

BACKGROUND ON LAND-AND-SHOOT/SAME-DAY-AIRBORNE TAKING OF WOLVES

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To interpret the history of regulations affecting the taking of a wolf on the same day a person was airborne, it is necessary to understand how hunting and trapping regulations are structured in Alaska. In addition, it is necessary to understand how the classification of wolves (as big game, fur animals and furbearers) has changed over the past 30 years. This document provides background on these two subjects and summarizes the history of taking wolves on the same day a person was airborne. Statements made in this document are based on a review of AS 16.05, codified regulations in 5 AAC and my personal knowledge and experience gained through participation in discussions with the Alaska Wolf Management Planning Team and the Alaska Board of Game.

The Distinction Between "Trapping" and "Hunting" in Alaskan Law

Under Alaskan law, the terms "Trapping" and "Hunting" refer to the authority to take certain species under a trapping or hunting license, respectively, regardless of the method used. (See AS 16.05.940 (20) & (35) and 5 AAC 92.990 (20) & (21)). Methods for taking game species under either license are controlled by 5 AAC 92.075 - .100. Seasons and bag limits for trapping are codified in 5 AAC 84.270. Seasons and bag limits for hunting are codified in 5 AAC 85.010 - .070

This construction of the law creates what appear to some people to be non sequiturs, such as "trapping" with a firearm or "hunting" with a snare. For example, under the authority of a trapping license, a person may take a free-ranging furbearer¹ with a firearm as long as the trapping season is open for that species in the area where the taking occurs and the person has not reached the trapping bag limit for that species in that area. Similarly, under the authority of a hunting license, a person may take certain species of game (grouse, hare or ptarmigan) with the use of a snare if the hunting season for these species is open and the person has not reached the bag limit for these species in the area where the taking occurs.

This construction is based on the premise that "Trapping" refers to the taking of an animal primarily for the value of its pelt, regardless of the method. Alternatively, "Hunting" refers to the taking of an animal primarily for the value of the meat, trophy or recreational experience.

¹ Except that beaver may not be taken by firearm in most of the state.

This construction also reflects the fact that use of firearms to take free-ranging furbearers as a method of "trapping" is a traditional practice in Alaska that is consistent with sound conservation of wildlife. This method of take accounts for the majority of the harvest of muskrats and a significant proportion of the take of foxes, wolves and wolverine. In some units many beaver are also taken during the spring by firearms.

The History of Game Species Classification Under Alaskan Law

AS 16.05.940(18) defines "game" to include all species of birds, reptiles and mammals and provides that species may be further classified by regulation as big game, small game, fur bearers or other categories. Prior to July 1, 1985 game was classified by regulation as "big game", "small game" "unclassified game" and "fur animals". During this period, big game, small game and unclassified game could be taken under the authority of a hunting license, using legal hunting methods during open hunting seasons. Fur animals could be taken under the authority of a trapping license, using legal trapping methods, during open trapping seasons.

From July 1 1965 to June 30, 1985 wolves were classified as both big game and fur animals. Accordingly, wolves could be taken under either a hunting or trapping license subject to relevant restrictions on methods, season dates and bag limits.

Effective July 1, 1985, the Board of Game modified the regulatory classification of game under AS 16.05.940. Their intent was to provide the opportunity to hunt for certain species of game, primarily foxes, coyotes and lynx, that could previously only be taken by trapping. To accomplish this goal the Board created a new classification of game, called "furbearers". This new category became the class of animals subject to take under a trapping license (see 5 AAC 92.990(21)).

The former classification of "fur animals" was retained, but was modified to become a class of animals subject to take under a hunting license (see 5 AAC 92.990(20)). A number of species were classified as both fur animals and furbearers, and could be taken under either license.

From July 1, 1985 until June 30, 1988 wolves, were classified as big game, fur animals and furbearers. Accordingly, wolves could be taken as either big game or fur animals under a hunting license, or as furbearers under a trapping license, subject to relevant restrictions on methods and seasons.

The classification of wolves as both big game and fur animals for purposes of take under a hunting license created a number of problems. For example, if a non-resident hunter claimed to be taking a wolf as a fur animal no non-resident big game tag was required. Further, while it was not legal to take a wolf as a big game animal on the same day a

person was airborne, it was legal to take a wolf as a fur animal in this way (see Table 1).

Wolves were deleted from the fur animal classification effective July 1, 1988 to eliminate these problems. From that date through the present, wolves have been classified as big game for taking under the hunting regulations and as furbearers for taking under trapping regulations.

History of Land-and-Shoot & Same-Day-Airborne Taking of Wolves

Restrictions on taking of big game in general, and wolves in particular, the same day a person has been airborne have varied over the past 20 years. The history for wolves is complicated by changes in how wolves were classified (i.e. big game, fur animal, furbearer). Table 1 illustrates when, where and under which regulations a person could take a wolf on the same day they were airborne from 1965 to the present.

