nature of the meeting, only legislators, Department of Revenue staff, Department of Law staff and the Governor's staff may attend the meeting. Please note that members of the public and legislative staff cannot attend the meeting.

Also, please note the location change to the Governor's Conference Room on the 3rd floor of the Capitol Building at 3:00 p.m. Afterwards, we will continue the Resources meeting on House Bill 55 in the Resources Committee room.

Please fill the attached form. You must have a notary public witness your signature, available at the Lieutenant Governor's Office. Please bring them with you at 3 p.m. on Friday to the Governor's Conference Room.

Please review the enclosed document for more information.

Thank you.

Enclosure

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

STEVE COWPER, GOVERNOR

STATE OFFICE BUILDING  
P.O. BOX SA  
JUNEAU, ALASKA 99811-0400

April 11, 1989

### GUIDELINES FOR REVIEW OF STATUS OF THE FISH TAX CREDIT PROGRAM BY THE HOUSE RESEARCH COMMITTEE

The House Resources Committee has requested from the Department of Revenue a complete analysis of the fish tax credit program under AS 43.40.

Some of the information to be reviewed by the House Resources Committee in the course of their investigation may be subject to the disclosure restrictions for tax returns and reports under AS 43.05.230 and AS 09.25.100.

In order to maintain the confidentiality of any such information and to comply with the Attorney General's advice, the following guidelines will apply to any confidential tax data covered by the disclosure prohibitions under AS 43.05.230 and AS 09.25.100.

1. Confidential tax data will be reviewed only in a meeting attended solely by appropriate state officials, specifically:

The Governor and his staff.

The Commissioner and staff of the Department of Revenue.

The Attorney General and staff of the Department of Law.

Legal counsel to the State.

Members of the Legislature.

2. No information will be provided that is covered by other non-disclosure agreements. For example, tax information that is protected under agreements with the U.S. Internal Revenue Service will not be the subject of this review.

3. All persons in the meeting agree to maintain the confidentiality of any confidential tax information now and in the future.

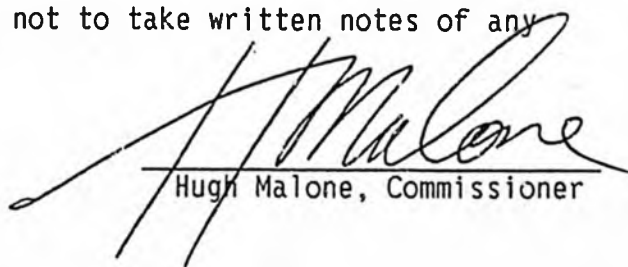
This agreement will include providing a signed written non-disclosure agreement for those persons who have not already done so, stating that the person has read and understands the law and the penalties provided for unauthorized disclosure, and that the person agrees to comply with the law.

4. No written materials containing confidential tax data will be distributed at the meeting.

5. Participants will be requested not to take written notes of any confidential tax data.

DATED:

April 12, 1989

  
Hugh Malone, Commissioner

DEPARTMENT OF REVENUE  
CONFIDENTIALITY AGREEMENT

I, \_\_\_\_\_, being first duly sworn, agree and stipulate as follows:

1. I acknowledge that I have read and understand the following paragraph and the attached abstract (AS 43.05.230 - Disclosure of Tax Returns and Reports - Form 04-016 dated 6/83).

In accordance with AS 43.05.230, it is a violation of Alaska Statutes and Federal code for any person having information relating to a taxpayer which is obtained during the performance of duties on behalf of the State of Alaska to discuss or reveal in any manner the text or terms of this information with anyone not having a need and legal right to know.

2. I will or may be exposed to certain information entitled to confidential treatment. I will not discuss any such information, or in any manner transmit or cause to be transmitted either the text or terms of any such information other than to persons who have also signed this confidentiality agreement, and

3. To the extent that I may be involved in the handling or storage of any such information, I will handle and store such information in a manner calculated to prevent its exposure to persons who have not signed this confidentiality agreement.

4. I understand that a violation of the confidentiality requirements is unlawful and may result in criminal charges being brought against me.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Name

SUBSCRIBED and SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of Alaska  
My Commission Expires: \_\_\_\_\_

AS 43.05.230. DISCLOSURE OF TAX RETURNS AND REPORTS

(a) It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under AS 43.05.010 - 43.80.040, except

(1) in connection with official investigations or proceedings of the department, whether judicial or administrative, involving taxes due under AS 43.05.010 - 43.80.040;

(2) in connection with official investigations or proceedings of the child support enforcement agency, whether judicial or administrative, involving child support obligations imposed or imposed under AS 25.05.011 - 25.30.910 or AS 47.05.010 - 47.80.900;

(3) as provided in AS 38.05.036 pertaining to audit functions; and

(4) as otherwise provided in this section.

(b) The department, upon written request, shall furnish to the taxpayer a copy of his tax return upon payment of a fee of \$1 per page.

(c) The department may permit the proper officer of the United States or of a state, territory or possession of the United States or of the Dominion of Canada or of a province or territory of Canada, or his authorized representative, to inspect tax returns or reports filed with the department, or may furnish to the officer or representative a copy of the tax return, if the other jurisdiction grants substantially similar privileges to the department or its representative or to counsel for the state; and if the department determines that the other jurisdiction provides adequate safeguards for the confidentiality of the returns and reports, and that the returns and reports will be used for tax purposes only. The department may also permit the employment security division of the Alaska Department of Labor to inspect tax returns or reports filed with the department or may furnish a copy of the tax returns for tax purposes only.

(d) The commissioner of revenue at his discretion may furnish to the Multistate Tax Commission or other authorized agent information contained in the tax returns, reports, related schedules and documents filed under an audit or investigation of a multistate business made by the department. This information may be furnished for tax purposes only. The Multistate Tax Commission or other authorized agent may make the information available to the tax officials of other states, the District of Columbia, the United States and its territories for tax purposes only.

(e) Nothing in this section prohibits the publication of statistics so classified as to prevent the identification of particular returns or reports or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with other relevant information which in the opinion of the department may assist in the collection of delinquent taxes.

(f) A wilful violation of the provisions of this section is punishable by a fine of not more than \$5,000, or by imprisonment for not more than two years, or by both.

(g) The information contained in a license issued by the commissioner of revenue under AS 43.50.010-43.50.190, 43.60.010 - 43.60.040, 43.65.010-43.65.060, 43.70.020 - 43.70.120, and 43.75.011-43.75.140 is public information.

HISTORY (Sec. 2 ch 166 SLA 1976; am sec. 32 ch 126 SLA 1977; am sec. 5 ch 61 SLA 1980; am secs. 2,3 ch 113 SLA 1980)

DATE: \_\_\_\_\_

4-016 (6/83)

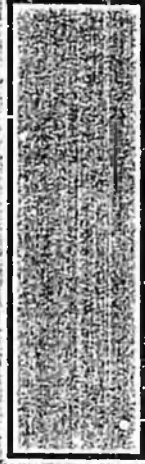
\_\_\_\_\_  
Signature

HPB

38

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

**ALASKA  
MISCELLANEOUS  
GAME REGULATIONS**



**No. 9—Effective July 1, 1988**

**Alaska Board of Game  
Alaska Department of Fish and Game**

# HOUSE COMMITTEE REPORT

(9)

Date Referred: January 9, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/26/90

The RESOURCES Committee recommends that:

HOUSE BILL NO. 38 [CAPTIVE-BRED GROUSE FARMING]  
"An Act relating to noncommercial farming of captivebred grouse; and providing for an effective date."

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note ADF+G
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: \_\_\_\_\_
- zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

Bill Hudson

Scott Maranda

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

Scott Maranda - NR

Chris D. ... NR

Cliff Davidson No Rec

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cliff Davidson  
Chairman's signature

## FISCAL NOTE

**REQUEST:**

Revision Date: 3/27/90 Agency Affected: Fish and Game  
 Title: An act relating to noncommercial farming of captive-bred grouse BRU: Wildlife Conservation  
 Sponsor: Representative Menard Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING:** (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

No FY 90 Impact.

Prepared by: Molly McCammon  
 Division: Commissioner's Office

Phone: 465-4100  
 Date: 3/27/90

Approved by Commissioner: *Thomas W. Wiley*  
 Agency: Department of Fish and Game

Date: 3/27/90

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Wildlife Conservation	BILL NUMBER HB 38	SPONSOR Menard
SHORT TITLE OF BILL An act relating to noncommercial farming of captive-bred grouse			
DEPARTMENT POSITION Opposed			
PREPARED BY Donald E. McNight	DATE 1/23/89	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 1/24/89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Public Safety Department of Environmental Conservation	CONSTITUENT GROUPS AFFECTED BY BILL Aviculturists All users of Alaska wildlife
ORGANIZATIONAL SUPPORT FOR BILL Alaska Game Bird Association	ORGANIZATIONAL OPPOSITION TO BILL Board of Game

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

A few individuals within Alaska wish to import, export and sell captive-bred grouse. The sale of wildlife is prohibited by statute and regulation. Importation of grouse, except one species, is prohibited by regulation. The Board of Game addressed this issue in 1987 and passed a regulation creating an Aviculture Permit and expanding the list of species that may be imported without any permit. These actions allow a wide variety of exotic birds to be imported, exported and sold. However, the Board specifically prohibited grouse to be imported or sold. This decision is based on concerns about introduction of

ANALYSIS OF BILL/PROGRAM EFFECTS

Passage of HB 38 would essentially deregulate the possession, import and export of native and exotic captive-bred wild grouse; eliminate the capability of the department to control or manage this activity, remove the authority of the Board of Game to regulate this activity and reduce the ability of the Department of Public Safety to enforce some regulations. This erosion of the authorities of both the department and the Board regarding protection of Alaska's wild grouse has serious implications to the management of all Alaska's publicly-owned wildlife and fisheries resources.

In addition to the implications of this significant legal precedent, the department has specific concerns about the activities allowed by this legislation. Alaska has healthy, flourishing populations of 7 native grouse and ptarmigan species, including the willow ptarmigan, Alaska's state bird. Members of the grouse family are highly susceptible to a number of disease organisms. Unregulated and uncontrolled commerce involving wild grouse will increase the risk of exposure of our wild grouse and ptarmigan to disease organisms.

AMENDMENTS PROPOSED

Sec 16.05.333(e) should read "grouse" means a member of the avian subfamily Tetraoninae. As a result of recent taxonomic changes family Tetraonidae is now considered subfamily Tetraoninae of the family Phasianidae.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

BILL ANALYSIS

HB 38

Page 2 of 2

BACKGROUND/LEGISLATIVE INTENT (continued)

diseases, hybridization, and competition with native grouse. Also, sale of live wildlife has numerous negative aspects and is not in the best interests of wildlife in Alaska.

ANALYSIS OF BILL PROGRAM (continued)

The department believes that the risk involved to our irreplaceable native game birds, no matter how slight, does not justify deregulating importation of captive-bred grouse which may harbor exotic disease organisms. Another risk factor associated with uncontrolled importation of captive-bred grouse is the potential for genetic mixing should captive birds escape and survive in the wild. Similarly, accidental introduction of nonnative grouse species into Alaska has the potential for introducing a competitor which could eventually exclude or reduce a native species.

This bill emphasizes the noncommercial aspects of gamebird farming, but deregulation of the permitting process for grouse would make it extremely difficult to enforce existing laws and regulations regarding commercial sale of these resources. We do not know what noncommercial sale means. The Board of Game, reflecting the wishes of Alaska's citizens toward "privatization" of Alaska's publicly-owned wildlife resources, has repeatedly acted to prohibit the commerce in wildlife. Passage of HB 38 would make it impossible to enforce existing laws prohibiting commerce in live native grouse because captive-bred and wild caught grouse are indistinguishable.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act relating to noncommercial farming of captive-bred grouse  
Sponsor: Representative Menard  
Requestor: \_\_\_\_\_

Agency Affected: Fish and Game  
BRU: Wildlife Conservation  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Passage of HB 38 would have no significant fiscal impact on the Division of Wildlife Conservation.

Prepared by: Don McKnight Phone: 465-4190  
Division: Wildlife Conservation Date: January 18, 1989

Approved by Commissioner: [Signature] Date: 1/21/89  
Agency: \_\_\_\_\_

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# MEMORANDUM

A1G

State of Alaska  
DEPARTMENT OF LAW

TO: Hon. Don W. Collinsworth  
Commissioner

DATE: October 20, 1987

Alaska Department of Fish and Game FILE NO: 661-88-0066

TELEPHONE NO:

THRU:

SUBJECT: Legal status of captive-bred birds



SEM  
FROM: Sarah E. McCracken  
Assistant Attorney General  
Natural Resources-Anchorage

Your memorandum of August 5, 1987, requested our opinion regarding whether the offspring of birds held in captivity under a permit from your office become the private property of the permittee, or whether the offspring bred in captivity remain state "property."

Our summary answer is that the progeny of birds held in captivity under a permit are still "owned" by the state in trust for all its citizens, absent a contrary provision in the permit. You probably have, however, the legislative authority to allow private ownership of these offspring, under certain conditions. Our reasons for these conclusions follow.

One must begin analysis of your question by recognizing the fundamental common law principle that wild animals in the state are the property of the sovereign, held in trust for the people of the state. Geer v. Connecticut, 161 U.S. 519, 526, 40 L.Ed. 793, 796 (1896), overruled on other grounds, Hughes v. Oklahoma, 441 U.S. 322, 60 L.Ed. 250 (1979). This principle is embodied in the Alaska Constitution, article VIII, section 3, which provides that fish and wildlife, wherever occurring in their natural state, are reserved to the people for common use.

As explained by the court in Geer, id., the common law trust ownership principle means that game is not the subject of private ownership except in so far as the people may elect to make it so. The Alaska Legislature has specifically established this principle in AS 16.05.920(a): unless authorized by law or regulation under the fish and game code, it is unlawful to take, possess, buy, or sell game.

As explained in 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-878-0149), the legislature has granted to the Commissioner of Fish and Game the authority to issue permits to individuals to

Hon. Don W. Collinsworth  
Commissioner  
Alaska Department of Fish and Game  
661-88-0066

October 20, 1987  
Page 3

Defendant's pre-protection sparrow hawks were acquired and held under permits from Wisconsin and Utah. His permissive possession of the birds did not carry with it traditional incidences of property rights .... The Wisconsin permit authorizes the collection "for scientific purposes" of designated birds for the purpose of "study of their reproductive behavior" and requires that the birds be kept at a designated place. The Utah permit authorizes the sale of "young produced from captive birds" under specified conditions. At most the states granted a partial property interest which did not encompass all usual property rights.

Id. (Emphasis added, citations omitted).

Although no Alaska statutes or regulations expressly address sale of progeny of captive birds held under a permit, no law allows for it, and hence under AS 16.05.920(a) it is not lawful. 3/ It makes no difference whether the permit is for scientific, educational, or propagative purposes.

It should be noted, however, that the people of the state, through laws enacted by their elected officials, have vested your department with broad authority with respect to

---

3/ The rights acquired in wildlife such as birds held under a collecting permit are, unless otherwise specified, to be distinguished from the rights acquired, for example, under AS 16.40.010 -- 16.40.030 to surplus bison and musk oxen and even those acquired under a permit to collect foxes for fox farming issued under AS 16.05.930(f). Under AS 16.40.010 the state may grant a person title to bison or musk oxen and thereby the person acquires all the indicia of ownership. That was the intent of the legislature. See 1986 Inf. Op. Att'y Gen. (July 31; 661-86-0532). Similarly, it is evident from the statutory language and purposes of AS 16.05.930(f), which allows foxes to be collected to enhance the genetic stock of commercial fox farms, that the offspring of these foxes become the property of the fox farmer and may be sold. See 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149).

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# MEMORANDUM

A/G

State of Alaska  
DEPARTMENT OF LAW

TO: Hon. Don W. Collinsworth  
Commissioner

DATE: October 20, 1987

Alaska Department of Fish and Game FILE NO: 661-88-0066

TELEPHONE NO:

THRU:

SUBJECT: Legal status of captive-bred birds



SEM  
FROM: Sarah E. McCracken  
Assistant Attorney General  
Natural Resources-Anchorage

Your memorandum of August 5, 1987, requested our opinion regarding whether the offspring of birds held in captivity under a permit from your office become the private property of the permittee, or whether the offspring bred in captivity remain state "property."

