

Michelle D. Sinnott (AK Bar No. 1506049)
Joanna Cahoon (AK Bar No. 1405034)
Ashley Donovan (AK Bar No. 2404031)
TRUSTEES FOR ALASKA
121 W. Fireweed Ln., Suite 105
Anchorage, AK 99503
Phone: (907) 276-4244
msinnott@trustees.org
jcahoon@trustees.org
adonovan@trustees.org

Attorneys for Plaintiffs

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

ALASKA WILDLIFE ALLIANCE and
CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

v.

STATE OF ALASKA, *et al.*,

Defendants.

Case No. 3AN-25-10324 CI

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION¹

Plaintiffs Alaska Wildlife Alliance and Center for Biological Diversity (collectively, Wildlife Alliance) move for a preliminary injunction under Alaska Rule of Civil Procedure 65 to prevent the Alaska Department of Fish and Game (Department) from engaging in predator control activities targeting black and brown bears within the

¹ The Wildlife Alliance has filed a motion for expedited consideration requesting a decision from the Court by **5pm on May 1**.

Mulchatna Caribou Herd (MCH) Predation Management Area (Mulchatna Control Area or Control Area) until after this Court has adjudicated the merits of the Wildlife Alliance’s pending litigation.

INTRODUCTION

In July 2025, the Alaska Board of Game (Board) convened a special meeting in Anchorage for the sole purpose of adopting Proposal 1, which reinstated the Mulchanta predator control program after it had been struck down as unconstitutional twice. Despite the speed at which the Board went out of its way to reinstate the amendments to 5 AAC 92.111(c), Proposal 1 has been stuck in a bureaucratic slow roll since then. For months, the Wildlife Alliance’s counsel has attempted to clarify with opposing counsel the State of Alaska’s (State) timeline for complying with the remaining ministerial requirements of the Alaska Administrative Procedure Act (APA) and its plans to implement the Mulchatna predator control program this summer to no avail. Despite these repeated requests for information, on March 24, 2026, during a regularly scheduled meeting, the Board unexpectedly went into an executive session to discuss amendments to the Mulchatna predator control program. Without any substantive discussion on the public record, the Board readopted Proposal 1 with minor changes, as identified in RC 46, “as a technical formality.”² On April 3, the Lieutenant Governor filed the regulation as

² Pursuant to Civil Procedure Rule 15(a), the Wildlife Alliance may amend their complaint “once as a matter of course at any time before a responsive pleading is served.” The Defendants have not yet filed an answer, which means the Wildlife Alliance may amend its complaint without leave of court. In light of the Board’s unexpected readoption

required by the APA.³ The Department may start killing bears under the program beginning on May 3.⁴

Bears are constitutionally protected. The Alaska Constitution requires the Board to ensure that bear populations targeted by a predator control program are managed sustainably. It has been over a year since this Court held that the Board needed credible scientific evidence documenting brown and black bear populations to comply with the constitutional sustained yield requirement. The Board still does not have that information, and yet it has once again authorized the Department to kill an unlimited number of brown and black bears within the approximately 40,000 square-mile Mulchatna Control Area in Game Management Units 9B, 17A, 17B, 17C, 18, 19A, and 19B. Despite the Wildlife Alliance's repeated requests, the Defendants are unwilling to pause implementation of the program this summer. Thus, a preliminary injunction is necessary to prevent irreparable harm before the Court issues a decision on the merits.

FACTUAL BACKGROUND

In 2022, the Board adopted Proposal 21, authorizing the Department to kill an unlimited number of brown and black bears within the approximately 40,000-square-mile

of the amendments to 5 AAC 92.111(c), while minor, the Wildlife Alliance has filed an amended complaint as a technical formality to reflect the Board's latest action.

³ Lt. Gov., Memorandum Filing Bd. of Game Regulations re: Mulchatna Caribou Herd Predation Management, 5 AAC 92.111 (April 3, 2026),

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=161051>. The Defendants withdrew its motion to dismiss as moot due to the filing of the regulation.

⁴ Pursuant to AS 44.62.180, a regulation "becomes effective on the 30th day after the date of filing," which means the Department could start to implement the program on May 3.

Mulchatna Control Area each year through 2028.⁵ Despite acknowledging that it lacked any data or estimates about the relevant bear populations,⁶ in its Operational Plan for implementing Proposal 21, the Department set the objective to “remove all bears” within the Mulchatna Control Area.⁷ Without population data, the Department created assumptions about the number of brown bears in the area, based on two outdated and geographically distinct studies, and predicted it would kill between five and fifteen individuals.⁸ The Department did not provide any black bear population estimates.

Between May 11-June 2, 2023, the Department implemented Proposal 21, shooting every bear it found within 1,200 square miles of the Western MCH’s calving grounds. The Department killed five black bears and ninety-four brown bears, six times more brown bears than predicted.⁹ The Department blamed this egregious discrepancy on “extrapolation” from the inapplicable studies.¹⁰

⁵ 5 AAC 92.111(c) (2022).