Prior to 1971, wolves could not only be taken on the same day a person was airborne, but also could be shot from an airborne aircraft under terms of a permit issued by the department. The Federal Airborne Hunting Act of 1971 (FAHA) was adopted to eliminate aerial shooting, except in government approved control programs. Following passage of the FAHA it was still legal to employ aircraft for access to take wolves, as long as the person landed the aircraft before taking the wolf and did not use the aircraft to drive, herd or harass the wolf before landing.

Under trapping regulations it was legal to take wolves on the same day a person was airborne for many years in much of the state (Table 1). One method used to take wolves in open country with terrain that permitted aircraft landing during the winter months was to locate a wolf or wolves from the air, land a ski-equipped aircraft as close to the wolf as possible, exit the aircraft and immediately attempt to shoot the wolf. This activity was often referred to as "Land-and-Shoot" trapping.

Taking of wolves under hunting regulations as big game the same day a person was airborne was permitted throughout the state prior to 1973-74. Taking of wolves (as well as most other big game) on the same day airborne was prohibited throughout the state from 1974-75 through June 30, 1988 (Table 1). However, wolves could be taken as fur animals the same day a person was airborne throughout the state during three regulatory years, 1985-86 through 1987-88 as a result of their multiple classification.

At the November, 1987 Board meeting, members Joel Bennett and Vic VanBallenburgh raised a concern about the disparate number of wolves taken by a limited number of trappers using the "Land-and-Shoot" method. Although there was no biological basis for reducing the number of wolves taken by this method, as a matter of equity, these members argued that the number of wolves taken by any individual using

this method should be limited.

In response to these arguments the Board considered adopting a method-specific bag limit for "Land-and-Shoot" trapping of wolves.² Due to the administrative difficulty of implementing such a regulation, and to resolve the problems stemming from the classification of wolves as both big game and fur animals for purposes of hunting, the Board took the following actions:

- wolves were deleted from the definition of fur animals;
- the taking of wolves as furbearers under a trapping license on the same day a person was airborne was prohibited statewide; and
- the taking of wolves as big game under a hunting license on the same day a person was airborne was permitted with restrictive bag limits in some GMUs (Table 1).

This situation prevailed with minor adjustments to the list of GMUs open for taking of wolves on the same day a person was airborne for 4 regulatory years, 1988-89 through 1991-92 (Table 1). During this time this method of taking wolves was often referred to as "Land-and-Shoot" hunting.

State regulations prohibit the use of aircraft to drive, herd or molest wildlife (5 AAC 92.080(5)) and federal regulations adopted pursuant to FAHA also prevent harassment of wildlife with aircraft. Although the federal regulation define harassment in broad terms, until the late 1980's neither the state nor federal government considered the response of a wolf to the nearby landing of an airplane engaged in "Land-and-Shoot" taking to be a violation of state regulations or the FAHA.

However, in response to cases involving blatant violations of both state regulations and the FAHA, the federal government adopted a strict interpretation of the regulations prohibiting harassment of wildlife with an aircraft in the late 1980s. Federal law enforcement officers addressing the Alaska Wolf Management Planning Team in the spring of 1990 indicated that they believed it was virtually impossible to take a wolf by the "Land-and-Shoot" method without violating the FAHA.³

These federal agents also advised the Wolf Planning Team that it would be possible to take a wolf the same day a person was airborne under some circumstances without violating the FAHA. The methods described

² Generally, the number of wolves that may be taken by trapping is unlimited under 5 AAC 84.270.

³ Interestingly, federal enforcement officers have not expressed any concern that regulations permitting the taking of a number of other furbearer or fur animal species creates any inherent conflict with the FAHA.

involved use of the aircraft to access an area where wolves are known or believed to be present, landing the aircraft without disturbing the wolves and then stalking, calling or ambushing the wolves.

In response to this input, the Wolf Planning Team formally adopted the terms "Land-and-Shoot" and "Same-Day-Airborne" to refer to different types of taking. The former involved use of the aircraft as an integral tool of taking as had historically been practiced in some areas. The latter involved use of the aircraft strictly as a means of accessing an area to take a wolf in a manner described by the federal agents as legal under the FAHA. To ensure that "Same-Day-Airborne" taking was done legally, the Wolf Planning Team believed it would be advisable to require a hunter or trapper to travel some distance away from their aircraft before taking or attempting to take the wolf.

After lengthy debate, the Wolf Planning Team reached consensus that "Land-and-Shoot" taking as historically practiced probably did involve violations of the FAHA. Consequently, they recommended to the Department and the Board that "Land-and-Shoot" taking be limited to use under permit as part of a government control program.

The Wolf Planning Team could not reach consensus regarding the acceptability of "Same-Day-Airborne" taking. Some members believed it would invite violations of the FAHA, others adamantly disagreed and considered it a legitimate method of taking wolves. The team left it to the Department and the Board to resolve this issue.

The Board of Game considered the findings and recommendations of the Wolf Planning Team at the November 1991 Board meeting. Based on the Wolf Planning Team's differentiation of the two methods of taking, and the concern about the conflict between "land-and-shoot" taking and the FAHA, the Board of Game restricted "Land-and-Shoot" taking of wolves to authorized control programs which are exempt from the FAHA (see 5 AAC 92.039).