Our summary answer is that the progeny of birds held in captivity under a permit are still "owned" by the state in trust for all its citizens, absent a contrary provision in the permit. You probably have, however, the legislative authority to allow private ownership of these offspring, under certain conditions. Our reasons for these conclusions follow.

One must begin analysis of your question by recognizing the fundamental common law principle that wild animals in the state are the property of the sovereign, held in trust for the people of the state. Geer v. Connecticut, 161 U.S. 519, 526, 40 L.Ed. 793, 796 (1896), overruled on other grounds, Hughes v. Oklahoma, 441 U.S. 322, 60 L.Ed. 250 (1979). This principle is embodied in the Alaska Constitution, article VIII, section 3, which provides that fish and wildlife, wherever occurring in their natural state, are reserved to the people for common use.

As explained by the court in Geer, id., the common law trust ownership principle means that game is not the subject of private ownership except in so far as the people may elect to make it so. The Alaska Legislature has specifically established this principle in AS 16.05.920(a): unless authorized by law or regulation under the fish and game code, it is unlawful to take, possess, buy, or sell game.

As explained in 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-878-0149), the legislature has granted to the Commissioner of Fish and Game the authority to issue permits to individuals to

Hon. Don W. Collinsworth  
Commissioner  
Alaska Department of Fish and Game  
661-88-0066

October 20, 1987  
Page 2

capture wild animals for scientific, educational, and propagative purposes. AS 16.05.340(b). Under this authority, you may issue permits to individuals to capture certain birds in Alaska for purposes specified in the permit, including propagation. 1/ As explained in the 1986 Inf. Op. Att'y Gen., supra, the grant of a permit to possess animals suggests that the granting authority (the state) retains some element of its trust responsibility over the game, allowing the state to continue to impose terms and conditions upon use of the animals. We believe this applies equally to the progeny of captive wild animals. 2/ The sovereign's authority to retain control over captive-bred birds has been recognized, for example, in the context of the Migratory Bird Treaty Act, 16 U.S.C. §§703-718, explained below.

In United States v. Richards, 583 F.2d 491 (10th Cir. 1978), a college professor who held permits to possess and propagate live sparrow hawks (kestrels), was convicted of illegal sale of sparrow hawks that had been bred in captivity. The court on appeal noted that federal regulations expressly provided that sale of certain birds governed by the Migratory Bird Treaty Act was unlawful, "whether or not raised in captivity." Id at 496. These regulations were held to apply to the defendant even though he acquired the original hawks before enactment of the Migratory Bird Treaty Act and adoption of the implementing regulations. The court, ruling that the federal ban on sale of kestrels bred in captivity was not an unconstitutional deprivation of property held:

---

1/ With respect to certain birds subject to special federal laws such as the Migratory Bird Treaty Act, 16 U.S.C. §§701-718, and the Bald Eagle Protection Act, 16 U.S.C. §§668-668d, your authority may be restricted by overriding federal law.

2/ There may be a factual and statutory limitation upon this retained state authority over time, in that it is possible that certain birds, over a long period of time and many generations, may become "domestic" and no longer subject to the state's regulatory jurisdiction. See AS 16.05.020 and AS 16.05.940(17). It is beyond the scope of this memorandum to determine when a population of wild birds could become "domestic," except to say that it could probably not occur within the lifetime of one permittee.

Hon. Don W. Collinsworth  
Commissioner  
Alaska Department of Fish and Game  
661-88-0066

October 20, 1987  
Page 3

Defendant's pre-protection sparrow hawks were acquired and held under permits from Wisconsin and Utah. His permissive possession of the birds did not carry with it traditional incidences of property rights .... The Wisconsin permit authorizes the collection "for scientific purposes" of designated birds for the purpose of "study of their reproductive behavior" and requires that the birds be kept at a designated place. The Utah permit authorizes the sale of "young produced from captive birds" under specified conditions. At most the states granted a partial property interest which did not encompass all usual property rights.

Id. (Emphasis added, citations omitted).

Although no Alaska statutes or regulations expressly address sale of progeny of captive birds held under a permit, no law allows for it, and hence under AS 16.05.920(a) it is not lawful. 3/ It makes no difference whether the permit is for scientific, educational, or propagative purposes.

It should be noted, however, that the people of the state, through laws enacted by their elected officials, have vested your department with broad authority with respect to

---

3/ The rights acquired in wildlife such as birds held under a collecting permit are, unless otherwise specified, to be distinguished from the rights acquired, for example, under AS 16.40.010 -- 16.40.030 to surplus bison and musk oxen and even those acquired under a permit to collect foxes for fox farming issued under AS 16.05.930(f). Under AS 16.40.010 the state may grant a person title to bison or musk oxen and thereby the person acquires all the indicia of ownership. That was the intent of the legislature. See 1986 Inf. Op. Att'y Gen. (July 31; 661-86-0532). Similarly, it is evident from the statutory language and purposes of AS 16.05.930(f), which allows foxes to be collected to enhance the genetic stock of commercial fox farms, that the offspring of these foxes become the property of the fox farmer and may be sold. See 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149).

Hon. Don W. Collinsworth  
Commissioner  
Alaska Department of Fish and Game  
661-88-0066

October 20, 1987  
Page 4

management of wildlife, and we believe it would probably be within your authority under AS 16.05.020 and AS 16.05.340(b) to specify by regulation (or perhaps simply in a permit) that the progeny of birds held under a collecting permit would become the permittee's property and could be freely sold or traded. Any such authorization could, however, only be made after full consideration of constitutional principles of sustained yield management, and the biological, enforcement, and management ramifications of allowing such commerce in wildlife. See 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149); see also 1986 Inf. Op. Att'y Gen. (July 31; 661-86-0532).

In summary, under existing statutory and regulatory provisions the progeny of birds held in captivity under a collecting permit from your office do not automatically become the property of the permittee. They remain subject to the same ownership interest the state retains in the adults, unless the permit and applicable regulations specify otherwise.

If we can be of further assistance on this matter, please let us know.

SEM/jmo

cc: W. Lewis Pamplin ✓  
Larri I. Spengler

a:moabirds.sem



## GREATER PALMER CHAMBER OF COMMERCE

### RESOLUTION SUPPORTING HOUSE BILL NO. 38

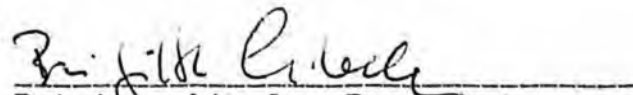
WHEREAS, Alaska Statute 16.05 Section 1 provides for the raising and breeding of various game birds; and

WHEREAS, House Bill No. 38 would amend this statute to allow for the breeding and raising of captive-bred grouse; and

WHEREAS, the raising of captive-bred grouse for noncommercial use is not inconsistent with the Greater Palmer Chamber of Commerce's objectives of actively promoting and perpetuating the business, commercial, and industrial interests of the Palmer Community.

NOW, THEREFORE, BE IT RESOLVED that the Greater Palmer Chamber of Commerce supports House Bill No. 38.

PASSED AND APPROVED by the board of directors of the Greater Palmer Chamber of Commerce on this 21st day of February, 1989.

  
\_\_\_\_\_  
Brigitte Lively, President

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

*Regelia*  
STEVE COWPER, GOVERNOR

333 RASPBERRY ROAD  
ANCHORAGE, ALASKA 99518-1599  
PHONE: (907) 344-0541

January 13, 1989

Mr. Kenneth Rivard  
P. O. Box 871842  
Wasilla, Alaska 99687

Dear Mr. Rivard:

As agreed in our meeting of December 7, 1988 and noted in Mr. Duncan Fowler's December 20 letter regarding that meeting, this letter constitutes the department's response to the points raised in your November 9 letter. We have taken the liberty of numbering all relevant points in your 3-page "list of topics for discussion" (enclosure). Those numbers correspond to the numbered paragraphs of our response below.

1. We agree that SB 443 was not directed at native grouse and ptarmigan; however, its passage could have affected native grouse. We agree that the aviculture permit is not a collection permit.
2. The department does not have a copy of any permit issued to you in 1982. If you would care to provide a copy, we would be happy to comment on it. For your information, however, all collecting permits issued in 1982 specified that "the purchase or sale of any birds . . . acquired by virtue of this permit" is not authorized. There was no specific mention of "progeny." Nevertheless, because it would be impossible to acquire offspring without first collecting wild adults (i.e., by virtue of the permit), a proscription on purchase or sale of progeny is therefore implicit in that permit restriction.

The "application form" that you used in 1982 was a multi-purpose form available to applicants for use in applying for various types of permits. Although the current application form (in use since May 1983) does not contain the word "propagative," any applicant may request a permit for that purpose, and the department may issue such a permit, if appropriate.

Early permits issued to you did not specifically mention disposal of progeny because the department never realized it would become an issue. In fact, until 1986 we were unaware that you had ever successfully bred birds collected from the wild, and until 1987 we were unaware that any chicks had ever survived to adulthood. You should be aware that any live grouse, regardless of how, when, or where it was obtained, may not be possessed without a department permit. Consequently, all your reports and renewal requests should have included the total number of all grouse/ptarmigan--including captive-bred progeny--in possession at the end of the calendar year.

3. This statement is incorrect. The attorney general's opinion you have cited states that the department "probably" has the authority "to specify by regulation" that progeny of birds held under a collecting permit would become the permittee's property. That opinion, however, did not discuss the implications of 5 AAC 92.029 with respect to the sale of live game. In a separate opinion on private possession of game (661-87-0149), the attorney general stated that "the department has authority to adopt regulations allowing private ownership of bison and musk oxen only." The opinion went on to say that "the department has authority to allow collection of game animals for scientific, educational, propagative, or exhibition purposes, which we believe could not include any commercial exploitation" (emphasis added). Finally, the Department of Law cautioned the Board of Game to carefully study the legal implications of adopting any regulation authorizing private ownership of wildlife and advised the department to fully inform the board of departmental decisions regarding collecting permits.

The department has consulted informally with the Department of Law regarding these and other opinions dealing with the possession and use of live game. It is our belief that the department does not have authority to allow private ownership and sale of "game," including any Alaskan species or its progeny (except bison and musk oxen). State statutes give the board authority to regulate possession and use of game [AS 16.05.255(9) and 16.05.920]. The regulation adopted by the board governing possession of live game (5 AAC 92.029) specifically withholds from the department the authority to issue any permit that allows purchase or sale.

4. We agree that a game farming license does not restrict the sale or trade of game. Nor does it allow the sale or trade of game when such sale or trade is prohibited by other laws. In fact, any breeder of game birds who engages in commerce must have a game bird farming license to legally buy or sell any species they legally own, including capercaillie, captive-bred waterfowl, pheasants, quail, and other species of game birds listed under 5 AAC 92.028 and 92.029. Phil

Koehl's June 6, 1985 letter is not clear on this matter and his choice of words was poor. In fact, that letter was written at a time when you had imported capercaillie and black grouse into the state without legal authorization and for the first time indicated that you had intentions to breed birds for future sale. The department decided not to cite you or seize illegally imported birds, but to issue you a permit which allowed out-of-state sale of these nonnative game birds, but only if you possessed a game farming license.

There was never any intention to authorize sale of native grouse or ptarmigan (which, according to your reports, you did not possess in June 1985). That is why every permit you have ever been issued that allows for the collection or possession of native grouse or ptarmigan also prohibits sale or barter. Moreover, no permit ever issued to you (or any other permittee) specified that you "owned" any animal or its progeny that may have been in your possession.

5. Permits 85-16 and 86-280 were issued for research purposes and did not authorize sale. The permittee never indicated in any correspondence that he had any intention of selling progeny of birds collected in Alaska.
6. Mounted nonmigratory birds may be sold under authority of 5 AAC 92.290. Furthermore, such mounts may then be sold only if legally harvested during the hunting season. Specimens obtained under authority of a department collecting permit may not be bought or sold, regardless of whether they are alive or dead. When reindeer, musk oxen, and bison are lawfully owned, they are no longer defined as "game" and may be purchased and sold [AS 16.05.940(2)]. Furbearers may be sold under separate authority of statutes and regulations that do not apply to game birds. However, permits to collect furbearers from the wild are issued for the genetic improvement of existing fur farm stock--not for the establishment of commercial operations. Salmon eggs are not under the purview of the Board of Game, and purchase and sale are authorized by statute, not the department. The "private entities" that may buy and sell eggs are private nonprofit hatcheries, which may sell only to other private nonprofit hatcheries (AS 16.10.420).
7. Prior to adoption of the regulation creating an aviculture permit, grouse were occasionally collected for avicultural purposes, which did not include and were never intended to include any sale or commercial use. Such permits are no longer issued because the board, in creating the aviculture permit, indicated that use of tetraonids (except for capercaillie) for aviculture purposes was inappropriate.
8. The disposition of any game received by the department depends on the species of animal, when and how it was

obtained, and the ability of the department to place the animal(s) in a zoo or wildlife research facility.

9. When your regulation proposal for an aviculture permit was amended and adopted by the Board of Game, the board, not the department, made a decision to prohibit the use of grouse or ptarmigan except capercaillie for aviculturist purposes. Mr. Duncan Fowler in his August 9, 1988 letter to you (pages 4 and 5) summarized the factors considered by the board. The department does not have the authority to alter the board's decision.
10. The department explained our concerns and provided recommendations to the Board of Game regarding this entire issue. We did not believe it was necessary to comment on the variety of written information you presented to the board. Apparently the board felt the same way because they did not ask for a detailed response from the department. We agreed with some of the information you presented to the board, but remained convinced that what you were asking for was not in the best interest of wildlife resources in Alaska.
11. The potential for disease introduction and/or transmission is only one of the reasons the department is opposed to importation of grouse. We have always acknowledged that the degree of risk associated with disease is limited, but it does exist. The department weighed the wishes of a few individuals against the potential problems that importation of grouse might create and determined that benefits to the public and the wildlife resource were lacking and did not warrant taking such a risk. We believe our recommendations to the board and the legislature have been both prudent and correct.

The department is concerned about the potential for introduction of several diseases and parasites including (but not limited to):

- (1) pullorum disease (Salmonella pullorum);
  - (2) fowl typhoid (Salmonella gallinarum);
  - (3) avian adenoviruses;
  - (4) cecal worm (Heterakis spp.); and
  - (5) gapeworm (Syngamus trachea).
12. The department has never tried to purposely confuse or mislead. The bill analysis on SB 443 summarized some of our concerns with the bill, and we continue to oppose legislation that would politicize sound wildlife management decisions and remove them from the public process and regulatory authority of the Board of Game and this department. Because you oppose the department's stand on this

issue, it is understandable that you disagree with the opinions expressed in the analysis. Regarding the organized opposition cited by the department in the bill analysis, the board had already indicated its opposition to importation and commercial use of grouse for avicultural purposes; the Audubon Society informed the department that it opposed the bill and later so stated in a letter. We erred in mistaking opposition expressed by individual falconers as representing the Alaska Falconer's Association. We also erred by listing the Wildlife Federation of Alaska as opposing the bill for similar reasons. I have apologized to you on several occasions for those staff errors and have implemented changes which ensure that such errors will not occur in the future.

13. The department has made a diligent effort to work with you. Since 1983, we have issued you 14 permits and permit amendments to hold and breed a wide variety of game birds. You currently have a scientific permit to possess and propagate 18 rock ptarmigan, 19 white-tailed ptarmigan, 9 willow ptarmigan, and 19 spruce grouse. In the past you have also been issued permits to collect and propagate blue grouse.

The department has restricted your permits for two actions. First, you have not been allowed to sell these game birds or their progeny because sale of game is prohibited by law (see item 13). Second, the department has denied you a permit to import grouse into Alaska. The board specifically prohibited importation of grouse (except capercaillie) for avicultural purposes when it created the aviculture permit in 1987 and we agree with that decision. The department does not have the authority to issue permits for sale or importation of grouse when statutes and regulations prohibit the activity.