⁶ Exhibit A, DIV. OF WILDLIFE CONSERVATION, ALASKA DEP’T OF FISH & GAME, OPERATIONAL PLAN FOR INTENSIVE MANAGEMENT OF CARIBOU (*RANGIFER TARANDUS*) IN GMUS 9B, 17, 18, 19A & 19B DURING REGULATORY YEARS 2022–2028, at 14, 18, 23 (2023) [hereinafter Operational Plan].

⁷ *Id.* at 18.

⁸ *Id.* (citing Lawrence J. Van Daele et al., *Grizzlies, Eskimos, and Biologists: Cross Cultural Bear Management in Southwest Alaska*, 12 *URSUS* 141–52 (2001); Patrick Walsh et al., *Application of a Double-Observer Aerial Line-Transect Method to Estimate Brown Bear Population Density in Southwestern Alaska*, 1 *J. OF FISH & WILDLIFE MGMT.* 47–58 (2010)).

⁹ Exhibit B, Memorandum from Todd Rinaldi, Mgmt. Coordinator, Alaska Dep’t of Fish & Game, to Tim Peltier, Reg’l Supervisor, Alaska Dep’t of Fish & Game 1, 3 (Aug. 28, 2023) [hereinafter 2023 Report].

¹⁰ *Id.* at 5.

From May 10 through June 5, 2024, the Department again killed every bear it saw near the Western MCH’s calving grounds, totaling eighty-one brown bears.¹¹ The Department admitted it was still proceeding without any relevant brown or black bear population data because it “desire[d] to avoid delaying the initiation of bear removal.”¹²

In March 2025, after 180 bears had been killed, the Anchorage Superior Court struck down Proposal 21 as “unlawfully adopted and, therefore, void and without legal effect.”¹³ The Court held, among other things, that the Board had violated the Alaska Constitution’s sustained yield clause because it lacked “credible scientific evidence” about the bear populations when it authorized the unrestricted killing of bears.¹⁴

Using its emergency rulemaking powers, the Board almost immediately reauthorized the program without addressing the constitutional deficiencies.¹⁵ The Department killed eleven more brown bears around May 10, 2025¹⁶ before the Court

¹¹ Exhibit C, Memorandum from Todd Rinaldi, Reg’l Mgmt. Coordinator, Alaska Dep’t of Fish & Game, to Tim Peltier, Reg’l Supervisor, Alaska Dep’t of Fish & Game 4 (Oct. 2024) [hereinafter 2024 Report].

¹² *Id.* at 10.

¹³ Decision & Order at 10, *Alaska Wildlife All. v. State*, No. 3AN-23-07495 CI, 2025 Alas. Trial Order LEXIS 59 (Alaska Super. Ct. Mar. 14, 2025).

¹⁴ *Id.* at 9–10.

¹⁵ *See* Exhibit D, Alaska Bd. of Game, Notice of Adoption of Emergency Regulation by the Alaska Board of Game on Intensive Management for the Mulchatna Caribou Herd (Apr. 8, 2025).

¹⁶ *See* Freeman Aff., Ex. 1, at 10 n.70.

struck down the emergency regulation as a bad faith attempt to circumvent the March 14 Order.¹⁷

Undeterred, in June 2025, the Department announced a proposal to reinstate the Mulchatna predator control regulation (Proposal 1).¹⁸ The Department submitted several documents to the Board in support of Proposal 1, including a report identified as the agency’s “consideration of the sustained yield principle.”¹⁹ However, this document did not provide data on brown or black bear populations within the Mulchatna Control Area, as required by the Court. Contradicting the March 14 Order,²⁰ the Department asserted it was not required to collect data on the impacted bear populations before the Board authorized the unrestricted killing of bears.²¹ Rather, the Department characterized calls for it to collect such data as “a misunderstanding of what is required under the law and constitution.”²²

¹⁷ Order on Renewed Appl. TRO at 2, *Alaska Wildlife All. v. State*, No. 3AN-23-07495 CI, 2025 Alas. Trial Order LEXIS 63 (Alaska Super. Ct. May 12, 2025).

¹⁸ See Exhibit E, Alaska Bd. of Game, Notice of Proposed Changes in the Regulations of the Alaska Board of Game (June 6, 2025); see also Exhibit F, Alaska Dep’t of Fish & Game, Proposal 1: 5 AAC 92.111 Intensive Management Plans, Mulchatna Caribou Herd Predation Management Area (June 6, 2025).

¹⁹ See Exhibit G, DIV. OF WILDLIFE CONSERVATION, ALASKA DEP’T OF FISH & GAME, RC 3 TAB 1.3, SUSTAINED YIELD OF PREDATORS UNDER IM: OVERVIEW FOR THE BOG 1 (2025) [hereinafter Sustained Yield Report].

²⁰ March 14 Order at 9–10.

²¹ See Ex. G at 1, 4–5, 7–8.

²² *Id.* at 4.

