

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 8, 2002

1:15 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Joe Green
Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 266

"An Act establishing and relating to the Joint Federal and State Navigable Waters Commission for Alaska; and providing for an effective date."

- MOVED CSHB 266(RES) OUT OF COMMITTEE

3d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 178

"An Act relating to the powers and duties of the commissioner of fish and game, the Department of Fish and Game, and the Board of Game, to taking and use of certain game animals, and to consideration of the budget of the Department of Fish and Game by the legislature; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 48

Relating to federal land withdrawals.

- MOVED HJR 48 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 266

SHORT TITLE:FED/STATE NAVIGABLE WATERS COMMISSION

SPONSOR(S) : REPRESENTATIVE(S) PORTER

Jrn-Date	Jrn-Page		Action
05/02/01	1481	(H)	READ THE FIRST TIME - REFERRALS
05/02/01	1481	(H)	RES, FIN
05/02/01	1481	(H)	REFERRED TO RESOURCES
05/03/01		(H)	RES AT 1:00 PM CAPITOL 124
05/03/01		(H)	-- Meeting Canceled --
03/29/02		(H)	RES AT 1:00 PM CAPITOL 124
03/29/02		(H)	-- Meeting Canceled --
04/01/02		(H)	RES AT 1:00 PM CAPITOL 124
04/01/02		(H)	Heard & Held MINUTE(RES)
04/08/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 178

SHORT TITLE:MANAGMENT OF FISH AND GAME

SPONSOR(S) : REPRESENTATIVE(S) FATE

Jrn-Date	Jrn-Page		Action
03/13/01	0560	(H)	READ THE FIRST TIME - REFERRALS
03/13/01	0560	(H)	RES, FIN
03/16/01	0636	(H)	COSPONSOR(S): DYSON
04/05/01	0860	(H)	SPONSOR SUBSTITUTE INTRODUCED
04/05/01	0860	(H)	READ THE FIRST TIME - REFERRALS
04/05/01	0860	(H)	RES, FIN
01/18/02	2002	(H)	2D SPONSOR SUBSTITUTE INTRODUCED
01/18/02	2002	(H)	READ THE FIRST TIME - REFERRALS
01/18/02	2002	(H)	RES, FIN
03/25/02	2668	(H)	3D SPONSOR SUBSTITUTE INTRODUCED
03/25/02	2668	(H)	READ THE FIRST TIME - REFERRALS
03/25/02	2668	(H)	RES, FIN
03/25/02	2668	(H)	REFERRED TO RESOURCES
04/01/02		(H)	RES AT 1:00 PM CAPITOL 124
04/01/02		(H)	Scheduled But Not Heard
04/08/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HJR 48

SHORT TITLE:TERMINATION OF FED LAND WITHDRAWALS

SPONSOR(S) : RLS

Jrn-Date	Jrn-Page		Action
04/01/02	2740	(H)	READ THE FIRST TIME - REFERRALS
04/01/02	2740	(H)	RES
04/08/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

RON SOMERVILLE, Consultant
to the House and Senate Majority
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801-1182
POSITION STATEMENT: Testified on HB 266 on behalf of
Representative Porter, sponsor.

ROD ARNO
Alaska Outdoor Council (AOC)
P.O. Box 1410
Wasilla, Alaska 99687
POSITION STATEMENT: Testified in support of HB 266; testified
in support of intent of 3d SSHB 178 and passing it out of
committee.

GORDY WILLIAMS, Legislative Liaison
Office of the Commissioner
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526
POSITION STATEMENT: Expressed serious concerns about provisions
of 3d SSHB 178; answered questions.

MATT ROBUS, Deputy Director
Division of Wildlife Conservation
Alaska Department of Fish and Game
P.O. Box 25526
Juneau, Alaska 99802-5526
POSITION STATEMENT: Answered questions relating to 3d SSHB 178;
testified that a general, flexible, sustainable-yield approach
would be preferable.

VIC VAN BALLEMBERGHE
8941 Winchester Street
Anchorage, Alaska 99507
POSITION STATEMENT: As wildlife biologist, expressed concerns
about 3d SSHB 178; cautioned against trying to manage for

maximum sustained yield and suggested the bill might work counter to the goal of producing wildlife abundance.

MICHAEL PURVIANCE

P.O. Box 1656

Delta Junction, Alaska 99737

POSITION STATEMENT: During hearing on 3d SSHB 178, provided a farmer's perspective on damage caused by moose and other animals.

JOEL BENNETT

Defenders of Wildlife

(No address provided)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to 3d SSHB 178.

JUDY OHMER, Staff

to Representative Pete Kott

Alaska State Legislature

Capitol Building, Room

Juneau, Alaska 99801

POSITION STATEMENT: Presented HJR 48 on behalf of the House Rules Standing Committee.

STEVE BORELL, Executive Director

Alaska Miners Association, Incorporated

3305 Arctic, Number 202

Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HJR 48.