14. Refer to item 12, above.
15. I am unaware of letters from this department denying that nonresidents ever collected and exported grouse or grouse eggs. Please provide copies of any such letters, and I will be happy to comment on them. The department has issued permits authorizing nonresidents to collect game bird species (including grouse) for valid scientific and educational purposes, but never for sale or commercial gain.
16. The department is not confused about this matter. Grouse, whether wild, captive, native, exotic, or captive-bred, are all grouse and therefore "game," by definition. Your statement on page 3 (lines 8-10) of the attachment to your November 9, 1988 letter seems to make a distinction between the progeny of wild-caught grouse and captive-bred grouse in captivity. You have both at Wild Acres Farm, and they are one and the same under the law.

17. Although you may feel the guidelines are unreasonable and discriminatory, they are only guidelines and not requirements. They were intended to provide pertinent information to people who may be interested in aviculture. Failure of a person to meet all the guidelines would not necessarily preclude issuance of an aviculturist permit. The department did not conduct "expensive research" before writing the guidelines. The guidelines for disposal of fecal waste were written after consultation with Dr. Bert Gore, State Veterinarian, and Dr. Milton Friend of the U.S. Fish and Wildlife Service, National Wildlife Health Center in Madison, Wisconsin. We also reviewed requirements for aviculturists from several other states and adopted guidelines that were appropriate for Alaska. Our goal was to provide information to aviculturists that would reduce health risks without high costs.
18. The department was advised in March 1988 by the Department of Law that only the Board of Game could authorize the operation of game bird hunting preserves. Consequently, the department stopped issuing such permits pending board consideration of the issue. We cannot understand your suggestion that by acting legally in refusing to issue permits the department was somehow acting improperly. The department informed Mr. Palmer that action by the Board of Game was required before a permit to operate a game bird hunting farm could be issued. We offered to assist him in drafting a proposal for consideration by the Board of Game.
19. The U.S. Fish and Wildlife Service (FWS) and this department agreed to adopt the same standards for raptor rehabilitators. We were advised by the FWS that the new standards would be imposed as federal permits came up for renewal (federal permits are issued for several years as opposed to state permits which are issued annually). Due to the difference in implementation dates, there was confusion by some permittees who felt the federal standards were more liberal. In fact, they were not. The state may, at its discretion, impose stricter standards if desirable, but did not do so in this case.

I assume the individual you refer to as qualified to rehabilitate birds of prey is Judith Rivard. As we explained in a March 25, 1988 letter, your wife did indeed receive permits to rehabilitate birds for 6 years--1983 through 1988. In reviewing her qualifications to treat raptors (specifically, hawks, eagles, ospreys, and falcons) under the revised standards, we examined her past reports. She did not report handling any raptors in 1983, 1986, or 1988. During 1984, one marsh hawk was treated, which "became droopy and refused to eat" and was turned over to a veterinarian. During 1985, one sharp-shinned hawk was treated and released. During 1987, four hawks were reported, two of which were released and two turned over to

a veterinarian. The department does not believe that record qualifies the permittee to handle raptors under the standards jointly developed by the FWS and department. Nevertheless, at the time her 1988 rehabilitation permit was issued, your wife was sent a copy of the standards and invited to provide additional information regarding her qualifications so that the permit could be amended, if appropriate. Her response was to return her permit and give up rehabilitation work altogether.

20. This statement is misleading. Jeff Hughes did not ask the Alaska Falconer's Association "to testify against the Alaska Gamebird Association." Mr. Hughes had been contacted previously by a falconer and member of the Alaska Falconer's Association, who expressed concern about actions of the department regarding collecting permits for grouse and ptarmigan. When the Alaska Gamebird Association submitted a proposal on that issue to the Board of Game, the interested individual was informed of the opportunity to present testimony and encouraged to express his concerns directly to the board. The department frequently encourages the public to participate in the regulatory process, as we have frequently so encouraged you.
21. As noted above, to retain any grouse in captivity, regardless of how or when they were obtained, you must have a permit issued by the department. Your 1988 permit request was to continue research in the propagation of grouse and ptarmigan. Because you had never previously submitted a research proposal, we asked for one.

In a letter dated February 10, 1988, we further explained the reasons behind the department's request for a study plan. With few exceptions, applications for permits to conduct scientific research are required to include study plans or research proposals. In that respect you are being treated just as any other researcher. The purpose for a study plan is several-fold: to assess the merits of a proposed research effort; to aid in determining whether a request to collect wildlife serves a valid public purpose; and to ensure, insofar as possible, that the actual reasons for a collecting activity are as stated by the applicant.

22. We have no record of issuing you a permit in 1982. All of the collecting and propagation permits you have been issued since 1983 have been for scientific or educational purposes. Such permits authorizing propagation are viewed in the same context as scientific permits and have never allowed for commercial uses of game birds. Regarding the sources of information suggested by Dr. McKnight, the department advised you of researchers who, through their knowledge or contacts, may have been able to save you time and effort in your own breeding experiments. That suggestion was intended to be helpful and certainly not meant to antagonize you.

January 13, 1989

An additional point you made during the meeting on December 7 was that the department was not consistent in its requirement of study plans for scientific permits. You made a charge that the department was harassing you by requiring study plans for your permits and you provided copies of 12 permits we issued in 1988 to support your point of view.

Three of these permits (88-51, 88-94, and 88-158) were issued for fur farming. No study plan is required for fur farming. This may be confusing because we use the same form to issue many different kinds of permits.

We have study plans and other supporting information on file for permits 88-20 (grouse) and 88-176 (swans for transplant to Minnesota). The remaining permits were issued for migratory waterfowl; all but one was issued to collect birds or eggs of migratory waterfowl that were transported out of Alaska and we did not require study plans. We do not issue a state permit for migratory birds until the person has been issued a federal permit because the FWS has ultimate authority for management of migratory birds. The FWS has a permit review committee that examines each permit application prior to issuance. The department has one biologist that normally serves on this review committee. If you recall, permits that have been issued to you for waterfowl have not required a study plan.

I hope the above discussion is helpful in explaining the department's position with regard to permitting procedures and management actions.

Sincerely,



W. Lewis Pampin, Jr.  
Director

Enclosure

cc w/enclosure:

Representative Ron Larson  
Representative Curt Menard  
Senator Jalmar Kerttula  
John Bitney, Aide to Representative Larson  
Linda Johnson, Member, Alaska Gamebird Association  
Duncan Fowler, State Ombudsman  
Ruth DeCamp, Assistant Ombudsman  
Norman Cohen, Deputy Commissioner, ADF&G  
Wayne Regelin, Deputy Director, Division of Wildlife  
Conservation, ADF&G  
Phil Koehl, Division of Wildlife Conservation, ADF&G  
Beth Stewart, Director, Division of Boards, ADF&G  
Larri Spengler, AG's Office

First Issue - Wild caught grouse:

1 This issue of the wild caught grouse and their progeny was never taken before the Legislature.

2 The newly implemented Aviculturist Permit is not a collection permit.

Why was the disposal of the progeny never mentioned or set forth on our permits. Our original application form from the department, August, 1982, read as follows: PERMIT to take, possess, hold alive, import into or export from Alaska, BIRDS OR THEIR EGGS, MAMMALS (except historically domestic birds, their eggs, and mammals) and FISH AND THEIR EGGS (except gold fish and decorative tropical fish) FOR SCIENTIFIC, EDUCATIONAL, OR PROPAGATIVE PURPOSES.

Reference 5 AAC 92.033. Permit for Scientific, Educational, or Propagative Purposes with authority from AS 16.05.255, AS 16/05.340, and AS 16.05.930. The department has eliminated the words 'Propagative Purposes' from their permit applications, permits, and in any correspondence we have had regarding 5 AAC 92.033. Why?

3 A memorandum from the Attorney General to Commissioner Collinsworth, dated October 20, 1987, subject - legal status of captive-bred birds, stated the department would have the authority to allow the sale or trade of the progeny under AS 16.05.020 and AS 16.05.340(b).

4 In a letter dated June 6, 1985, Phil Koehl, game biologist with the department, indicated we need only have a game farming license to farm any game species for which collecting activities had been authorized. A game farm license does not restrict the sale or trade of game.

5 Non-residents have been allowed to take grouse from the wild and export them from Alaska with no restrictions on the progeny, i.e., permit #85-16 with amendments #1 and #2, permit #86-280. These permits and amendments for 1985 and 1986 allowed for the taking of 210 grouse or their eggs and exporting them to Minnesota.

6 If the selling or trading of a small number of progeny is considered by the department to be commercialization of small game why are mounted birds allowed to be sold; fur bearing animals are taken from the wild to be used as food stock and their progeny is allowed to be sold; salmon eggs are collected by private entities for sale, trade or release; reindeer, musk oxen and elk are privately owned, farmed and sold.

7 It now appears that the department has made an internal decision not to allow anyone to collect grouse from the wild in Alaska. The applications for collection submitted by Jim Helmricks of Prudhoe Bay, Roger Thommes of North Pole and Kevin Thommes of Minnesota were all denied in 1988. Is this so and what is the purpose of this decision?

8 We have repeatedly been told that any excess captive-bred progeny must be turned over to the department for disposal. Ray Kramer, non-game biologist for the department, stated in 1986 that these birds would be killed as they could not be released due to the fact they might be diseased. Other than this comment we have never been informed just how the department would dispose of the birds.

**Second Issue - Captive-bred Grouse in Captivity:**

9 The Alaska Gamebird Assn. (AGA) has asked the department, the Board of Game, and the Legislature for the ability to import into Alaska species of captive-bred grouse from aviculturists in other states for the purpose of propagation, sale, trade, and export.

When the AGA met with the department to attempt to clarify the existing regulations so the public would understand which birds could or could not be held in Alaska the department came up with the idea of an Aviculturist Permit. This permit was to be implemented so the department could have control over certain species of birds, such as grouse, that they felt should not be in the hands of just anyone. Why does the department refuse to place all species of grouse on this permit?

10 When this issue was taken to the Board of Game the department was never required to substantiate their arguments against holding captive-bred grouse in Alaska. The AGA submitted a great deal of information along with letters from experts in the field of aviculture to substantiate their argument that captive-bred grouse held in captivity would not be a threat to the wild life of Alaska. Why has the department refused to acknowledge this information?

11 Why does the department continue to use disease transmission as an excuse for not allowing captive-bred grouse to be held when the department has never cited a specific disease they were concerned about? In a letter of April 4, 1988, Bert A. Gore, D.V.M., State Veterinarian, State of Alaska, said, "grouse do not represent any greater risk than other domestic or semi-wild birds raised in captivity. The information I have read on the possibility of disease transmission into wildlife by gamebirds, specifically grouse, leads me to believe that the risk is minimal or non-existent".

12 When this issue was taken before the Legislature in the form of SB-442, why did the department purposely confuse the issue with misleading statements on their analysis of the bill? None of the four opponents cited by the department were officially against the bill. The bill stated very clearly that it was addressing the issue of captive-bred grouse not wild caught grouse and yet the analysis made by the department indicated that wild grouse were involved in the bill.

13 Rather than work with us to attempt to arrive at solution to this problem the department continues to refer us to the Board of Game. Why? The department has the power to settle the differences with all concerned without going before the Board.

Alaska Department of Fish and Game:

- 14 The misleading statements made by the department in their bill analysis of SB-442, Grouse Farming.
- 15 Statements that were made in letters indicating that non-residents have never been issued permits to remove grouse or their eggs from the wild in Alaska and exported to their states. We have copies of some of these past permits issued to non-residents.
- 16 The continued departmental confusion wherein the wild caught grouse and their progeny are consistently included in any arguments pertaining to the holding of captive-bred grouse in captivity.
- 17 The unreasonable and discriminatory guidelines for the Aviculturist Permit, especially the discussion of fecal waste disposal. Also, the expensive research that went into the fecal waste disposal concern.
- 18 The fact that a gamebird hunting preserve was allowed to operate in the Soldotna, Alaska, area for at least two years. However, when Ron Palmer of Wasilla, Alaska, applied for gamebird hunting preserve he was denied.
- 19 Although the U. S. Fish and Wildlife Service felt a wildlife rehabilitator was qualified, under USF&W guidelines, to care for birds of prey the department, using the same guidelines, denied the rehabilitator the right to tend to these birds. This individual had held both U.S. and state of Alaska permits for rehabilitation for six years prior to this decision.
- 20 The fact that Jeff Hughes, a non-game biologist with the department, contacted the Alaska Falconers Assn. and asked them to testify against the Alaska Gamebird Assn. at the Board of Game meetings in the spring of 1987.
- 21 Why were we required in 1988 to submit a study plan for scientific research in order to retain the wild caught birds we had in possession and to take any new birds from the wild? In the past other permittees have not been required to submit a study plan for scientific research before being issued permits.
- 22 We originally applied for a propagation permit to take grouse from the wild, August 12, 1982. Since that time the department has put us in the category of a scientific and educational permit which now requires an extensive study plan. In a June 28, 1988, letter Donald E. McKnight, Acting Deputy Director for ADF&G, he had only two comments on the study plan we were required to submit in 1988. First he stated that from the department's point of view our most important objective is the successful captive maintenance and propagation of the grouse. We agree but what do we do with the progeny? Second he indicated that our reference section was incomplete citing five sources we were not aware of. Upon contacting these five sources we found that none were of importance to what we were attempting to do in captivity, they merely referred to birds in the wild and the articles that were written were in the 1970's.

ATG

# MEMORANDUM

# State of Alaska

TO: Honorable Don W. Collinsworth  
Commissioner  
Department of Fish and Game

DEPARTMENT OF LAW  
DATE: June 7, 1988

FILE NO: 661-88-0442

TELEPHONE NO: 276-3550

THRU:

RECEIVED  
JUN 13 1988

SUBJECT: Releasing pheasants  
on public or private  
land for hunting

DIVISION OF GAME  
HEADQUARTERS  
SEM

FROM: Sarah E. McCracken  
Assistant Attorney General  
Natural Resources Section, Anchorage

Your April 12, 1988, memorandum requested our opinion on several questions regarding statutory and constitutional provisions governing release by a private citizen of pheasants and other birds on public and private land for purposes of sport hunting. Your questions, and our responses, follow:

1. If the department issues a permit to release pheasants (or other non-native game birds) on public land, may they legally be hunted without establishment of a season (by the board of game or by delegation to the commissioner)?

Our summary answer is no. As your memorandum correctly points out, pheasants are "game" under AS 16.05.940 and hence subject to the board of game's and your department's management jurisdiction. As you also correctly point out, under 5 AAC 92.029(b) a person may possess, import, or export pheasants without a permit from the department, but may not release a bird into the wild. The prohibition against releasing game into the wild unless by permit presumably serves the legitimate state interest of avoiding spread of diseases and introduction into the wild of new populations that may be destructive to native wildlife.

There are several statutory provisions that pertain to possession and hunting of wild game birds. Under AS 16.05.340(b) (collecting permits), AS 16.05.020(2), and AS 16.05.050(3) and (6) (commissioner's authorities relating to permits) your department probably has authority to issue a permit to release pheasants into the wild if it were deemed to be in the public interest and consistent with sustained yield management. However, as discussed below, unless hunting were authorized by the board of game, the birds could not be hunted.

Under AS 16.05.920(a), unless hunting or possession of game is authorized under AS 16 or a regulation adopted under AS 16, it is unlawful to hunt or pursue a game animal. However, AS 16.05.930(c) specifies that AS 16.05.920 "does not prohibit ... the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board."

Thus, game birds may be raised for recreational hunting, but only under board regulations governing both raising and hunting the birds. As your memorandum correctly points out, the board of game did at one time have a regulation, 5 AAC 81.040, setting conditions for operation of a game bird shooting preserve, but the board revoked this regulation in 1985. Thus there presently is no authority to hunt pheasants or other game birds on hunting preserves under AS 16.05.930(c). \*/

There is one other statute that pertains to the harvesting of game birds, AS 16.05.825, but as discussed below, it does not apply to pheasants.

AS 16.05.825, entitled the state upland game bird release program, was first enacted in 1974 (section 1, ch. 31, SLA 1974) and was amended (with only minor technical changes) in 1975 (section 15, ch. 206, SLA 1975). This statute requires your department to establish a "special program for the raising, maintenance, and release of upland game birds in the state," requires your department to establish a facility for raising game birds in interior Alaska, and requires the board of game to adopt regulations to implement the program. AS 16.05.825(a) and (b). The statute defines "upland game bird" as "a game bird for which a season is established under AS 16.05.255(a)(2) [board of game authority] as of July 23, 1974, excluding waterfowl." AS 16.05.825(d). The statute also specifies that a bird raised under the upland game bird program "may be released in an appropriate area of the state, at any time, but may be harvested only during regular hunting seasons set by the board of game." AS 16.05.825(a).