The Board, relying on the Department’s Sustained Yield Report, adopted Proposal 1, reinstating the predator control program in July 2025.²³ Eight months later, on March 25, 2026, the Department of Law slightly modified Proposal 1 and “as a technical formality” the Board readopted it.²⁴ The readopted Proposal 1, as modified by RC 46 during the March 2026 Board meeting, was filed by the Lieutenant Governor on April 3, which means the Department could begin killing bears on May 3.²⁵ Through counsel, the Wildlife Alliance has asked the State if the Department would agree to pause implementation of the program this summer, and it will not. Based on prior years, the Department is likely to reinstate predator control activities on May 10, 2026 to coincide with peak caribou calving.²⁶

LEGAL STANDARDS

A party may obtain a preliminary injunction under either the balance of hardships standard or the probable success on the merits standard.²⁷ Under the balance of hardships

²³ Exhibit H, ALASKA BD. OF GAME, SPECIAL MEETING: INTENSIVE MANAGEMENT FOR THE MULCHATNA CARIBOU HERD PRELIMINARY MEETING SUMMARY (2025).

²⁴ Alaska Dep’t of Fish & Game, *Meeting 03-25-26*, SONICLEAR WEBCAST, at 00:28–02:05, <https://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/swf/2025-2026/sc/index.html#> (March 25, 2026); *see also* Exhibit I, DIV. OF WILDLIFE CONSERVATION, ALASKA DEP’T OF FISH & GAME, RC 46 (March 2026).

²⁵ AS 44.62.180 (“A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing”).

²⁶ Exhibit J, Memorandum from Todd Rinaldi, Reg’l Mgmt. Coordinator, Alaska Dep’t of Fish & Game, to Tim Peltier, Reg’l Supervisor, Alaska Dep’t of Fish & Game, 2025 Spring MCH Intensive Management Activities 1 (Nov. 2025); Ex. C at 1–2; Ex. B at 1 (when caribou exit federal land and enter State-managed land during migration from wintering grounds, the Department “immediately” begins targeting predators).

²⁷ *State v. Galvin*, 491 P.3d 325, 332 (Alaska 2021).

standard, the Court may grant a preliminary injunction when the balance of the equities tips in the movant’s favor. The movant must show (1) the movant is faced with irreparable harm without a preliminary injunction; (2) the opposing party’s interests are adequately protected should the court issue a preliminary injunction; and (3) the movant raises serious and “substantial questions going to the merits of the case.”²⁸ If the movant does not satisfy the first two requirements of the balance of hardships test, then the Court applies the probable success on the merits standard.²⁹ Under this standard, the movant must show it is likely to succeed on the merits of its claim.³⁰

ARGUMENT

The Court should grant a preliminary injunction because the Wildlife Alliance satisfies both the balance of the hardships and the probable success on the merits standards. First, the Wildlife Alliance raises serious and substantial questions and is likely to succeed on the merits of its claim because, despite the Court’s March 14 Order stating that the Board must have credible scientific evidence about the impacted bear populations before authorizing the unrestricted killing of bears, the Board still lacks any relevant data about brown and black bear populations within the Control Area. Second, the threatened harm to the Wildlife Alliance and its members — killing bears to the detriment of Southwest Alaska’s ecosystem — is irreparable. Third, the risk of harm to

²⁸ *Id.* at 332–33 (quoting *Alaska Pub. Utils. Comm’n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975)).

²⁹ *Id.* at 333.

³⁰ *Id.*

the State's interest in maintaining sustainable wildlife populations is minimal. Thus, the substantial harm facing the Wildlife Alliance due to the unrestricted killing of bears greatly outweighs the risk of harm to the State posed by a preliminary injunction.

Therefore, under either standard, a preliminary injunction is warranted.

I. The Wildlife Alliance is likely to succeed on its claim that the Board still lacks the constitutionally required bear population data.

The Court's March 14 Order was clear: the Board needs adequate, relevant population data for the brown and black bears targeted by the Mulchatna predator control program in order to comply with the sustained yield clause in the Alaska Constitution. Because the Board reauthorized the program without this information, the Wildlife Alliance is likely to succeed on the merits of its claim that the Board failed to take a hard look at bear sustainability when adopting and readopting Proposal 1, or at a minimum, it has raised serious and substantial questions going to the merits of the case.³¹ The