At this same meeting the Board considered, and rejected by a vote of 3-4, a proposal to allow "Same-Day-Airborne" taking of wolves, provided that the person taking the wolf was at least one quarter mile feet from the aircraft. The deciding vote was cast by Board member Dick Burley who voted against the proposal. Mr. Burley stated that he voted against the proposal, in spite of his belief that it was legally and biologically sound to allow "Same-Day-Airborne" taking of wolves, in order to maintain the delicate compromise package embodied in the newly adopted Strategic Wolf Management Plan for Alaska.

As a result of the Board's action in November, 1991 the 1992-93 regulatory year was the first year during which it was not legal to take a wolf on the same day a person was airborne in any part of the state under either a hunting or trapping license (Table 1). However, in November, 1992 the Board of Game authorized the department to issue permits in the last half of the 1992-93 regulatory year for "Land-and-Shoot" taking of wolves in GMU 13 as part of a wolf control program. This was one of three control programs approved by the Board; the other two involved aerial shooting by department personnel only.

Strong public opposition to these wolf control programs caused the Governor and the Commissioner to cancel plans to implement any aerial shooting or "Land-and-Shoot" taking. The Board reconvened in January, 1993 and rescinded the programs at the department's request.

In June 1993 the Board of Game reconsidered a number of its previous actions under the Strategic Wolf Management Plan for Alaska. Several Board members, including Mr. Burley who had cast the deciding vote at the November, 1991 meeting, expressed concern over the department's refusal to implement control, which they viewed as part of the compromise forged under the Strategic Plan. The Board indicated that, in light of the need to withdraw some of the wolf control programs in response to one segment of the public's desire for more protection of wolves, it was equitable to provide some additional opportunity for public harvest of wolves in response to other public segment's desires.

Accordingly, the Board voted 6-1 to authorize "Same-Day-Airborne" trapping of wolves statewide. The Board went to some length to differentiate this new authorization from the former practice of "Land-and-Shoot" taking. In order to make it explicitly clear that this method was different from the historic practice of "Land and Shoot" taking, and with the specific intent of avoiding any potential conflict between state regulations and the FAHA, the Board required any person taking a wolf "Same-Day-Airborne" to be at least 300 feet away from their aircraft before taking or attempting to take a wolf. 5 AAC 92.095.⁴

Estimates of the number of wolves likely to be taken under the new "Same-Day-Airborne" regulations vary. However, the best judgement of people knowledgeable and experienced with respect to wolf hunting and trapping is that fewer than 50 wolves will be taken by this method. Any estimate based on prior harvest statistics, before a distance from the aircraft requirement was established for taking wolves, are invalid.

⁴ The Board had previously amended 5 AAC 92.090 and .095 (effective July 1, 1992) to permit Same-Day-Airborne taking of foxes, lynx and coyotes under either a hunting or trapping license, provided that the person taking the animal was at least 100 feet from the aircraft. In amending 5 AAC 02.095 at the June 1993 meeting to permit Same-Day-Airborne taking of wolves with a 300 foot distance requirement, the Board also increased the distance requirement for Same-Day-Airborne taking of foxes, lynx and coyotes under a trapping license to 300 feet. It remains legal to take all other furbearers, except wolverine, under a trapping license immediately on exiting the aircraft. Wolverine may not be taken on the same day a person has been airborne regardless of distance. 5 AAC 92.095. It also remains legal under a hunting license to take foxes, lynx or coyotes Same-Day-Airborne if the person taking the animal is at least 100 feet away from the aircraft. 5 AAC 92.090.

Table 1. Regulatory years and Game Management Units (GMUs) in which it was legal to take wolves on the same day a person was airborne under trapping or hunting regulations, 1965 to 1994.

YEAR	TRAPPING	HUNTING AS BIG GAME	HUNTING AS FUR ANIMALS
1965-66 thru 1972-73	GMUs 1-26	GMUs 1-26	N/A
1973-74	GMUs 1-26	GMUs 1-26, except GMU 15B	N/A
1974-75 thru 1980-81	GMUs 1-26	Prohibited	N/A
1981-82	GMUs 1-26	Prohibited	N/A
1982-83 thru 1984-85	GMUs 1-25	Prohibited	N/A
1985-86 ¹	GMUs 1-25	Prohibited	GMUs 1-26
1986-87 and 1987-88	GMUs 1-6, 8-10, 12, 13, 16-25	Prohibited	GMUs 1-26
1988-89 and 1989-90	Prohibited	GMUs 9, 17, 19, 21, 23, 24, 25B 25C & 25D	N/A
1990-91 and 1991-92	Prohibited	GMUS 9, 11, 12, 13, 17, 19, 20, 21, 24, 25B, 25C & 25D	N/A
1992-93	Prohibited	Prohibited	N/A
1993-94	GMUs 1-26 with 300 foot from aircraft limit	Prohibited	N/A

Note:

1. Prior to 1985-86 "Fur Animals" was the classification for animals taken under a trapping license. Effective July 1, 1985 classifications were changed and "Furbearers" was the classification for trapping; "Fur Animals" could only be taken under a hunting license after July 1, 1985.