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\*/ The wording of former 5 AAC 81.040 appears to be adequate to govern the raising and hunting of game birds should the board of game wish to readopt this regulation. It would, however, probably be better if the regulation specified what species of birds could be used for shooting preserves.

As of July 23, 1974, there was no classification of game called "game birds," but there were seasons for the upland bird species of grouse and ptarmigan (none for pheasants). See 5 AAC 81.320(1) and (3) (1974). Neither your department nor the board of game has yet implemented AS 16.05.825 by establishing an upland game bird release "program" or establishing a facility for raising game birds in interior Alaska. Such a program would probably be limited to grouse and ptarmigan, and would have to be established by regulation. Presently under 5 AAC 92.029 neither grouse nor ptarmigan may be imported, exported, possessed, or released without a permit from your department.

We believe that under AS 16.05.825 and AS 16.05.340(b), your department could by regulation establish an upland game bird release program, including issuance of permits for collecting grouse and ptarmigan for purposes of creating game bird preserves. See generally 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149). Your department could not, however, extend such a program to pheasants absent statutory changes because of the definition of "upland game bird" in AS 16.05.825(d).

In summary, based upon all the above statutory provisions, and upon the fundamental principle embodied in the Alaska Constitution, article VII, section 3, that game resources are held in trust by the state for all its citizens, it appears that game hunting programs or preserves are authorized for certain species, but must be operated under a permit or regulations that specify the terms and conditions, including regulations authorizing an open season on the birds. Under AS 16.05.825, an upland game bird release program could be established by regulation, but only for those upland birds that were lawfully hunted as of 1974 (which did not include pheasants). Under AS 16.05.050(6), AS 16.05.930(c), and 5 AAC 92.029(b), your department could probably issue a permit authorizing release of pheasants into the wild and setting conditions for that release, but we believe you could not allow recreational hunting without a season set by the board of game. See generally discussion of private possession of game animals for commercial purposes in 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149).

2. May pheasants released on private land be hunted without establishment of a season?

Our summary answer is no. As with any other game species, pheasants are held by the state in trust for the citizens, and a property owner does not acquire any right to hunt outside established seasons merely because a bird or other animal happens to be found on private land. See, e.g., Koop v. United

States, 296 F.2d 53 (8th Cir., 1961)(no property right in ducks on landowner's property); see also 1987 Inf. Op. Att'y Gen. (Aug. 24; 661-86-0532) at 3, and cases cited there; c.f. discussion of private possession of game in 1986 Inf. Op. Att'y Gen. (Nov. 14; 661-87-0149).

With respect to privately purchased pheasants, as discussed above your department probably has authority to issue a permit to release pheasants into the wild (including private property). However, in light of the language in AS 16.05.930(c) allowing the raising of game birds for hunting on game hunting preserves under regulations of the appropriate board, we believe hunting of these released birds would probably have to be authorized by the board of game. If, however, privately owned birds were kept in an escape-proof enclosure, the owner could presumably dispose of the birds by any lawful manner, and no board of game authorization would be necessary.

3. If a pheasant season is established, may the permittee who releases pheasants on public land charge a fee to hunters or otherwise restrict hunting of birds over which he does not exercise positive control?

A permittee who is authorized to release pheasants may charge a fee for guiding services (assuming the permittee meets all other applicable state or local laws regarding guiding, outfitting, or operating a business and assuming the board of game authorizes a season). The permittee may not, however, restrict public hunting of the birds (in a lawful season) once the birds have returned to the wild and are no longer under the permittee's positive control. See generally discussion of "feral" in 1987 Inf. Op. Att'y Gen. (July 30; 661-87-0426).

4. Regardless of board or department action, would the use of public land for private commercial purposes of this type violate constitutional principles of common use?

No. If we assume that the board and department have made findings that to allow release of pheasants into the wild for purposes of recreational hunting is consistent with sustained yield management and is in the public interest, and if the board and department adopt appropriate regulations to govern pheasant hunting, hunting would be open to all citizens in accordance with the applicable regulations. As discussed in answer to question no. 3 above, a person who obtained a permit to release pheasants into the wild could charge a service fee for guiding, assuming the person acted in accordance with all other applicable laws. The person could not, however, prevent nonpaying hunters from hunting these birds on public property otherwise open to hunting.

If the department were to issue a permit to a person to release pheasants on private property for purposes of hunting, the person could, through trespass laws, prevent nonpaying hunters from hunting the birds while they are on private property. If we assume that the pheasants were originally imported into the state by the permittee, we do not believe that issuance of a permit to release the birds would violate article VIII, sections 3 or 4 of the Alaska Constitution, pertaining to common use and sustained yield. The imported pheasants are not a part of the indigenous game of the state and thus the permittee is not being given a special privilege to take a public trust resource and is not affecting sustained yield management. The state's interest in approving or denying release of privately held, imported pheasants is in protecting indigenous species.

If, on the other hand, pheasants were an established wild species in Alaska, and if a person were granted a permit under AS 16.05.340(b) to collect pheasants for "propagative" purposes, there might be an article VIII violation if the department issued a permit to allow the birds to be hunted on private land to the exclusion of the general public. This scenario is not, however, presented in your memorandum and we need not address it further here.

In summary, there are some provisions that authorize release of game birds into the wild, but there are no regulations currently in place that would allow hunting of released pheasants.

If you have additional questions, please let me know.

SEM:sw

cc: Norman Cohen, Deputy Commissioner  
W. Lewis Pamplin, Director, Division of Game  
Phil Koehl, Game Division, Juneau  
Dan Timm, Game Division, Anchorage  
Larri Spengler, Assistant Attorney General, Juneau

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

STEVE COWPER, GOVERNOR

333 RASPBERRY ROAD  
ANCHORAGE, ALASKA 99518-1599  
PHONE (907) 344-0541

July 14, 1988

Ken Rivard  
P. O. Box 87182  
Wasilla, Alaska 99687

Dear Ken,

I wanted to express my appreciation for your time and your frank answers in our recent phone conversations on the 6th and 7th of July when we discussed the importation of black grouse and other wildlife for which a permit from the state is required. I thought it might be a good idea to document the main points of our conversation so both of us would have a written record of what was discussed, and if I have misunderstood anything that was said, this letter will give you an opportunity to respond.

I called you on the morning of the 6th to make an appointment to come out to your place and chat about a number of items. You wanted to know what it was that I wanted to talk about, and I indicated that I was reluctant to discuss details over the phone because I believed some of the subject matter was sensitive and that meeting you in person would be more appropriate. You were reluctant to meet with me unless you knew what was to be discussed, so I told you that a member of the public had provided the department with a picture of a black grouse which he claimed had been taken at your bird rearing facilities. I told you that no accusations were being made by the department. On the contrary, I pointed out that we often receive allegations that turn out to be misunderstandings or inaccurate reports. I wanted to meet with you to determine whether you possessed a black grouse, and if so, whether you mistakenly believed that no department permit was necessary. I said we wanted to work with you to resolve this issue as quickly and quietly as possible without resorting to "heavy handed tactics" that might lead to hard feelings on both sides.

For a number of different reasons you preferred to meet me at my office in Palmer to discuss this issue and you requested that a witness accompany you to hear the discussion. I said that sounded fine with me and that I would expect you before noon. Later in the morning, you called to tell me that you wanted to spend the rest of the day with relatives who were visiting from the lower 48 and asked if we could postpone the meeting to another time. I agreed to the request, but indicated that we should try and get together as soon as

possible. We mutually agreed to set a meeting date for the following morning between 8:00 and 9:00 a.m.

On the morning of 7 July at approximately 10:00 a.m. you called to find out if I received your 8:00 a.m. message that you would not be able to make our meeting because of continued commitments with your relatives. I asked when it would be convenient to set another meeting date. You said that you had spent the previous day talking with a number of influential people, including members of the Alaska Bird Breeders Association, and after thinking it over you didn't see any reason why we should meet to discuss the subject of importation of black grouse. The conversation continued for more than 30 minutes and covered a variety of topics. Following were the main points of discussion on the 6th and 7th of July:

1. You said that at the present time you had no black grouse on your premises so there was no need to meet to discuss the issue. You did not say one way or the other whether you have had a black grouse or other non-permitted birds on your premises in the recent past.
2. On at least two occasions, I emphasized that my goal as well as the Department's was to work with you to resolve any misunderstandings or problems and that if you did have black grouse, other birds, or fertilized eggs of birds for which a Department of Fish and Game permit is required, now was the time to let me know; now was the time to wipe the slate clean and start fresh. I said no one was accusing you of any intentional wrong doing. But, if you had any non-permitted wildlife in your possession or any direct or indirect involvement in housing this wildlife, I had authorization to tell you that you would have a week to 10 days to remove this wildlife from the state (perhaps longer if this would be an excessive burden.) No citation would be issued which would require a court appearance, but a Notice of Violation would be issued so there would be a written record of the incident.
3. I said that representatives of the department and the Division of Fish and Wildlife Protection who were advised of this potential problem agreed that if you were in violation of holding a black grouse or other non-permitted birds, you should be offered the opportunity to acknowledge the mistake so the issue could be quickly resolved. I told you that if you have had or now have any non-permitted birds in your possession or under your direct or indirect control, now would be the time to admit this fact because I had some say in how the case would be handled. If the department received another public complaint or were to establish that you have held birds in violation of state regulations, any future action taken by the state would probably be out of my hands.

4. Although you denied having a black grouse in your possession on the 7th, you did say on the 6th that if you did have such a grouse in your possession, you would not be in violation of any law if the department would issue you a permit. I said that was putting the cart before the horse. The department regulation clearly states that a permit is required before any bird can be imported into Alaska. It was your contention that the department has the authority to issue permits for importation. Therefore, if the department has that authority it doesn't make any sense not to issue the permit considering that grouse and other birds are imported in other countries around the world with "no apparent problems". I said that other countries and states have had some problems with the importation of wildlife and that the department believes that importation of some species of exotic wildlife poses a threat to the welfare of resident species.
  
5. At one point you said the department was always "harassing you" (I believe those were your words) in your attempt to breed and import grouse. I told you that was not the case at all. In fact, it was just the opposite. If it was the Department's intention to harass you, I wouldn't be making courtesy calls to find out if there was any truth to the black grouse report, nor would so many of the staff be taking their time to review your proposals and try to provide assistance for all the many requests that you had made over the years. The department's philosophical viewpoint about protecting and managing Alaska's wildlife may be different from yours, especially when it comes to introducing exotic grouse, but just because we have differences of opinion on this issue, does not mean that the department is engaged in a program to give you a hard time. Our primary interests are looking out for the welfare of Alaska's wildlife, and the department treats your requests for importation permits no differently than requests from any member of the public. Conversely, we expect you to follow the required permitting regulations just like everyone else, at least until those regulations are amended or are superceded by state statute.

Ken, I told you on several occasions, I have always worked under the premise that any two parties with a problem can eventually find an acceptable compromise, so long as each party is willing to continue talking. We want to work in harmony with you, and I, in particular, want to continue building a sound working relationship. However, the complaint about the black grouse and the possible importation of other non-permitted wildlife (such as fertilized eggs) has the potential to deteriorate that working relationship. The discussion we had about the black grouse complaint may come up again at some time in the future, and I want to be sure that I've correctly documented the main points in our conversations. I have written this letter not only to have an accurate record of what was said, but even more importantly to give you an opportunity to add or delete information so any important points about the status of the black grouse and other non-permitted

Ken Rivard

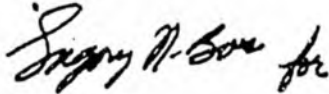
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July 14, 1988

birds alleged to have been on your premises can be clarified. If I don't hear from you, I'll assume that you generally concur with the contents of this letter.

My office is always open; please feel free to contact me at your convenience.

Sincerely,



Carl A. Grauvogel  
Game Biologist III  
Division of Game  
Palmer

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF GAME

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4190

June 28, 1988

Ms. Judi Rivard  
P. O. Box 871842  
Wasilla, AK 99687

Dear Ms. Rivard:

Your study proposal and permit application have been approved and an amendment to your ~~scientific permit~~ is enclosed. Be sure to note that your proposal to sell or trade excess captive-bred birds to offset expenses of research has not been approved and is specifically prohibited by the amendment. The Board of Game has determined that commercial use of native gamebirds is inappropriate. As we have discussed in the past, all grouse and ptarmigan in your possession remain state property, and excess birds must be disposed of through the department. If this restriction results in a financial burden that prevents you from conducting your proposed studies, then you should not attempt to collect additional birds.

Regarding your study proposal, several reviewers offered comments which I have summarized for your information. First, from the department's point of view, the most important objective is the successful captive maintenance and propagation of Tetraonids. The other objectives are of lesser importance and have already received considerable study. Consequently, for purposes of concentrating your efforts and limited resources, you may want to narrow the scope of your project.

Second, the references section is incomplete in that it includes none of the extensive published literature on grouse and ptarmigan. A review of this material could contribute to the success of your program and possibly save you both time and money. Rock and willow ptarmigan have been maintained at the UAF Institute of Arctic Biology for some years. Dr. Robert White may be able to direct you to sources of information about that work. John Theberg of the University of Waterloo in Ontario has studied ptarmigan chick behavior. Red grouse have been held in captivity and studied for decades in Scotland by the Nature Conservancy. David Boag, University of Alberta, has studied spruce grouse, and Clayton Braun, University of Colorado, has published the results of his work on white-tailed ptarmigan.

Ms. Judi Rivard

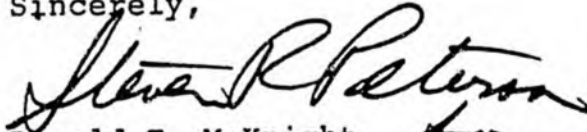
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June 28, 1988

For additional references, contact Ron Modafferri, research biologist in the Palmer area office.

If you have any questions about this permit, please let me know. Good luck with your project.

Sincerely,



Donald E. McKnight *for*  
Acting Deputy Director

Enclosure

cc: Lew Pamplin  
Ron Modafferri  
Carl Grauvogel



STATE OF ALASKA  
DEPARTMENT OF FISH AND GAME  
JUNEAU, ALASKA

SCIENTIFIC OR EDUCATIONAL  
PERMIT AMENDMENT

---

AMENDMENT NO. 1

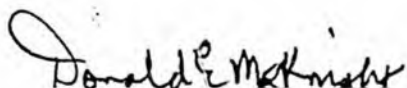
June 27, 1988

Permit No. 88-46

Permittees: Judi & Ken Rivard  
P. O. Box 871842  
Wasilla, AK 99687

This amendment extends the authority of Permit No. 88-46 to take from the wild, possess and propagate, for research purposes, up to twelve (12) each rock ptarmigan, white-tailed ptarmigan, and spruce grouse. "Take" includes all birds captured, including those which do not survive. No birds or their progeny may be released to the wild, bought, sold, traded, exported, or otherwise transferred to another person or organization without separate written authorization from this department.

The report of activities shall include detailed annual progress reports of propagation studies, numbers and species of all native grouse, ptarmigan, and their progeny currently held alive. The account of birds held shall indicate year of capture or hatching, sex, age, and causes of all mortality, if known.

  
\_\_\_\_\_  
Division of Game

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF GAME

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4190

February 10, 1988

Judi & Ken Rivard  
P. O. Box 871842  
Wasilla, Alaska 99687

Dear Mr. & Mrs. Rivard:

Thank you for your reports of 1987 collecting activities conducted under authority of Permit No. 87-32, and rehabilitation activities conducted under authority of Permit No. 87-78. These permits have been renewed with some changes as explained below.

The proposed regulation creating the Aviculture Permit was finally approved for filing by the Lieutenant Governor's office on January 26. We expect to issue Aviculture Permits, as necessary, beginning February 29, 1988. The regulation requires that applicants demonstrate to the satisfaction of the department the ability to properly care for birds to be kept under the permit. That includes providing facilities for maintaining and protecting the birds. Aviculture permits will be issued only following inspection and approval of facilities by a department representative. You should contact Mr. Carl Grauvogel, Palmer area biologist, to arrange a mutually acceptable time for an inspection. Until you are issued a permit, this letter will serve as temporary authorization from the department to retain four capercaillies (1 male, 3 females) already in possession. However, until you receive an aviculture permit, you are not authorized to sell, transport, import, export, or otherwise transfer ownership of any capercaillie or other species of bird listed under 5 AAC 92.028(d)(3).