³¹ For purposes of this Motion for Preliminary Injunction, the Wildlife Alliance is focusing on its claim concerning the Board's lack of bear population data, which is tied closely to this Court's prior rulings. A party moving for a preliminary injunction does not need to show serious and substantial questions or likelihood of success on all of its claims. *Cf. Palmer Kearney Mesa Props., Ltd. P'ship v. City of San Diego*, No. 23-cv-1755-DMS-DTF, 2025 U.S. Dist. LEXIS 98906, at *8 (S.D. Cal. May 23, 2025) ("A plaintiff need only demonstrate success as to at least one of their claims to receive preliminary injunctive relief."); *Morgan Stanley Smith Barney LLC v. Jacobs*, No. 2:19-cv-04540-ODW, 2019 U.S. Dist. LEXIS 92725, at *5 (C.D. Cal. June 3, 2019) ("Plaintiff is not required to demonstrate it is likely to prevail on all of its claims for the issuance of a preliminary injunction."). The Wildlife Alliance is not waiving and expressly reserves all its rights to pursue its additional claim concerning the inadequate design of the Board's predator control program. *See Creekside Ltd. P'ship v. Alaska Hous. Fin. Corp.*, 482 P.3d 377, 385 (Alaska 2021) (explaining that waiver requires "intentional relinquishment" through "express statement" or "where neglect to insist upon the right

probable success on the merits standard is satisfied when the plaintiff shows it is likely to succeed on the merits of its claim.³² Under the balance of hardships standard, the plaintiff “raise[s] ‘serious’ and substantial questions going to the merits of the case” so long as the issues raised are not “frivolous or obviously without merit.”³³ The Wildlife Alliance meets both standards.

The Alaska Constitution mandates that the State “utilize[], develop[], and maintain[]” wildlife “on the sustained yield principle, subject to preferences among beneficial uses.”³⁴ In other words, the State must manage wildlife to ensure availability for future generations in perpetuity.³⁵ The sustained yield clause applies to both prey and predator species, including bears, and it applies when the Board adopts predator control plans.³⁶ To satisfy this requirement, the Board must take “a ‘hard look’ at all factors material and relevant to the public interest” by considering relevant information and

results in prejudice to another party” (first quoting *Milne v. Anderson*, 576 P.2d 109, 112 (Alaska 1978); and then quoting *Powercorp Alaska, LLC v. Alaska Energy Auth.*, 290 P.3d 1173, 1185 (Alaska 2012)).

³² *Galvin*, 491 P.3d at 333.

³³ *Id.* (quoting *Alaska Pub. Utils. Comm’n*, 534 P.2d at 554).

³⁴ Alaska Const. art. VIII, § 4.

³⁵ *West v. Sate (West II)*, 558 P.3d 604, 609 (Alaska 2024); *West v. State (West I)*, 248 P.3d 689, 695–96 (Alaska 2010) (first quoting COMM. ON RES., PAPERS OF THE ALASKA CONSTITUTIONAL CONVENTION, FOLDER 210, TERMS (1955), <https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20210.pdf>; and then quoting THE ALASKA CONSTITUTIONAL CONVENTION PROPOSED CONSTITUTION FOR THE STATE OF ALASKA: A REPORT TO THE PEOPLE OF ALASKA (1956)).

³⁶ *West I*, 248 P.3d at 696, 701.

engaging in reasoned decision-making.³⁷ Thus, when adopting predator control plans, the Board must consider all relevant, material factors to ensure that predators targeted by the program are sustained for future generations.

This Court struck down Proposal 21 in March 2025 because the State failed to take a hard look at “material factors related to bear sustainability.”³⁸ The Court explained that the State must “engage in more than a rudimentary discussion about a bear population or engage in conclusionary opinions when considering a proposal to initiate a program calling for the unrestricted killing of bears.”³⁹ Specifically, the Court concluded that the State needed “credible scientific evidence,” including “adequate, relevant population studies” on the brown and black bear populations targeted by the predator control program.⁴⁰

Despite this clear directive, the Department failed to collect this constitutionally required information,⁴¹ and without it, the Board violated the Alaska Constitution by adopting and readopting Proposal 1. In fact, blatantly contradicting the Court’s March 14 Order, the Department claimed that requiring it to collect bear density data “misunderstand[s] . . . what is required to meet Alaska’s sustained yield obligation.”⁴²

³⁷ *Sagoonick v. State*, 503 P.3d 777, 788 (Alaska 2022) (quoting *Sullivan v. REDOIL*, 311 P.3d 625, 635 (Alaska 2013)).

³⁸ March 14 Order at 8–10.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 8–10.

⁴¹ *Id.*

⁴² Ex. G at 3–8.

Further, the Department stated that factors like bear “density, demography, and distribution . . . are not a requirement to manage for sustained yield.”⁴³ These statements directly contradict the March 14 Order. Because the Board adopted and readopted Proposal 1 without credible scientific evidence of the affected bear populations and in reliance on the Department’s legally erroneous Sustained Yield Report, Proposal 1 is unconstitutional.

Furthermore, the Board’s reliance on the Department’s brown bear population estimates does not save Proposal 1.⁴⁴ Since 2023, the Department has relied on the same two inapplicable studies to estimate the Control Area’s brown bear population because it lacked any actual data about brown bears within the Control Area. The Department noted that neither study was based on research conducted within the Control Area.⁴⁵ After the Department killed six times more brown bears than it estimated it would, the Department blamed its “extrapolation” from these studies, thus acknowledging that its use of these studies was unreliable.⁴⁶ The Department’s reliance on these outdated, geographically

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 8; *see also* March 14 Order at 8 (finding that anecdotal evidence is not sufficient because it does not amount to “adequate, relevant population studies or any genuine data” about bear populations).