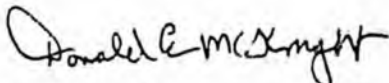
Your rehabilitation permit has been renewed. However, you are no longer authorized to provide care to sick and/or injured members of the Order Falconiformes, including hawks, eagles, ospreys, and falcons. The department has adopted standards for care of raptors that were developed by the U.S. Fish and Wildlife Service (enclosure). If you qualify to handle raptors under these new guidelines, please advise us regarding those qualifications so that your permit can be amended. Contact Mr. Jeff Hughes of our Anchorage office if you have any questions about permit requirements for rehabilitating raptors.

February 10, 1988

Your scientific permit to propagate and possess grouse and ptarmigan is enclosed. The request to collect additional birds, however, is being held pending the receipt of additional information. Last fall, the department reinstated a policy requiring permit applications for scientific research to include research proposals and/or study plans. Your permit file does not include a formal application to collect and propagate grouse or ptarmigan. Before we can consider your latest request, please submit a written application, including a copy of your research proposal. The proposal should incorporate a written operational plan that identifies the purpose and need for the proposed activity, research objectives, detailed procedures, project duration, ultimate disposition of birds, and expected results and benefits. As you know, the department "species management policies" and recent action by the Board of Game preclude commercial uses of native game. Consequently, in considering your research, you should not anticipate recouping financial expenses through the sale or barter of birds propagated under this permit.

If you have any questions about these permits or would like additional information regarding the preparation of a research proposal, please let me know or contact Jeff Hughes. Again, thanks for your prompt reports and your continued interest in Alaska's wildlife.

Sincerely,



Donald E. McKnight  
Acting Deputy Director

Enclosures

cc: Lew Pamplin  
Jeff Hughes  
Carl Grauvogel

See letter on 13. 22. 88 of it's in  
my 4500.

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF FISH AND GAME

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: (907) 465-4100

### OFFICE OF THE COMMISSIONER

November 30, 1987

Mr. John M. Dellinger, President  
Alaska Gamebird Association  
P. O. Box 871842  
Wasilla, AK 99687

Dear Mr. Dellinger:

Thank you for your letter concerning captive wild grouse.

The Division of Boards reports that the Alaska Board of Game reviewed proposals from your association on the issue of captive wild grouse at the December 1986 meeting and again at the March 1987 meeting. Department staff reviewed the tapes of the board discussion from the 1987 meeting and report that the tapes clearly reflect that the board did not want wild grouse or their progeny to be sold. The record is also clear that this was the board's final decision on the proposal. During the discussion, one board member indicated a need for further discussions in November 1987. However, another board member successfully argued to conclude work on the topic. The board vote for conclusion of the topic was 6-0 with one member absent.

I would like this opportunity to respond to a question raised on behalf of the Alaska Gamebird Association by Mr. and Mrs. Rivard during their testimony last April before the board. The Rivards were seeking clarification on regulations for ownership of progeny of captive-reared, wild-caught birds. The enclosed opinion by the Department of Law (File No. 661-88-0066, October 20, 1987) states that the progeny of birds held in captivity under a permit are still "owned" by the state in trust for all its citizens, absent a contrary provision in the permit.

This department does not issue permits to allow the sale of game. The face of each permit states that the permit is nontransferable and that no redelegation of authority is allowed. The reverse side of each permit states that the permit is granted "with the express understanding that all specimens taken under authority hereof...shall not be sold or

Mr. John M. Dellinger

-2-

November 30, 1987

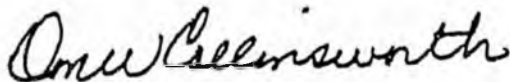
bartered." State regulations (5 AAC 92.002, 92.020, and 92.039) and statutes (AS 16.05.340(b) and 16.05.920(a)) allow the Commissioner broad discretion to impose appropriate restrictions on permittees.

I am sorry that you believe that the department was negative in testimony regarding your proposed regulations. The compromise proposals (which were recently sent to the Department of Law for filing with the Lt. Governor) go further than either the board or department had felt is prudent. The risks to our native fauna of farming and importing exotic species, however slight, are real. As Alaska liberalizes policies, other states--to their regret--are belatedly restricting their own laws. South Carolina, for example, recently notified us that it is now illegal to buy, sell or ship all game species except quail.

There is growing concern across the country about disease transmission between captive and wild populations of game birds. Given our responsibility to conserve, protect and perpetuate the state's wildlife resources, a conservative approach in subjecting those resources to any risk whatever seems extremely appropriate.

The board has set its agenda for the next two meetings. The topic of captive wild grouse is not on the agenda scheduled for the November 1987 or the spring 1988 meetings. I will forward your letter to the Division of Boards to add to the list of potential agenda topics when the board next works on its agenda.

Sincerely,



Don W. Collinsworth  
Commissioner

Enclosure



Riverbanks zoological park

500 wildlife parkway, columbia, s. c. 29210, USA ● (803) 779-8717  
Palmer Krantz, director

December 30, 1987

Ken & Judi Rivard  
P.O. Box 871842  
Wasilla, ALASKA 99687

Dear Mr. and Mrs. Rivard,

I spoke with John Cely of the S.C. Wildlife and Marine Resources Dept. today concerning your question about gamebirds in S.C. It is in fact illegal to import a native game species into South Carolina without first acquiring a permit. This permit will, however, be issued if there is good reason. As for non-native wildlife, there are no restrictions.

John declined to give an opinion on progeny of native game species. He said that was a matter for the individual state to decide.

I hope that this information will be of some use to you. Good luck!

Sincerely,

Robert E. Seibels  
Curator of Birds

RES/cw  
enc.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-000  
JUNEAU, ALASKA 99802  
PHONE: 907 / 465-4100

September 27, 1985

The Honorable Ronald L. Larson  
Alaska State House  
Box 53  
Palmer, AK 99645

RECEIVED SEP 27 1985

Dear Representative Larson:

Thank you for your letter of September 6 which enclosed the letter from Judi and Ken Rivard of Wasilla regarding statutes and regulations pertaining to game bird farming.

The department has been rather liberal in granting permits to Alaskan citizens to possess and raise both indigenous and exotic game birds, in spite of the very real concern that we have for the introduction into the wild of exotic bird species. As the Rivards noted, we have issued a permit to them to capture and possess ptarmigan and grouse and to possess the exotic capercaillies. If birds are captured and possessed only for the private enjoyment or private consumption of the permittees, no further permit or license is necessary. If, on the other hand, they intend to raise these birds for profit to sell as breeding stock to other persons, for example, the statutes presently require that they have a game farm license from the Department of Revenue. The fee for this license is set by statute.

The licensing provision and fee could not, of course, be changed by Game Board regulation; that would require legislative action. The board could change the species which are allowed to be imported and possessed without the (free) permit from the Department of Fish and Game. In this respect, the Board of Game has in place regulation 5 AAC 92.029 (copy enclosed); paragraph (b) of that regulation lists the species that the board allows a person to possess without any permit from the department. If Mr. and Mrs. Rivard wish to have other species added to this list of species for which no permit is required, they should make that proposal directly to the Board of Game for their consideration. I would be happy to see that all necessary assistance is given to them, so that such a proposal could be properly presented for the board's consideration.

COMM. SERVICE  
**RECEIVED**  
AUG 10 1988

5207



State of Alaska

**Ombudsman** DEPARTMENT OF FISH AND GAME Reply to:

August 9, 1988



□ P.O. Box 102636  
Anchorage, AK 99510-2636  
(907) 563-3673  
(800) 478-2624

□ P.O. Box W0  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970

□ P.O. Box 74358  
Fairbanks, AK 99707  
(907) 452-4001  
(800) 478-3257

Don W. Collinsworth, Commissioner  
Department of Fish and Game  
Post Office Box 3-2000  
Juneau, Alaska 99801

RE: Ombudsman Complaint A88-0344 (Closed)

Dear Commissioner Collinsworth:

On March 22, 1988, Ken Rivard filed a complaint against your department with my Anchorage office. In his complaint, Mr. Rivard alleged that the department had abused its discretion by making radical changes to certain gamebird permits without the benefit of statutory or regulatory authority.

The case was assigned to Assistant Ombudsman Ruth DeCamp and the results of her investigation prompted the attached report to the complainant. In summary, I found the allegation to be unsupported by the facts available to me, and I have suggested several ways for the complainant to continue to work toward realizing his goals within the systems which exist. I have further encouraged the complainant to continue his work and dialogue with your agency in an effort to achieve his desired end.

The case involves an issue which seems to be raising its head more and more - the privatization of Alaska's game resources. The Rivards proposed gamebird farming, and were instrumental in the creation of the aviculture class of permits. Unfortunately, the permits were only part of the Rivards' ambition, and they would like to expand the application of the aviculture permits to include more birds and the aviculturist's right to dispose of the progeny by trading or barter.

The Game Board spent much time considering the Rivards' arguments, and considering your department's specific objections to parts of their proposals. In my report to Mr. Rivard, I explained that I could find no fault or lack of fairness on the part of the board. They had fairly and exhaustively considered all the arguments presented to them, and simply chose not to adopt the Rivards' amendments. I also

August 9, 1988

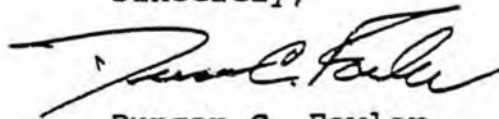
told Mr. Rivard that Board Chairman Brenda Johnson had told the investigator that the board had no problem reconsidering the proposal at a later date with more or revised information before them.

I hope you will read the report to Mr. Rivard with a mind to better understanding the issues of this case. According to Mr. Rivard, he has met with less than satisfactory cooperation from department officials with whom he has dealt. In fact, he explained to the investigator that dialogue had completely broken down by the time the board sent him and his wife back to the department to work on compromise language to present on this particular regulation. While I could not confirm or impeach this information, I would urge you to explore it from your side of the aisle.

Many of the complaints brought to our attention are as much the result of communication problems as the incident which first caused the citizen to approach the agency for resolution. If these aggrieved citizens find or perceive agency insensitivity piled upon their initial grievance, the entire situation erodes. I am not naive enough to believe that many of the complainants are faultless in communication failures. I do, however, give them some latitude because they believe they are aggrieved, and they often feel defensive and intimidated by the "state."

Please let me know if you have any questions about this letter or the attached report to Mr. Rivard. The case is now closed in our files, and the complainant has been notified. I will also provide a copy of the report to Board Chairman Brenda Johnson, who volunteered her cooperation during the investigation.

Sincerely,



Duncan C. Fowler  
Ombudsman

DCF:SJM:RJM:RAD:dea:ljb  
enclosure: Rivard Letter  
cc: Brenda Johnson (with enclosure)



State of Alaska  
**ombudsman**

Duncan C. Fowler

Reply to:

- P.O. Box 102636  
Anchorage, AK 99510-2636  
(907) 563-3673  
(800) 478-2624
- P.O. Box WO  
Juneau, AK 99811-3000  
(907) 465-4970  
(800) 478-4970
- P.O. Box 74358  
Fairbanks, AK 99707  
(907) 452-4001  
(800) 478-3257

August 9, 1988

Mr. Ken Rivard  
Post Office Box 871842  
Wasilla, Alaska 99687

RE: Ombudsman Complaint A88-0344 (Closed)

Dear Mr. Rivard:

On March 22, 1988, you filed a complaint against the Department of Fish and Game with my Anchorage office. In your complaint, you alleged that the department abused its discretion by making radical changes to certain gamebird permits without the benefit of statutory or regulatory authority.

The case was assigned to Ombudsman Assistant Ruth DeCamp and the results of her investigation are reflected in this report.

HISTORY OF THE COMPLAINT:

You and your wife are game bird enthusiasts, members of the local gamebird association, and political activists in the sense that you work with legislators and decision-makers to achieve your goals within the political system. What began as an amateur avocation, raising and propagating indigenous Alaskan varieties of birds, has turned into a much more sophisticated endeavor for you in recent years. You and your wife were instrumental in the creation of a new kind of game-farming permit (aviculturist) approved in 1987 by the Alaska Game Board.

Prior to the approval of the aviculturist class of permits, you had already received permits to capture, hold and propagate certain species of Alaskan birds. Prior to 1985, there were loose restrictions on the permits. When interest in this kind of endeavor increased, and the Department of Fish and Game realized that it might need to regulate the activity, it began to place restrictions on the permits. In 1985, the department made it clear to you that your permit did not allow you to dispose of the progeny of your wild-caught birds and you were not authorized to sell or barter live offspring or even unhatched eggs.

You and the Gamebird Association took steps to modify those administrative restrictions through proposals for statute and regulatory changes which favored your position. These proposals allowed aviculturists to sell or trade the progeny of their captive birds in order to recapture some of the costs associated with raising and holding them. The proposals also were intended to promote improvement of the gene pool, and allow other aviculturists in other states to attempt to raise and improve the gene pool for the Alaskan indigenous species. You hoped that in the future, you would be allowed to (1) import and export progeny and (2) expand the list of birds which could legally be raised by aviculturists without additional species permits. Although the aviculturist permit was a reality, you hoped for more liberal restrictions on it to incorporate these interests.

To you, the most important species to include on the "clean list" was the grouse (family tetraonidae) including the ptarmigan, sage hens, prairie chickens and all other varieties of grouse. You also hoped to be able to import non-Alaskan species of family tetraonidae. You had presented the first proposal for modification at the Game Board's fall, 1986 meeting. At that time, the board directed you to meet with officials from the Department of Fish and Game to attempt to work out a compromise of several issues that were in dispute. The motion was then tabled until the spring 1987 meeting.

The Game Board removed the proposal from the table, entertaining the motion to modify the regulations, and conducted a lengthy hearing on the issues at its spring meeting in 1987. After nearly six hours of testimony and deliberation, the board failed to pass the changes requested by you and the Gamebird Association. In addition to introducing the issue before the Game Board you brought proposed legislation to Senators Jack Coghill and Jalmar Kerttula. Senator Coghill introduced SB443 (Fifteenth Legislature, Second Session), with co-sponsorship by Senator Kerttula. The bill essentially mirrored the proposal you brought to the Game Board, and had it passed, it would have superseded the Board's 1987 decision. SSB 443 died in the Rules Committee at the May 1988 adjournment.

You finally brought your issue to my Anchorage office on referral from Senator Kerttula's office. Your complaint took the form of an allegation that the Department of Fish and Game had unilaterally (and without the benefit of statutory or regulatory authority) made changes in the permits it had previously granted for capturing, holding and propagating birds. You alleged that the department had no authority to modify the permits you had held since 1982, or to change the rules in the middle of the game. You also complained that the department had not yet issued your new aviculturist permit.

SUMMARY AND ANALYSIS OF THE INVESTIGATION:

You developed a persuasive packet of information regarding your position with the game board and the legislature on desired changes to the game regulations and statutes. The packet included scientific information, opinions from experts in the field of aviculture from this and other countries, and scholarly pieces from gamebird publications. The documents helped the investigator to focus on the substance of the disagreement between you and the department. Ms. DeCamp read through the materials provided, and subsequently spoke with Mr. Lewis Pamplin, Director, Department of Fish and Game, Division of Game. Mr. Pamplin invited her write him an interrogatory on the complaint.

In addition to answering the questions contained in the interrogatory, Mr. Pamplin provided copies of the official tape recorded minutes of the spring 1987 Game Board meeting at which the topics in contest were discussed. These tapes, covering approximately six hours of testimony, discussion and decision, provided a clear record regarding what the board had both considered and decided in the case of the regulatory changes you desired. Mrs. DeCamp later interviewed Brenda Johnson, chairman of the Board of Game, to further clarify the events of the spring meeting.

The documents and tapes revealed that there are two primary issues in this case. The first issue has to do with the department's changing of the permitting process prior to the adoption of the aviculturist permit regulation. The second issue has to do with the substantive question of whether you and other aviculturists should be able to dispose of the progeny of wild caught captive birds by barter or sale of eggs and/or live offspring and which birds should be included on the "clean list."