⁴⁵ Ex. A at 14, 18, 23; Ex. B at 5; Ex. C at 10 (acknowledging the Department relied on inapposite studies because collecting data about bear populations is “notoriously difficult” and the agency had “a desire to avoid delaying the initiation of bear removal”).

⁴⁶ Ex. B at 5.

distinct, and unreliable studies fails to satisfy the State’s constitutional duty to ensure bear sustainability because these studies are not “adequate, relevant population studies.”⁴⁷

For black bears, the Board likewise failed to fulfill its constitutional sustained yield obligations. In fact, the Department has never collected population data, pointed to any relevant black bear density studies, or even attempted to make any estimates regarding the black bear population in support of the Mulchatna predator control program. Without this information, the Board failed to engage in even a “rudimentary discussion about [the black] bear population . . . when . . . initiat[ing] a program calling for the unrestricted killing of [black] bears.”⁴⁸

Rather than ensure that the Department conduct “adequate, relevant population studies” and gather “genuine data about bear sustainability” for the brown and black bears targeted by the Mulchatna predator control program, as this Court stated was required, the Board approved Proposal 1 without the constitutionally required data.⁴⁹ Thus, the claim that the readopted Proposal 1 violates the constitutional sustained yield clause is serious and substantial, and the Wildlife Alliance is likely to succeed on the merits.

⁴⁷ March 14 Order at 8–9.

⁴⁸ *Id.*

⁴⁹ *See id.*

II. The Wildlife Alliance faces irreparable harm from the unrestricted killing of bears.

The Department has already unconstitutionally slaughtered 191 bears — 186 brown bears and 5 black bears — and it is poised to continue killing these slowly-reproducing creatures. Such unrestricted killing will permanently remove individual bears from the environment and impair Southwest Alaska’s ecosystem, irreparably harming the interests of the Wildlife Alliance and its members.⁵⁰ Irreparable harm stems from an injury that “cannot receive reasonable redress in a court of law” “because it is so large or so small . . . or because no certain pecuniary standard exists for the measurement of damages.”⁵¹ Injuries to the Wildlife Alliance’s interests in healthy bear populations and a balanced ecosystem cannot be redressed in a court. Instead, these substantial irreparable harms must be prevented.

The killing of bears, permanently removing them from the landscape, is an irreparable injury.⁵² The Wildlife Alliance’s members have an interest in the bears of

⁵⁰ The Court found that the Alaska Wildlife Alliance had standing because its purpose was to conserve and protect Alaska’s wildlife resources, and it testified at the Board meetings in opposition to the program. *Id.* at 3–5. The Wildlife Alliance similarly has standing here. The Center for Biological Diversity has long worked to maintain healthy populations and natural diversity of Alaska’s wildlife and their habitats. Both groups submitted comments in opposition to Proposal 1.

⁵¹ *State v. Galvin*, 491 P.3d 325, 333 (Alaska 2021) (quoting *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 n.5 (Alaska 1992)).

⁵² Federal courts have recognized that killing animals can constitute an irreparable injury. *See, e.g., Flathead-Lolo-Bitterroot Citizen Task Force v. State*, 703 F. Supp. 3d 1229, 1240–43 (D. Mont. 2023) (finding irreparable harm where evidence showed grizzly bears were reasonably certain to be killed under State’s regulatory scheme), *aff’d in part, vacated & remanded in part*, 98 F.4th 1180 (9th Cir. 2024); *Sierra Club v. Martin*, 933 F.

Southwest Alaska. The Wildlife Alliance’s work involves the conservation of Alaska’s wildlife, including bears and their habitats.⁵³ The Wildlife Alliance’s staff and members work and recreate, including studying and viewing bears, on public lands in and around the Mulchatna Control Area, including Katmai National Park and Wood-Tikchik State Park.⁵⁴ These public lands are ecologically and geographically connected to the Mulchatna Control Area.⁵⁵ One member, Jennifer Culbertson, is a bear viewing guide.⁵⁶ She goes to Katmai National Park to observe and photograph bears.⁵⁷ The Department’s Operational Plan calls for killing every bear it locates in the Mulchatna Control Area.⁵⁸ In 2023, the Department killed ninety-four brown and five black bears.⁵⁹ This included eleven cubs under a year old, four one-year-old cubs, and five two-year-old cubs.⁶⁰ In 2024, the Department killed eighty-one brown bears, including five cubs under a year

Supp. 1559, 1570–71 (N.D. Ga. 1996) (“In the instant case, once the migratory birds are killed, they cannot be returned . . . [and] no monetary award can recompense Plaintiffs for the birds’ deaths.”), *rev’d on other grounds*, 110 F.3d 1551 (11th Cir. 1997); *Fund for Animals v. Espy*, 814 F. Supp. 142, 143, 151 (D.D.C. 1993) (holding that killing ten to sixty bison from a bison herd caused irreparable injury to plaintiffs who had a special interest in the bison).

⁵³ Schmitt Aff. ¶¶ 5, 8–11, 15; Freeman Aff. ¶¶ 7–9, 11–12, 14–15.

⁵⁴ Stetz Aff. ¶¶ 31–33; Culbertson Aff. ¶¶ 5, 10–16, 22–27; Schmitt Aff. ¶¶ 13, 22–24; Freeman Aff. ¶¶ 13, 18–19.

⁵⁵ Stetz Aff. ¶¶ 30, 34; Culbertson Aff. ¶¶ 5, 29; Schmitt Aff. ¶¶ 12, 23–24; Freeman Aff. ¶¶ 13, 19.

⁵⁶ Culbertson Aff. ¶¶ 2–3, 22.

⁵⁷ *Id.* ¶¶ 22–23.

⁵⁸ *See* Ex. A at 18.

⁵⁹ Ex. B at 1, 3.

⁶⁰ *Id.*

old, eleven one-year-old cubs, and two two-year-old cubs.⁶¹ In 2025, operating for only one weekend, the Department killed eleven brown bears before the Court restrained the State.⁶² Unless enjoined, the Department will once again kill every bear it finds in the Mulchatna Control Area.⁶³ This will irreparably harm the Wildlife Alliance's interests in these bears.

The large-scale killing of Southwest Alaska's bears causes irreparable harm to Southwest Alaska's environment and the Wildlife Alliance's interests in healthy bear populations and a resilient ecosystem.⁶⁴ This unrestrained killing, especially when there is no credible scientific evidence concerning the targeted brown and black bear populations, will have long-lasting impacts. Bear populations are slow to recover due to low rates of reproduction, low likelihood of cub survival, and late maturation.⁶⁵ The loss of apex predators also creates dysfunctional ecosystems, fundamentally altering ecosystem dynamics locally and regionally.⁶⁶ When large predator populations become depleted and destabilized, the ecosystem's biodiversity and resilience decline.⁶⁷ Targeted

⁶¹ Ex. C at 4–6.

⁶² Freeman Aff., Ex. 1, at 10 n.70.

⁶³ See Exhibit K, Def. State of Alaska's Notice Regarding May 7, 2025 Order at 2, *Alaska Wildlife All. v. State*, No. 3AN-23-07495 CI (Alaska Super. Ct. May 9, 2025) (indicating that the Department will only stop killing bears if enjoined by a court).

⁶⁴ Schmitt Aff. ¶¶ 5, 8–11, 15; Freeman Aff. ¶¶ 7–9, 11–12, 14–15.

⁶⁵ Exhibit L, ALASKA DEP'T OF FISH & GAME, WILDLIFE NOTEBOOK SERIES: BROWN BEAR 1 (2025), https://www.adfg.alaska.gov/static/education/wns/brown_bear.pdf; Exhibit M, Hava Dennenberg & Family, Comment Letter on Proposed Changes in the Regulations of the Alaska Board of Game (July 2025).

⁶⁶ Freeman Aff., Ex. 1, at 18.

⁶⁷ *Id.*

predator populations face “adverse behavioral and genetic consequences.”⁶⁸ These effects spread throughout the population beyond the artificial boundaries of the predator control program area.⁶⁹

The Wildlife Alliance’s and its members’ interests in the health of the bears and ecosystem in the Mulchatna Control Area and the greater Southwest Alaska region would be irreparably harmed if the Department’s predator control activities are not enjoined. One member, Jeffrey Stetz, has an interest in the health and integrity of the Mulchatna Control Area’s ecosystem and bear populations because he worked at the Department as a wildlife biologist managing the area’s natural resources.⁷⁰ Likewise, Culbertson, a former park ranger in the region’s State and national parks and a current bear-viewing guide, has an interest in the region’s responsible natural resource management.⁷¹ The irreparable harm to the ecosystem stemming from large-scale reductions in Southwest Alaska’s bear populations harms the Wildlife Alliance’s and its members’ interests in the health of the region’s ecosystem.

Moreover, the Wildlife Alliance and its members benefit from a thriving and abundant bear population in Southwest Alaska, and their interests would be irreparably harmed by the Department’s unrestricted killing of bears. For example, Culbertson takes her clients to Katmai National Park because Katmai is the only place where she can

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Stetz Aff. ¶¶ 11–17, 22–23, 30.

⁷¹ Culbertson Aff. ¶¶ 5, 10–16, 29–30, 32.

guarantee close observation of bears.⁷² This is due to the region’s high bear abundance and the bears’ neutral attitude toward humans.⁷³ Over the last several years, Culbertson has noticed a “precipitous” drop in the bear population in Katmai, including bears she used to count on returning every year.⁷⁴ Additionally, targeting bears makes them afraid and more likely to avoid humans.⁷⁵ If the brown bear population in Southwest Alaska continues to decline or bears becomes skittish, Culbertson’s business would be harmed because she would not be able to guarantee bear viewing opportunities to her clients.⁷⁶ As discussed, bear populations recover slowly, so harm to the bear tourism industry, and specifically to the Wildlife Alliance’s interests in that industry, will be long-lasting.