The Permitting Process:

The allegation is that the department abused its discretion by altering your permits without the benefit of statutory or regulatory authority. AS 16.05.050 indicates that the department has the authority to control the gamebird resource: "The commissioner has, but not by way of limitation, the following powers and duties: (6) to capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific or stocking purposes."

In 5AAC 92.033. Permit for Scientific, Educational, or Propagative Purposes, the Department "may issue a permit for the taking, possessing, importing or exporting of game for scientific, educational or propagative purposes." The language of 5 AAC 92.033 allows the Commissioner of the Department, by permit, to delegate his duty and power conferred in AS 15.05.050 to citizens. The use of the word "may" in the

regulation advises that the commissioner's authority to delegate his power and duty is discretionary.

In order for me to find that the agency "abused its discretion" in this case, I would have to find that, in the exercise of its judgment, the agency:

- (a) did not proceed according to law;
- (b) based its decision on an erroneous choice of standards or principles;
- (c) based its decision on considerations not supported by evidence;
- (d) based its decision on considerations that are not relevant; or
- (e) made a decision that is clearly contrary to the reasonable inferences or deductions to be made from the evidence.

OMBUDSMAN POLICIES AND PROCEDURES, SECTION 3040.

SUBSTANTIVE QUESTION OF USE OF GAMEBIRD RESOURCE:

The second issue is one that was, and still is, properly before the Board of Game. The substantive questions of "privatization of wild game, commercial uses of game, introduction of exotic species of game and their effect on the ecology and balance of Alaska's indigenous species and their habitat" are not matters which the Ombudsman is allowed to judge. While a review of the documentation you presented to the board would cause any reasoning person to make some judgments, it is not appropriate for me to substitute my judgment for discretionary rights given to the board.

On the other hand, I am able to review the actions of the board for fairness. I have chosen to look at that issue from the perspective of determining whether you were given a full and fair opportunity to present your side of the case, and whether you were given the benefit of full consideration before the board made its decision. I will discuss this issue first.

Admittedly, the Board of Game is made up of lay persons, for the most part, who are probably not biologists or experts in the world of gamebird diseases, encroachments by exotics on food sources and other aspects of the native birds' habitats. On the other hand, those persons sitting on the Board have been charged, to the best of their ability, with the awesome responsibility of making decisions about the allocation, preservation and protection of Alaska's game resources in the best interests of all citizens of this state.

It is for this reason that substantive issues requiring changes in law, regulation and policy for the department must be brought before that board for decision. The board, as demonstrated by the taped record of the March 1987 meeting, was most willing to listen to every argument the petitioners (you and your wife) and the agency (Department of Game) had to offer them to help make the decision. The board members admitted their ignorance generally about the potential impact of the importation and exportation of grouse progeny and eggs, but they listened to the arguments presented for literally hours without interruption.

The Department of Game gave a forthright assessment of its own inability to predict the effects of your proposal, but warned of POTENTIAL hazards in terms of diseases and encroachments of exotics on the indigenous birds' habitat, dilution of the gene pool, and various other factors. The department argued about the general issue of privatization of wild game, and discussed the potential effects of extreme commercialization of the state's game resources.

During the March 1987 meeting, a number of board members commented that they felt inadequately prepared to make a decision with such serious implications based upon the information they had before them. The concerns raised by the department were alarming, and the Board realized that it would be held responsible if the "potential" problems described by the department representatives actually materialized. Some members of the board actually wanted to table the action again, and to seek more documentation and testimony at its next meeting. Finally, the board decided to at least pass the regulation authorizing the aviculturist permit class, and to work on other details at a later date.

The department representative never implied that you would abuse the privilege of avicultural pursuits, but the same officials made it clear that not everyone who obtained an aviculturist permit would fit your exemplary stereotype. The department seemed particularly concerned that others might try to sell the birds for food, (i.e., wild game restaurants, etc.) and engage in other forms of mass commercialization. In other words, while the Department has been giving you a nearly free hand at aviculture since 1982, it is concerned about those who will follow now that the aviculturist permit class is official.

Mrs. Rivard's practical arguments about the feasibility of raising grouse for restaurants was well-taken. Her arguments about the department's ability to control aviculturist activities under the permitting system were also reasonable. On the other hand, the Board was not totally convinced that it could make a reasonable and absolute decision on the matter, and invited you to come back to the Board after meeting with the Department.

From the Board's decision at the March meeting, it was clear that the Department's concerns about the unknown, but potential hazards of the proposal outweighed your sincere and altruistic attempts to convince them that those hazards were minimal, and could be controlled by the Board at any rate through the permitting process. The Board allowed the passage of the new aviculturist class of permits, but did not choose to include the grouse (family tetraonidae) on its clean list, and would not allow for the importation and exportation of the birds, their progeny or their eggs without exceptional permits.

The board did, in my judgment, fairly and fully consider all of your arguments in favor of changing the regulations to accommodate your desires. They approved a part of your proposal, but not all of it. Their decision did not foreclose on future discussion and the modification of the regulation, however. The chairman of the board, Brenda Johnson, invited you and your association to continue working with the Department, and to bring the proposal (or a different and modified proposal) back to the board. The next time that section of the regulations will be open for change will be fall of 1989, but according to Ms. Johnson, you may petition the Board for an earlier reconsideration if you wish.

#### FINDINGS:

I find the allegation that the agency abused its discretion by modifying your permits to be unsupported by the facts. The agency did not modify your permits while they were effective, but at the time that new permits were required and reissued. The statutes clearly charge the commissioner of the department with the power and duty to regulate both gamebirds and their progeny. The regulations allow him to delegate those powers and duties to citizens, but do not require him to do so.

I find that the game board did afford you a fair and full hearing on the issues of the case. The board is not compelled to find for citizens petitioning for regulatory change, despite any preponderance of scientific or other evidence which may support their position. The board is compelled to hear testimony, and to consider it. You are free to approach the board again with the same issue, and they will be required to hear your evidence and testimony. Perhaps your next visit will result in the acceptance of your position.

In regard to your "late" aviculturist permit, I have simply determined that the department took a very long time issuing it, although you did not lose any privileges or rights as a result. The fact that you did not receive your permit in a "timely manner" did not affect your ability to continue your operation under your other permit. You have now received your permit, and it appears that the department has developed its guidelines for inspection of facilities so that future permits may be issued in a more timely manner.

RECOMMENDATIONS:

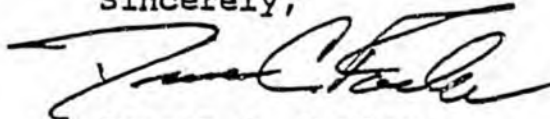
I will not make any specific recommendations to the department or the Board of Game, except to urge that they keep an open and on-going dialog with the state's citizens, and work with them to develop standards, regulations and statutes which continue to benefit the state's citizens. I will provide a copy of this report to both the Commissioner of the Department of Fish and Game and to the Chairman of the Game Board with my closing cover letter.

I do recommend that you continue to work within the systems you have already come to know so well through this incident. The legislature did not pass your bill in the last session, but that does not mean that you cannot present it again at the start of the Sixteenth Legislature. You may also petition the Board of Game to hear your proposal to change the regulations again, and you may certainly be placed on the agenda for the 1989 hearing schedule when that section of the regulations will be open if your petition for special scheduling is not approved at this time.

With the transmittal of this letter, I am closing your case. We have all learned from this investigation, and I thank you for bringing it to our attention. I know that you are disappointed that your proposals were not totally accepted, but I want to assure you that you are proceeding in the right way, and your diligence will pay off for you. Sometimes the political process is fickle, but you have already shown that a determined citizen can make a difference.

I wish you luck in your endeavors. If I can answer any questions about this letter or the investigation, please feel free to call me or Ms. DeCamp.

Sincerely,



Duncan C. Fowler  
Ombudsman

DCF:RAD:dea:ljb

cc: Brenda Johnson, Chairman, Board of Game  
Don Collinsworth, Commissioner, Department of Fish and Game

April 29, 1988

Ms. Ruth DeCamp  
Ombudsman Associate  
3201 C Street, Suite 403  
Anchorage, Alaska 99503-3934

Dear Ms. DeCamp:

This responds to your letter of April 15 regarding Ombudsman Complaint A 88-0344, alleging that the Division of Game has treated Mr. and Mrs. Ken Rivard unfairly by not issuing them a propagation permit for spruce grouse, has unreasonably delayed processing of their aviculture permit, and has discriminated against them in the permitting process in general. You have asked a number of specific questions regarding this complaint and I will address each in turn.

1. I find your first question somewhat perplexing because it indicates that we once issued the Rivards permits to propagate birds but we no longer do so. Our most recent permit to Judi and Ken Rivard (Permit No. 88-46) states the following: "Authority is granted the permittees to possess and propagate the following birds" (emphasis mine). This permit, like a number issued to the Rivards in the past, does allow for propagation. What this year's permit does not do is allow the Rivards to ~~sell~~ ~~these birds~~ or their progeny. Furthermore, this permit also stipulates that no birds may be transferred to another person or organization without written authority from this department. The Rivard's aviculture permit, issued on April 29, 1988 (copy enclosed) gives them the authority to possess, sell, import, or export captive-bred birds which the Board of Game considers appropriate for these purposes (see enclosed copy of 5 AAC 92.028 for this list). It appears that the Rivards have chosen to define propagation as "to breed and sell." Our definition is "~~to breed~~"

The department's adherence to the "to breed" definition of propagate stems from the Board of Game's determination at their March 1987 hearing on this matter that the

privatization of Alaska's wildlife, specifically selling of native birds, is not in the best public interest. Because the Rivards attended that meeting of the Board of Game and are certainly aware of the board's decisions and intent regarding the matter of privatization, I am somewhat surprised at the Rivard's allegations. They should understand the difference between the board's functions (allocation decisions) and the department's (biological management of resources), and also understand our unwillingness to issue permits contrary to the board's wishes.

2. Your second question, regarding disposition of progeny, is closely related to question number 1. Under an aviculturist permit, the Rivards are permitted to dispose of the progeny of their captive birds (those species covered by the aviculturist permit). Under their existing permit for white-tailed ptarmigan, rock ptarmigan, willow ptarmigan, and spruce grouse they may not sell the eggs or young of their permitted captive birds. The department's contention that indigenous bird species (those species not covered by an aviculturist permit) and their progeny remain the property of the state is supported by a recent opinion of the Department of Law, File No. 661-88-0066 dated October 20, 1987 (copy enclosed) and reflects the decision of the Board of Game at their March 1987 review of the matter of privatization of wildlife.

I am not certain who "the others" are who have been allowed to sell eggs and live young, but I imagine the Rivards are referring to aviculturists and their collections of migratory waterfowl in Alaska. Migratory waterfowl (ducks, geese, and swans) are managed primarily by the federal government (U.S. Fish and Wildlife Service) so our "authority" over these species is more limited than with resident species. For a number of years, we issued permits to aviculturists for the collection of migratory waterfowl which were identical with the permits issued by the federal agency with principal authority for these species. The federal permits do not preclude sale of progeny. We are currently, based on March 1987 Board of Game decisions on privatization of wildlife and the Department of Law's opinion on this matter, exercising the state's authority to be more restrictive than the federal government regarding permits for migratory waterfowl when it appears that such restrictions are necessary for conservation purposes.

3. This question, regarding our policy of limiting the number of birds held in captivity versus current hunting bag limits, appears inconsistent on the surface. Under our present hunting regulations for most of the state, an individual could kill 15 spruce grouse a day during a season which runs from August to April. The fact remains that hunting has been determined by the Board of Game to be an

appropriate use of game--propagation with the intent to sell the progeny has not.

We do not, through policy, limit the number of birds anyone has in captivity. For example, in 1985 our permit to the Rivards authorized them "to take, possess, hold alive, and propagate up to 12 spruce grouse." At year's end they reported having 7 spruce grouse. In 1986, their permit was similar to that in 1985 and as near as we can tell they only had 1 spruce grouse in possession. In other words, limiting the number of birds in captivity has not been an issue--the issue has been the disposition of the birds and their progeny.

During the late spring to midsummer, nesting/brood rearing period for spruce grouse, hunting seasons are closed to allow these birds to reproduce. The Rivards and other aviculturists obtain eggs or young birds at this time and it seems prudent to place some reasonable constraints on the numbers of eggs/young collected. Our "limit" of 12 birds per year represented this constraint and did not appear to be a problem to the Rivards at that time.

4. This question regards the Rivard's allegation they were denied access to the Board of Game meetings this year. The Board of Game establishes its own agenda and probably should be the body addressing this allegation. I can tell you, however, that this issue received the board's considerable attention at their March 1987 meeting. The board simply does not have the time or resources to address all issues and all regulations at each meeting. I have enclosed a copy of the board's agendas for their 1988 through 1995 meetings for your perusal.
5. This question regards the status of the Rivard's request for an aviculture permit. The regulation covering aviculture permits (5 AAC 92.028) was approved for filing by the Lieutenant Governor's office on January 26, 1988. Carl Grauvogel, our area biologist in Palmer, and Dr. Bert Gore, the state veterinarian, inspected Rivard's facilities on March 7, 1988, and an aviculture permit for the Rivards was issued on April 29, 1988. Because this is a new permit only recently established by the Board of Game, we have been in the process of developing draft guidelines for facilities as we proceeded with implementation of the regulations establishing aviculture permits. I have enclosed a copy of our draft Aviculturist Permit Operational Guidelines as requested. Because the department's principal concern regarding aviculture in Alaska is the potential for disease transmission from captive birds to wild avifauna, it has taken some time to develop guidelines for disposal of fecal wastes (potentially harboring disease organisms) from captive birds. This has required a number of inquiries to a sample of other state agencies and appropriate federal

agencies in order to determine acceptable and practical standards for fecal waste disposal.

6. This question, regarding the desires of the Rivards to have spruce grouse added to the "clean" list for whatever reason, goes back to the Board of Game's determination in March 1987 that indigenous grouse and ptarmigan species would not be made available for privatization. The whole list of species would include white-tailed, rock and willow ptarmigan, spruce grouse, blue grouse, sharp-tailed grouse, and ruffed grouse. These animals belong equally to all residents of Alaska and transferring their ownership to private citizens does not, in the board's opinion, constitute an appropriate use of these resources.

The portion of the March 1987 Board of Game meeting covering the whole matter of aviculture permits and privatization of wildlife took several hours of discussion. I have enclosed a copy of the tapes for your use (there is no transcription available). You will find that the Board of Game thoroughly reviewed this matter with more than ample opportunity for the Rivards to present their "case." However, the board did not grant the Rivards everything they wanted.

The Division of Game has been cooperative with the Rivards, and to the extent we could in good conscience and legally comply with their desires we have done so in a timely manner. Since 1983, the Division of Game has issued 22 permits and amendments to those permits to the Rivards. This approximates our permitting activities required to meet the needs for scientific and collecting permits by the entire faculty at the University of Alaska, Fairbanks. This spring the Rivards have taken their case to the legislature in an attempt to diminish the state's authority to regulate commercialization of Alaska's game birds, and now they have taken their "problem" to your office.

In many instances, state and federal wildlife officials in other states and other nations have either lost their ability to regulate use of publicly-owned wildlife or have relinquished that authority in response to harassment, intimidation, or whatever. A number of cases of disease transmission from captive animals to wild animals with resultant major losses of wildlife populations have been documented. Similarly, the accidental or intentional release of various species into the wild has resulted in major ecological problems including the diminution in numbers or even extirpation of species and subspecies of wild animals. We take our responsibility to protect and maintain Alaska's wildlife very seriously and we certainly make every attempt to comply with and insist upon compliance with state wildlife laws and regulations.

The Rivards are unhappy with some of the current regulations designed to protect and preserve Alaska's wild species, but they certainly have been treated fairly by this division and the Board

April 29, 1988

of Game. We will continue to work cooperatively and objectively with the Rivards and all other citizens interested in aviculture.

If you need additional information or clarification, please do not hesitate to call me or Don McKnight (465-4190), our acting deputy director.