In sum, the Department’s unrestricted killing of bears irreparably harms the Wildlife Alliance’s interests. No amount of money can remedy the unconstitutional killing of bears because their removal from the ecosystem is permanent and irreparable. Therefore, the proper course of action is to prevent such harm through a preliminary injunction.

III. Any risk of harm to the State is minimal and outweighed by the harm to the Wildlife Alliance.

The potential killing of eighty to one hundred bears per year greatly outweighs the minimal risk of harm to the State from a preliminary injunction. The opposing party’s

⁷² *Id.* ¶¶ 22–23.

⁷³ *Id.*

⁷⁴ *Id.* ¶¶ 25–26.

⁷⁵ *Id.* ¶ 31.

⁷⁶ *Id.*

interest is considered adequately protected if its injury is “relatively slight” or “inconsiderable” compared to the harm facing the plaintiff without a preliminary injunction, can be indemnified by a bond, or can be “otherwise protected by some action.”⁷⁷ A preliminary injunction poses minimal risk to the State’s interest in the MCH, fulfills the State’s constitutional obligation to protect natural resources, and would not interfere with the State’s orderly management of game resources.

Any harm to the MCH’s population is likely to be minimal compared to the irreparable harm to the bear populations without an injunction. Since 2019—including both years with and without predator control activity—the MCH’s population has remained relatively stable.⁷⁸ The Department’s own reports demonstrate that bear predation was not a substantial factor in the MCH’s population decline; instead, disease and poor nutrition caused the MCH’s decline from its peak in the mid-1990s.⁷⁹ When the Board first considered the Mulchatna predator control program in 2021, Department staff

⁷⁷ *State v. Galvin*, 491 P.3d 325, 333 & n.21 (Alaska 2021) (first quoting *State v. Kluti Kaah Native Village of Copper Center*, 831 P.2d 1270, 1273 (Alaska 1992); and then quoting *A.J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 540 (Alaska 1970)). Because the State’s interest cannot be indemnified by a bond, the Court should waive the bond requirement or require only a nominal bond. See Alaska R. Civ. P. 65(c) (“No . . . preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper . . .”).

⁷⁸ Exhibit N, Memorandum from Evelyn Lichwa & John Landsiedel, Dillingham Area Biologists, Alaska Dep’t of Fish & Game, to Todd Rinaldi, Reg’l Mgmt. Coordinator, Alaska Dep’t of Fish & Game 3 (July 22, 2025).

⁷⁹ Exhibit O, ALASKA DEP’T OF FISH & GAME, RC 3 TAB 2.1, MULCHATNA CARIBOU IM STATUS AND INFORMATION 3 (2025) (“Based on limited data on nutritional condition and range observations, the [D]epartment determined that its 1990s peak herd size was unsustainable.”).

reported that predation was not a “significant challenge” to adult caribou.⁸⁰ As much as eighty percent of adult caribou mortality was attributable to causes other than predation.⁸¹ Department staff explained that deteriorating range conditions caused by overgrazing and invasion of shrubs, disease, and unreported killing by humans are “likely more significant factors in the [MCH] decline and recovery.”⁸²

Further, the Department does not know to what degree bear predation affects the MCH’s population or whether killing bears will increase it. The Department has stated that it is “not aware of research on the effectiveness of predator reduction where brown bears are the primary predators of caribou calves.”⁸³ Additionally, it does “not know wolf or bear predation rates on different caribou age-classes”⁸⁴ nor “[t]he degree to which bear predation . . . contributes to annual [] calf mortality.”⁸⁵ In 2024, after the vast majority of documented caribou calf deaths were due to starvation and dehydration and only one was attributed to bear predation,⁸⁶ the Department reiterated that “nutrition and disease may

⁸⁰ Freeman Aff., Ex. 1, at 14 (quoting Sterling Miller, Patrick Walsh & Matthew Kirchoff, *Agency-Conducted Aerial Shooting of Bears in Alaska: Is It Justified?*, INT’L BEAR NEWS, Fall 2023, at 19 [hereinafter Miller, Walsh & Kirchoff Study]).

⁸¹ See Ex. A at 8.

⁸² Freeman Aff., Ex. 1, at 14 (quoting Miller, Walsh & Kirchoff Study at 19).

⁸³ Exhibit P, THOMAS F. PARAGI & JOHN H. LANDSIEDEL, ALASKA DEP’T OF FISH & GAME, REVIEW OF FACTORS IN PUBLIC AND AGENCY PREDATOR CONTROL FOR MULCHATNA CARIBOU, 2012–2023, at 19 (2024) [hereinafter Review of 2012–2023 Report].

⁸⁴ Ex. A at 20.

⁸⁵ Ex. P at 16.

⁸⁶ Ex. C at 7–8.

also be affecting [the MCH's] growth.”⁸⁷ The Department explained that poor nutrition, disease, and severe winters can be the ultimate causes that “make[s] prey susceptible to predation.”⁸⁸ In other words, calves killed by predators may be those that are already weak due to other factors like starvation and disease.⁸⁹

Thus, the Department's own evidence demonstrates that issuing a preliminary injunction will not cause the MCH to crash. Rather, it would maintain the status quo for both the bears and the MCH.⁹⁰ On the other hand, without an injunction, the Department intends to kill every bear it encounters in the Control Area, permanently removing an untold number of bears from the population, which will have long-lasting impacts to the entire ecosystem.⁹¹ Thus, a preliminary injunction poses far less risk to the caribou population than the bear population faces without an injunction.

Indeed, a preliminary injunction would further the State's constitutional duty to protect natural resources, including bears.⁹² As discussed above, the State has repeatedly shirked this constitutional obligation for the black and brown bears targeted by the Mulchatna predator control program. The Department killed 175 brown bears and 5 black

⁸⁷ *Id.* at 12.

⁸⁸ Ex. P at 28.

⁸⁹ *Id.* (explaining the Department was unable to determine “whether calves protected against [bear] predation will survive to reach breeding age and improve herd growth potential or will be more susceptible to another proximate source of mortality such as illness, malnourishment, winter starvation, or wolf predation”).

⁹⁰ *Martin v. Coastal Vill. Region Fund*, 156 P.3d 1121, 1126 (Alaska 2007) (“The purpose of a preliminary injunction is to maintain the status quo.”).

⁹¹ *Supra* Argument Section II.

⁹² *See West I*, 248 P.3d 689, 701 (Alaska 2010).

bears under an unconstitutional predator control program before it was struck down and then took every opportunity after it lost the case to kill eleven more bears before the Court was able to intervene again. Now, without a preliminary injunction, the Department will likely continue the unrestricted, unconstitutional killing of bears without the adequate, relevant population data necessary to ensure healthy bear populations for future generations. The unrestricted removal of bears will have long-lasting impacts on the bear populations and irreparable consequences for the entire ecosystem. Thus, prohibiting the Department from implementing the Mulchatna predator control program protects the natural resources at risk from the State's continued flouting of its constitutional duties.

Furthermore, the requested injunction would not interfere with the Department's responsibility to conduct orderly game management like that in *State v. Kluti Kaah Native Village of Copper Center*.⁹³ In *Kluti Kaah*, after the superior court issued a preliminary injunction requiring the Department to administer a twenty-six-day subsistence hunt for residents of Kluti Kaah to harvest forty moose, other Alaska Native villages sought the same relief.⁹⁴ The Alaska Supreme Court reversed because the preliminary injunction caused a rush on the courthouse and was infeasible for the superior court to administer.⁹⁵ There is no such risk here. The Wildlife Alliance asks the

⁹³ 831 P.2d 1270, 1274 (Alaska 1992).

⁹⁴ *Id.* at 1272–73.

⁹⁵ *Id.* at 1274.

Court to prohibit the Department from mass killing bears until after the litigation is resolved, not to affirmatively mandate a subsistence hunt involving individual hunters, permits, and specific bag limits.⁹⁶ Moreover, there is no risk of a rush to the courthouse because the requested preliminary injunction does not advantage one group over those similarly situated. Therefore, this preliminary injunction would not create problems for orderly game allocation like that in *Kluti Kaah*.⁹⁷

In sum, the balance of the equities tips in favor of issuing a preliminary injunction because the State’s interest in the unrestrained slaughter of bears is “minimal” compared to the significant harms facing the Wildlife Alliance, an injunction would help ensure the State fulfills its constitutional duty to protect bears, and injunctive relief would not interfere with the State’s orderly management of game resources.

CONCLUSION

For the foregoing reasons, the Court should grant the Wildlife Alliance’s Motion for a Preliminary Injunction and prevent the Department from engaging in predator control activities targeting black and brown bears in the Mulchatna Control Area until after this Court has adjudicated the merits of the Wildlife Alliance’s pending litigation.

Dated and signed the 6th day of April 2026, in Anchorage, Alaska.

⁹⁶ *See id.* at 1274 & n.9.

⁹⁷ *See id.* at 1274.

Respectfully submitted,

By: s/ Michelle D. Sinnott - Bar No. 1506049
Staff Attorney
TRUSTEES FOR ALASKA

Michelle D. Sinnott (AK Bar No. 1506049)
Joanna Cahoon (AK Bar No. 1405034)
Ashley Donovan (AK Bar No. 2404031)
TRUSTEES FOR ALASKA
121 W. Fireweed Ln., Suite 105
Anchorage, AK 99503
Phone: (907) 276-4244
msinnott@trustees.org
jcahoon@trustees.org
adonovan@trustees.org

Attorneys for Plaintiffs