Sincerely,



W. Lewis Pamplin, Jr.  
Director  
Division of Game

Enclosures

cc: Don McKnight

bcc: Don Collinsworth  
Norman Cohen

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### DIVISION OF GAME

STEVE COWPER, GOVERNOR

P. O. BOX 3-2000  
JUNEAU, ALASKA 99802-2000  
PHONE: (907) 465-4190

April 29, 1988

Ken & Judi Rivard  
P. O. Box 871842  
Wasilla, AK 99687

Dear Mr. & Mrs. Rivard:

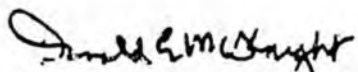
Enclosed is your aviculture permit for 1988 and 1989. Please note that this permit stipulates that you must report annually to the department.

I have attached a copy of our draft Aviculturist Permit Operational Guidelines which were developed with considerable assistance from some members of the Alaska Gamebird Association. Because of your intense interest in and understanding of aviculture, we would appreciate any additional comments you may have on these guidelines. Copies of the document will also be sent to other aviculturists in Alaska in order to obtain their comments and suggestions.

Our Palmer Area Biologist, Carl Grauvogel, who inspected your facilities felt that they were "exemplary." He was concerned, however, about your current procedure for fecal waste disposal. We strongly recommend that you adopt one of the methods for fecal waste disposal which are outlined in our draft Aviculturist Permit Operational Guidelines.

I sincerely regret any inconvenience we have caused you and appreciate your assistance and patience throughout this process.

Sincerely,



Donald E. McKnight  
Acting Deputy Director

Enclosures

cc: Carl Grauvogel



STATE OF ALASKA  
DEPARTMENT OF FISH AND GAME  
JUNEAU, ALASKA

Permit No. 88-1-AV

Expires 1/31/90

AVICULTURE

PERMIT

This permit authorizes Ken and Judi Rivard  
of P. O. Box 871842, Wasilla, AK 99687  
following activities during 4/28/88 to 1/31/90 in accordance with AS 16.05.930 to:  
person, agency or organization  
address

Authority is granted the permittee to possess, sell, import or export captive-bred nonendangered birds listed under 5 AAC 92.028(d)(3). All birds must be wing-clipped. No birds may be released to the wild nor may possession of birds be transferred to any person within the state who does not have a current aviculture permit issued by the department. An annual report, as specified under 5 AAC 92.028(c), must be submitted to the department no later than January 31 of each year.

Attached to this permit are draft Aviculturist Permit Operational Guidelines.

This permit must be in the possession of a person specified on this permit during approved activities who shall show it on request to persons authorized to enforce Alaska's fish and game laws. This permit is nontransferable, and will be revoked, or renewal denied by the Department of Fish and Game if the permittee violates any of its conditions, exceptions or restrictions. No redelegation of authority may be allowed under this permit.

Donald C. McLaughlin  
Division of Game

ALASKA DEPARTMENT OF FISH AND GAME  
Division of Game

AVICULTURIST PERMIT  
OPERATIONAL GUIDELINES  
(Draft)

Holding Pens

1. All holding pens containing small game birds (e.g., francolins and sand partridges) should have an area of at least 20 square feet per adult bird.
2. All holding pens containing large game birds (e.g., capercaillie) should have an area of least 36 square feet per adult bird.
3. All pens should be covered with netting or woven wire, or roofed with some material to protect birds from disturbance and attack from avian predators.
4. Each bird should have a protected area from sun, wind, and inclement weather. The protected area should cover at least 25 percent of the overhead surface area of the pen, and it should be constructed of materials strong enough to support an above-average snow load in that area. If birds have ready access to an enclosed building and can obtain shelter inside without excessive crowding, no portion of the outside pen area needs to be covered.
5. When pens with open areas are built in a location with prevalent winds, sidewalls (constructed of plywood or other wind resistant material) should be erected under the overhead protected area to help protect birds from exposure from the prevailing wind(s). Sidewalls should be constructed on at least two sides of the open pens, preferably 3 sides if the wind blows from variable directions. Sidewalls are not necessary if birds have ready access to an enclosed building from the open area.
6. All holding pen doors used for entrance or exit should have a self-locking latch mechanism and preferably all should open inward.
7. If the floor of the holding pen is located at ground level, the height of the pen walls should be at least 4 feet. If the pen "floor" is elevated above ground level (using chicken wire or similar material), the height of the "floor" upon which the birds walk should be at a level that facilitates easy cleaning. Buildings that house birds should have a wall height of at least 6 feet.

8. (a) All holding pens should be surrounded by a perimeter fence constructed of materials that are strong enough to prevent ground predators from entering the pen compound. The perimeter fence should have a height of at least 5 feet.

OR

- (b) All holding pens should have two entrance doors/gates. The first door should open into an enclosure that does not house birds; any subsequent entrance door(s) following may or may not open into enclosures that house birds. A pen that contains a covered aisle in which the aisle area is not used to house birds meets the requirements in (b) of this section provided the covered aisle has two secure doors that are used to gain entrance into the pen area where birds are housed.
9. Pens should be cleaned on a regular basis and maintained in a sanitary condition.
10. The floor of the pen should be well drained and consist of materials that permit easy cleaning. Sand or pea gravel are excellent ground covering materials that could be used. All of the floor area should have easy access for cleaning.

#### Disposal of Fecal Wastes

1. Fecal wastes should be disposed of in a manner that will prevent the spread of possible disease pathogens and contamination of the environment. Any of the following methods are an acceptable means of disposal:
- (a) burning or incineration;
  - (b) burying or covering material in a manner that meets Alaska Department of Environmental Conservation (ADEC) sewer disposal regulations (which includes but is not limited to prevention of stream, lake, and groundwater contamination);
  - (c) storing wastes in a covered container and then composting for a minimum of 3 months during the summer season or composting at an indoor temperature above 50 degrees Fahrenheit; using two containers and alternating use between containers every other year is an acceptable method; or
  - (d) disposing of material in a approved sanitary landfill that meets ADEC regulatory standards.

SCHEDULE OF SECTIONS TO BE OPEN FOR PROPOSED CHANGES TO THE ALASKA ADMINISTRATIVE CODE

Article	1987	1988	1989	1990	1991	1992	1993	1994	1995
<b>5. RESTRICTED AREAS Chapters 78--88</b>			Homer only F						
Areas Closed to Hunting	14, 15		F		F				F
Controlled Use Areas	14, 15	23		S		S		S	
Management Areas				S		S		S	
Closures and Restrictions in State Game Refuges					F				F
<b>TRAPPING CHAPTER 84</b>									
<b>5. AREAS CLOSED TO TRAPPING</b>									
5 AAC 84.180 Applications of this Article .190 Southeastern Alaska (Units 1-5) .200 Southcentral Alaska (Units 6-16)	X				S			S	
<b>6. STATE GAME REFUGES AND SANCTUARIES</b>									
5 AAC 84.220 Application of this Article .230 Southeastern Alaska (Units 1-5) .240 Southcentral Alaska (Units 6-16) .250 Interior-Arctic Alaska (Units 17-26)	X				S			S	
<b>7. TRAPPING SEASONS AND BAG LIMITS</b>									
5 AAC 84.260 Application of this Article .270 Fur Bearer Trapping	X		lynx-F		S			S	
<b>STATEWIDE PROVISIONS Chapter 92</b>									
<b>1. GENERAL</b>									
5 AAC 92.001 Application of this Chapter .002 Liability for Violations .005 Policy for Changing Board Agendas		F				F			

X = Topic considered for all areas  
F = Fall Meeting

Number = Topic only considered for these units  
S = Spring Meeting

SCHEDULE OF SECTIONS TO BE OPEN FOR PROPOSED CHANGES TO THE ALASKA ADMINISTRATIVE CODE

Article	1987	1988	1989	1990	1991	1992	1993	1994	1995
1. DESCRIPTION Chapters 78--88  Description of Regions Application of Regulations Description of Game Management Units					F				
2. and 3. Chapters 78--88  SUBSISTENCE AND GENERAL SEASONS AND BAG LIMITS:									
Caribou	X	7-21	13-S	S		S		S	
Deer	X	X			S		S		S
Moose	X	X	S*	S	S*	S	S*	S	S*
Bison	X		S		S		S		S
Black Bear	X			S		S		S	
Brown or Grizzly Bear	X	9-S; 4-F		S		S		S	
Goat	X		S		S		S		S
Muskoxen	X	X	S			S			S
Sheep	X		S		S		S		S
Wolf					S			S	
Wolverine					S			S	
Fur Animals			lynx-F		S			S	
Small Game			F					F	
Waterfowl		X			S		S		S
Unclassified Game			F					F	
Elk			S		S		S		S
4. Chapters 78--88  Permits, Permit Procedures, and Conditions			F				F		

\* Antlerless moose seasons only

X = Topic considered for all areas  
F = Fall Meeting

Number = Topic only considered for these units  
S = Spring Meeting

SCHEDULE OF SECTIONS TO BE OPEN FOR PROPOSED CHANGES TO THE ALASKA ADMINISTRATIVE CODE

Article	1987	1988	1989	1990	1991	1992	1993	1994	1995
<b>2. LICENSES, HARVEST TICKETS, HARVEST REPORTS, TAGS, AND FEES</b>									
5 AAC 92.010 Harvest Tickets and Reports	X	X		F			F		
.012 Licenses and Tags	X			F			F		
.014 Brown and Grizzly Bear Tag Fee Exemption	X	X	S	S	S	S	S	S	S
.016 Muskoxen Tag Fees	X		S			S			S
.018 Waterfowl Conservation Tag		X			S		S		S
.019 Funeral Potlatch Moose	X		F				F		
<b>3. PERMITS</b>									
5 AAC 92.020 Application of Permit Regulations									
.025 Permit for Exporting Raw Skins									
.027 Permit for Exporting Trophies									
.028 Aviculture Permits									
.029 Permit for Possessing Live Game									
.031 Permit for Selling Skins and Trophies			F				F		
.033 Permit for Scientific, Educational, or Propagative Purposes									
.037 Permit for Raptors									
.039 Permit for Taking Wolves from Aircraft (to be scheduled with wolf predation control)									
.041 Permit to Take Beavers to Control Damage to Property									
.043 Permit for Fur Farming									
.050 General Permit Hunt Conditions and Procedures	X	F			F			F	
.052 Discretionary Permit Hunt Conditions		F			F			F	

X = Topic considered for all areas  
 F = Fall Meeting

Number = Topic only considered for these units  
 S = Spring Meeting

SCHEDULE OF SECTIONS TO BE OPEN FOR PROPOSED CHANGES TO THE ALASKA ADMINISTRATIVE CODE

Article	1987	1988	1989	1990	1991	1992	1993	1994	1995
<b>4. METHODS AND MEANS</b>									
5 AAC 92.075 Lawful Methods of Taking Game									
.080 Unlawful Methods of Taking Game	X	X		S		S		S	
.005 Unlawful Methods of Hunting Big Game				F(*)			F(*)		
.090 Unlawful Methods of Hunting Fur Animals					S			S	
.095 Unlawful Methods of Trapping Furbearers	X				S			S	
.100 Unlawful Methods of Hunting Waterfowl, Snipe, and Cranes	X				S		S		S
<b>5. PREDATOR CONTROL</b>									
5 AAC 92.110 Control of Predation by Wolves			F						
.120 Wolf Predator Control Programs	20B		F						
<b>6. POSSESSION AND TRANSPORTATION</b>									
5 AAC 92.130 Restriction to Bag Limit	X		F				F		
.135 Transfer of Possession	X		F				F		
.140 Possession or Transportation of Game									
.150 Evidence of Sex and Identity			F				F		
.155 Exportation of Trophies									
.160 Marked or Tagged Game									
.165 Sealing of Bear Skins and Skulls	X				S			S	
.170 Sealing of Wolf, Wolverine, Lynx, Marten, and Land Otter	X				S			S	
.175 Sealing of Beaver	X				S			S	
<b>7. USE OF GAME</b>									
5 AAC 92.200 Purchase and Sale	X		F				F		
.210 Game as Animal Food or Bait	X				S			S	
.220 Salvage of Big Game Meat, Furs, and Hides	X		F				F		

(\*) Land and shoot only

X = Topic considered for all areas

F = Fall Meeting

Number = Topic only considered for these units

S = Spring Meeting

SCHEDULE OF SECTIONS TO BE OPEN FOR PROPOSED CHANGES TO THE ALASKA ADMINISTRATIVE CODE

Article	1987	1988	1989	1990	1991	1992	1993	1994	1995
7. USE OF GAME (continued)									
.230 Feeding of Game			F				F		
.250 Transfer of Muskoxen for Scientific and Educational Purposes			S			S			S
.260 Taking Cub Bears and Female Bears with Cubs Prohibited				S		S		S	
9. EMERGENCY TAKING									
5 AAC 92.400 Emergency Taking of Game			F				F		
.410 Taking Game in Defense of Life or Property									
20. DEFINITIONS									
5 AAC 92.990 Definitions	X	F				F			
SUBSISTENCE USES Chapter 99									
5 AAC 99.025 Communities and Areas with Customary and Traditional Uses	X	X	S	S	S	S	S	S	S
.030 Eligibility for Subsistence and General Hunts	X			S	S	S	S	S	S

Additional Items for Fall 1988

- 1) Wolf Big Game Hunting Seasons and Bag Limits - Units 7, 14(C), and 15 only.
- 2) Coyote Fur Animal Hunting Seasons and Bag Limits - Units 7 and 15 only.
- 3) Fox Fur Animal Hunting Season - Unit 15 only.
- 4) Fox Trapping Methods and Means - Unit 15 only.
- 5) 98.005 - Advisory Committee veto power over antlerless moose seasons.
- 6) Board adoption of all changed codified regulations per staff reorganization of codified.

Statement to be put on the Agenda Schedule

At every fall meeting, the board will consider proposals from department staff and the Attorney General that effect no substantive change and clarify or simplify regulations.



**ombudsman**

**Duncan C. Fowler**

April 15, 1988

Mr. W. Lewis Pamplin, Jr., Director  
Division of Game  
Department of Fish and Game  
333 Raspberry Road  
Anchorage, Alaska 99518-1599

RE: Ombudsman Complaint A88-0344 (Information Request)

Dear Mr. Pamplin:

On April 5, 1988, I spoke with you about allegations filed with our office by Ken and Judith Rivard. Mr. and Mrs. Rivard allege that your agency has treated them unfairly by your refusal to allow them propagation permits for spruce grouse. The Rivards also allege that your agency has unreasonably delayed processing of their aviculture permit, and that you have discriminated against them in the permitting process in general.

As we agreed in our April 7 conversation, I am asking some questions for your response. I will be on leave until April 20. If you have questions about my inquiry, please contact me after April 20, or you may also contact my supervisor, Deputy Ombudsman Sandra McGill for any urgent information needs before that date.

SPECIFIC QUESTIONS:

1. Mr. and Mrs. Rivard have been raising birds for a number of years. When they first began this activity, they received permits for the propagation. Regulations covering this activity have not changed, but the permits are now altered by the department in such a way that permits for propagation do not appear on the form. Since the regulations allow for propagation, why does the department fail to provide permits for such use? Is there an official policy in writing which supersedes the regulation allowing for permits for propagation purposes or by what authority has the division changed the issuing of such permit?

2. The Rivards believe they are not allowed to dispose of the progeny of their captive birds; they may not sell the eggs or living young of their permitted captive birds. The Rivards contend that their captives' progeny would be used by zoos and other aviculturists and believe it is unfair that the division would not allow them to recoup some of their own expenses by selling the progeny.

State of Alaska  
Legislative Branch

Reply to:

3201 C Street, Suite 403  
Anchorage, AK 99503-3334  
(907) 583-3673  
(800) 478-2824

P.O. Box W0  
Juneau, AK 99811-3000  
(907) 485-4870  
(800) 478-4870



In support of this allegation, the Rivards point out that others have been allowed to sell eggs and live young produced by their captive birds, or eggs gathered in the wild. Will you please comment on this allegation, both in the Rivards specific case and in general?

3. The Rivards believe that the policy of severely limiting the number of birds they may have in captivity is ridiculous in light of the bag-limits for taking spruce grouse during hunting season. The Rivards have been advised that they may take and hold no more than twelve spruce grouse in captivity, whereas a person hunting in several of the game management districts may kill as many as 30 of the same birds in one season.

Can you please comment on this issue, in particular as to whether it has ever been raised with and considered by the Game Board?

4. The Rivards have alleged that they were denied access to the Board of Game during this year's meetings. They were advised that the board's agenda was set and inalterable through the spring of 1989. Please advise whether the Rivards were denied access to the board, and what the normal deadlines are for being placed on the board's agenda.

5. The Rivards allege that they applied for an aviculture permit, that their bird facility was inspected, and that their aviculture permit has never been issued. The Rivards state that there are no published standards for facilities such as theirs, and they are wondering what standards were used during the inspection. They are also concerned that the permit has never been issued.

Please forward a copy of the standards for facilities used by the inspector during his pre-permit inspection of the Rivard's facility.

Please also let me know how long an aviculture permit applicant should expect to wait for approval and issuance of such a permit, and specifically, when you expect the Rivard's permit to be issued.

6. The Rivards place a great deal of stock in the similarities between ptarmigan and spruce hens for the purpose of legitimizing their desire to have spruce hens added to the "clean list." This clean list is the one which designates which animals may be held in captivity without permits.

I realize that there is a great deal of history that comes with this question, but could you provide a summary on the attempts made to put spruce grouse on the "clean list," and why the Game Board has not yet approved this? Also, your comments on the difference between ptarmigan and spruce grouse (in lay terms) would be most helpful.

\* \* \* \* \*

If any of the issues here have been brought before and answered by the Game Board, I would like to have a copy of the minutes for the meeting(s) at which they were considered.

I look forward to your response and hope that your answers will satisfy the Rivards' concerns.

Sincerely,

*Jandra M. Hill for*  
Ruth DeCamp  
Ombudsman Associate

'RAD:jjb

Chairman, Mike Davis  
Executive Representative  
10000 Alaska 99511

Executive Representative

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## JUNEAU AUDUBON SOCIETY

P.O. Box 021725 • Juneau, Alaska 99802

February 23, 1989

Representative Curt Menard  
Representative Cliff Davidson  
House of Representatives  
Resources Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representatives Menard and Davidson:

The Juneau Audubon Society strongly opposes House Bill 38, relating to the farming of captive-bred grouse. We have reviewed this legislation and believe it could pose serious risks to Alaska's bird life.

In 1987, the Board of Game unanimously rejected a proposal that would have allowed similar types of activities as are provided for under this legislation. The Board was concerned about a wide range of potential problems, including:

- (1) the risks of introducing dangerous avian diseases to native gamebird populations; and
- (2) the risks of introducing closely related but exotic species of grouse and ptarmigan to Alaska which, if intentionally or accidentally released, could compete with or genetically contaminate healthy, native species.

The Board is well-equipped and was designed to balance wildlife resource protection with the interests and needs of the public. We urge the committee not to legislate the Board of Game and the Department of Fish and Game out of wildlife management in Alaska.

Sincerely,

Peggy Cowan  
Co-Chair

cc: Resources Committee members  
Don W. Collinsworth  
David R. Cline

# ALASKA GAMEBIRD ASSOCIATION

P. O. Box 871842  
Wasilla, Alaska 99687  
907-376-2140



## THE QUESTION OF CAPTIVE-BRED GROUSE IN ALASKA

The Department of Fish and Game has made a decision to not allow the import, export or sale of captive-bred grouse in Alaska even though the statutes and regulations are all in place to allow this to occur. Their decision appears to be based on the concern that an escaped bird or birds would cause the introduction of disease, hybridization, and/or competition with the native grouse. (i.e. 16.340. [b], 5 ACC 92.028, 5 AAC 92.033)

The only indigenous game birds in Alaska are grouse. We believe the main reason for this is because they are capable of finding food above the snow cover. They thrive on buds, catkins and needles taken from the trees during the winter. Once the snow and ice arrive in October there is very little chance of finding anything at ground level for most game birds to eat and this situation remains until late March or April. The chance of survival of a captive bred grouse in the wilds of Alaska would be no better than the survival rate of the countless pheasants, partridge and quail that have been released in Alaska over the years. If a captive-bred grouse is raised on commercial grains from the first day of its life how could it possibly know about the buds, catkins or needles? Hence, how would it be able to live long enough to introduce disease, hybridize and/or compete with native birds.

We have not found any serious argument within the Department's Species Management Policies against holding grouse or other exotic species of game birds in captivity. On Page XIII-4, Section 3 of that publication it is stated, 'Attempts to transplant exotic species of game birds have never succeeded in Alaska, and each major vegetative type in the state naturally supports at least one species of game bird. In spite of numerous attempts to transplant various exotic game bird species into Alaska and several attempted range extensions of native birds to other areas in the state, there have been no successful game bird transplants to date. Transplants of native spruce grouse, captured on the Kenai Peninsula, were attempted in 1957 and 1959 by the USF&W on Kodiak Island but the transplants were not successful. The Department also attempted to introduce blue grouse on Kodiak in 1962, 1963, and 1964 and these transplants failed. (Game transplants in Alaska, Alaska DF&G, Game Technical Bulletin No. 4, December 1973) When one looks at the history of transplant attempts you will agree this makes a very good argument against the deliberate release or transplant of exotics and also makes a good argument that the escaped, unprepared exotic will not survive. If all attempts to introduce new game bird species and to extend the range of existing species have failed, how can one argue that an accidental escapee from captivity would be able to survive?

There are many reasons why these transplants and releases have not succeeded; improper preparation of the birds for release, the inability of the birds raised on commercial rations to find sufficient food, foraging behaviors, social, sexual, cover-seeking and predator awareness. Mr. Keith Howman, Chairman of the World Pheasant Assn. and an avid aviculturist was quoted in the edition of the Woodland Grouse Symposium of 1978 as follows: "As an aviculturist I have found that highly vegetarian species such as grouse and some pheasants have great difficulty in adapting to a new situation. In captivity they will slowly adapt to an artificial pelleted diet, but returning them to a vegetarian diet can be rapidly fatal. After many many years of attempting to purposely release captive-bred birds into the wild the aviculture world is only now beginning to make steps forward."

One major reason that grouse are not raised in captivity in the large numbers of other game birds is they are very susceptible to disease and infection, are unable to withstand the stress and usually die at the onset of an illness. The chance of a diseased or infected grouse escaping into the wild and surviving more than a day or so is next to zero. There is no record that grouse are carriers of any type of disease.

Intergeneric hybridization occasionally occurs in nature. There is a remote possibility intergeneric hybridization could occur between an escaped exotic and a native grouse if the exotic was able to survive and if the exotic was able to locate another grouse of its genera. In scientifically controlled hybridization most of the progeny were either mules or were unable to communicate with the other sex and consequently did not breed.

Competition with native grouse for food, cover and nesting areas should not be a concern. As we have discussed in the previous paragraphs the chances of survival of escaped exotic grouse are so nominal that this competition would not occur.

The aviculturists' captive propagation offers an attractive reinforcement to the complex task of habitat preservation and can produce stock for study to yield information useful in managing wild populations. The identification of basic biological, behavioral and ecological characteristics usually require intensive scientific study. In many instances study that would be difficult if not impossible to undertake in the wild can be conducted under the controlled conditions available in captivity. Some of the most abundant species are not well established in captivity and some are next to impossible to keep alive under captive conditions for even a short period of time. It is essential that aviculturists learn what is required to propagate them while they are abundant and this is left up to the private sector as the game departments, institutions and zoos need to put their resources into the threatened and endangered species. Many of the grouse species are abundant in the wild but have not yet been established in captivity.

Today we face ever increasing populations all over the world. As the numbers of mankind grow so does their need for food, shelter and land. Around the world ancient forests are being destroyed, prairies ploughed, and wet lands drained for farms, subdivisions and new cities. The natural habitats of birds and animals are being destroyed at an ever increasing rate. Many of these birds and animals were once found in the hundreds of thousands; however, quite a few of these are now on the threatened or

endangered list: whooping crane, giant canada geese, condors, blue birds, etc. The breeding of endangered and non-endangered species in captivity is likely to be crucial to their eventual survival. Captive breeding must be used as a method of preventing extinction along with the maintenance of wild stock in their natural habitat. The techniques of captive breeding are learned, improved upon and extended to other aviculturists in the hope that when the time comes one of us will be there with the knowledge necessary to keep a dwindling species alive. Gene pools need to be created before the native stock even begins to feel the pressures of mankind.

• The Alaska Gamebird Assn. has accumulated a large volume of letters from scientists, veterinarians, etc, responding to the Department's disease and hybridization issue and supporting the raising of grouse in captivity. This information is available should you be interested in perusing it.

RECEIVED FEB 10 1989

# **ALASKA GAMEBIRD ASSOCIATION**

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P. O. Box 871842  
Wasilla, Alaska 99687  
907-376-2140



February 07, 1989

Representative Curt Menard  
P. O. Box V  
Juneau, Alaska 99811

Dear Curt,

Thank you for sending a copy of Fish and Game's bill analysis of HB38. We would like to respond to that analysis.

Under the heading 'Organizational Opposition to Bill' the Board of Game is cited as being opposed to HB 38. We have been informed that the Board of Game has never discussed this bill in their sessions and therefore they should not be cited as being opposed.

Under the heading 'Background Legislative Intent' we direct your attention to the sentence: "The sale of wildlife is prohibited by statute and regulation." What is the definition of wildlife for the purpose of this sentence? If wildlife refers to the wild birds in Alaska then it is used improperly in this analysis as HB 38 only addresses captive-bred birds. If wildlife refers to all game birds then what about the privately owned captive-bred wildlife such as waterfowl, pheasants, wild turkeys, and quail that are routinely imported, exported and sold in Alaska.

In 1987 the Alaska Gamebird Assn. met with the department and the Board of Game to initiate some changes to the existing regulations in an attempt to make them clearer to the public at large. At that time the list of bird species that could be imported without any permit was expanded to include the chukar partridge and two species of quail; coturnix and button. Other species that are now defined by name on the list were not actually added as they were originally lumped into one category, Phasianinae. In 1987 the Department created the Aviculturist Permit. Three species the Department insisted on placing on this permit are tropical and due to the very special needs of these birds to live in captivity it is safe to say these

species will probably never be imported into Alaska; megapodes, curassow, and sand-partridges. The expansion of exotic species that could feasibly be raised in Alaska with a permit was limited to partridge, francolin, and capercaillie grouse.

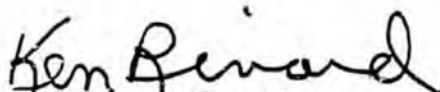
Under the heading 'Analysis of Bill Program' there are some serious allegations. The passage of this bill would eliminate the Department's control and management of this activity; however, that is by their choice. The regulations are in place for the raising of captive-bred grouse but they refuse to make use of these ( i.e. 16.340 [b] License and Tag Fees and 5 ACC 92.033. Permit for Scientific, Educational, or Propagative Purposes). The Board of Game frequently takes the Department's position on matters without presentation of documented evidence to substantiate their arguments. The Alaska Gamebird Assn. went to that board meeting with considerable documentation and scientific evidence contrary to the Department's stand. It appeared that this evidence was ignored by all. We have attempted to appear before the Board of Game since the meeting in the spring of 1987 but to no avail. We have met with the Department several times and a great deal of correspondence has passed between us. The Department has taken a stand against the raising of grouse in captivity and no matter how much information to the contrary that we amass they refuse to discuss the possibility of this activity being feasible. We have no alternative but to ask for help from the legislature.

As has occurred many times in the past, the Department continues to confuse this issue by constantly bringing the wild grouse into the discussion rather than discussing the issue of raising captive-bred grouse. This leads people to believe that the bill advocates the taking of grouse from the wild without a permit and introducing new species into the wild, this is not so.

It would be interesting if the Resource Committee were to ask the Department for an opinion of Dr. Pearson's letter, or any of the letters that are contrary to their position on disease.

If you have any questions or suggestions please do not hesitate to contact me. Thank you again for all your help.

Best wishes,

  
Ken Rivard, President  
Alaska Gamebird Assn.

# ALASKA GAMEBIRD ASSOCIATION



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At present, the Rivard's of Wasille, AK have led the study of captive bred populations of ptarmigan and grouse in Alaska. A conservative estimate of moneys spent for capture and possession of these birds is approximately \$4000.00, pens and coup areas to hold these captive populations of grouse range close to \$8000.00 I believe this to be but a drop in the bucket compared to the money that would be needed to be appropriated for a government or institutional study of these birds.

Their first paper dealing with White-Tailed Ptarmigan surviving in captivity has been submitted and soon to be published in the American Pheasant & Waterfowl and the American Pheasant & Waterfowl Society magazines. They have made a great contribution through their study of disease and stress in captive-held populations of ptarmigan and grouse.

The private avicultural community is the logical place to develop the necessary techniques and to add to the collective knowledge of this beautiful and fascinating family of birds. We must learn as much about them as possible while they are still abundant.

All statutes are in place as far as keeping these birds in captivity, please refer to ADF&G Miscellaneous Rules & Regulations Book #8, 5AAC 92.028. In addition to these statutes there are also laws in place that pertain to the shipping in of eggs, day-old chicks or adult breeding birds to the state of Alaska. In brief, a health certificate is required to accompany all importations of captive-bred avian populations.

There is greater potential for success of captive grouse breeding in Alaska than there is in any other climate in the United States. Our climate has a sterilizing effect against many of the bacteria and viruses that thrive in "Outside" captive flocks of gamebirds. To date there are no known documented diseases of grouse existing in Alaska.

I have spoken with several experts throughout the state about the possibility of disease transmission or contamination of the native population of grouse by insect vectors (black fly & mosquito populations) feeding on captive-bred birds and possibly transmitting disease through this manner. These are the conversations in brief with the people and various state departments I have communicated with.

Ed Holspan-Entymologist, Division of Forestries, Anchorage office-  
"there are approximately 4-5 genera of mosquito populations in AK and a dozen black fly populations in the state. There are no known disease carrying mosquitos or black fly populations in the state."  
Donald G. Ritter-Manager of the Northern Regional Laboratory in charge of bacterial and viral disease for the state of Alaska, U of A Fairbanks.  
I had asked Mr. Ritter to conduct a library search for me on the

# ALASKA GAMEBIRD ASSOCIATION



-3-

possible' documentation of disease in the native populations of grouse and ptarmigan and also the possible documentation of disease that had been spread by insect vectors in the state of Alaska. After reviewing the information sent by Mr. Ritter I would note that there is no documentation of disease as of this date on file concerning the native populations of grouse, also no documented material concerning disease carrying mosquitos or black fly populations in the state.

Dick Barret-Pathologist-Department of Enviromental Conservation, Palmer I asked Dick these same questions concerning transmission of disease by insect vectors. His reply was that there was nothing that could be substantiated or that "they could get there hands on."

Ken Crieg- U of A Fairbanks-Extention Office- Ken stated that there might be a possibility of disease spread by the insect population but that he had never heard of a case this far north on the continent.

Meg Berget-Cooperative Extention Service-Palmer-Meg has raised flocks of poultry in the Mat-Su Valley for several years now and has never noticed a problem with the insect population feeding on her poultry.

What has been documented by Ken & Judi Rivard of Wasilla, AK on observing their wild-caught grouse populations in captivity is the presence of tapeworm in a few of the necropsys done on wild-caught chicks that died in 48 hours after captivity or exactly 5 days after capture. The necropsys were performed at Washington State University, the Veterinary Diagnostic Laboratory in Kansas, the USF&W laboratory in Ames, Iowa and the state biology lab in Palmer, AK. Although the tapeworm parasite does not seem to present a problem to the bird unless an extreme stress situation is involved, it was the first time I had heard of this particular parasite infecting the native grouse population in the wild.

Birds brought in from the wild are effectively wormed with medication and quaranteened for several weeks to remove any external parasites such as the Northern Fowl Mite that they may bring in from the wild. Aviculturist/hobbyists are highly aware of the parasites and disease that wild vectors (wild birds) carry, the escape-proof pens that maintain the captive-bred populations of gamebirds are built with the function to keep wild birds out as well as to keep our own birds in.

Another concern voiced by ADF&G concerning the keeping of captive-bred grouse in the state is the remote possibility that an escaped bird would hybridize with the native stock. There are numerous examples in nature of more than one species of closely related birds existing in the same habitat with no known hybridization. This is true in quail, pheasants, grouse and water fowl. Hybridization usually occurs in a captive situation when birds with no opportunity to mate with their own kind are forced together. There is no reason to believe that one