SANDRA SINGER, Realty Services Section

Division of Mining, Land and Water

Department of Natural Resources (DNR)

550 West 7th Avenue, Suite 1050A

Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HJR 48.

ACTION NARRATIVE

TAPE 02-26, SIDE A

Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:15 p.m. Representatives Masek, Fate, Stevens, and Scalzi were present at the call to order. Representatives Kapsner, Kerttula, and McGuire arrived as the meeting was in progress.

HB 266-FED/STATE NAVIGABLE WATERS COMMISSION

CO-CHAIR MASEK announced the first order of business, HOUSE BILL NO. 266, "An Act establishing and relating to the Joint Federal and State Navigable Waters Commission for Alaska; and providing for an effective date." [In packets was a proposed committee substitute (CS), version 22-LS0966\C, Cook, 3/27/02.]

Number 0108

RON SOMERVILLE, Consultant to the House and Senate Majority, Alaska State Legislature, speaking on behalf of Representative Porter, sponsor of HB 266, noted that he'd discussed the bill at length at the [April 1] hearing; he highlighted materials addressed during that hearing. He told members that since statehood in 1959, the state has had considerable problems getting title to the approximately 60 million acres of submerged lands it received at statehood under the equal footing doctrine and the Submerged Lands Act. First, he said, the Quiet Title Act is "kind of schizophrenic" in that the state can give a 180-day notice, as required by law, to quiet title, but if the federal government doesn't actively assert its interest, the courts have ruled that the courts no longer have jurisdiction. He added, "You can't sue the federal government unless they agree to it, so you can't quiet title." He offered an example and referred to his testimony at the previous hearing. Noting that the other difficulty is the navigability criteria, he said:

Even though there have been several court cases that the state has won, we've essentially outlined what the criteria are for navigability established by the courts. And one case that probably is the paramount one is the Gulkana case, which ... was decided in 1987, appealed, and later affirmed by the 9th Circuit Court [of Appeals] in 1989. So the criteria [themselves have] been very difficult to get a handle on, in order to force some sort of criteria determination by BLM [Bureau of Land Management], in particular, and/or the courts.

The other thing is, BLM surveys that have been conducted up 'til 1983 were not consistent with their own manuals, so a lot of land ... was conveyed in title, particularly to corporations, which ... leaves a cloud ... on the title because they didn't use their own manual surveying instructions. In other words,

[for] lakes less than 50 acres and streams less than 3 chains - 198 feet - they should have done a navigability determination; they did not.

So the implication was, when they conveyed some of the lands to the corporations, that the ... submerged lands belonged to the corporation, when, in fact, the state has claimed that many of them are navigable and thus, if they were navigable at the time of statehood, they, in essence, ... belong to the state. So [for] any land conveyed prior to 1983 that doesn't fit the Gulkana decision and criteria, in essence, there's a cloud on the title.

Number 0472

MR. SOMERVILLE continued:

To illustrate the problem, the state had submitted about 200 rivers to the federal government, gave 180-day notice that they intend to quiet title under the Quiet Title Act. And then taking three rivers - or the Kandik, the Nation, and the Black [Rivers] - out of ... those 200, they filed a lawsuit and [tried] to force the federal government ... to release the title, in essence, of the three rivers, again, the purpose being to establish some precedent, if you will, in establishing navigability.

Nine years later - and a million dollars, federal and state money - two of the rivers, we quieted title to them because the federal government had asserted an interest. And we can prove that in court, so we quieted the title on the Kandik [River] and the Nation [River]. The Black River, the federal government was successful in convincing the court it didn't have jurisdiction, [and so] they couldn't quiet title to it. And so ... for two rivers, it took us nine years and a million dollars. If you consider the fact [that] we have 22,000 rivers and a million lakes, the rivers alone, it'll take us 99,000 years to resolve our navigability and title issues. That may be an overexaggeration, but that's the rate at which we're doing it.

Why do we need title? Because if the state wishes to utilize the submerged lands in any way, such as

leasing for gravel, oil and gas, or whatever - if you wish to manage it - the jurisdictional aspects that go with managing the water ... column [are] involved when you own title to submerged lands.

This particular proposal ... is designed for one purpose, ... to try to create a cooperative federal-state commission to sit down and identify those rivers which are navigable and those which are nonnavigable. And those you don't agree [about], you have to fight out in court - and then with the idea that working with the Secretary of Interior and Congress, and possibly even coming back to the legislature, if it's necessary, to certify which rivers are navigable and which are nonnavigable. And this particular group has no authority, in essence, to declare them; it just has the purpose [of] sitting down and saying, "We agree that these rivers meet the Gulkana criteria for navigability; these clearly are nonnavigable," and develop those two lists. That way, the recommendations will go from the body - the federal and state body - to the Secretary [of the Interior], through Congress, and to the legislature for further action.

Number 0699

REPRESENTATIVE STEVENS asked Mr. Somerville whether he was comfortable with the fiscal note, and what the \$250,000 covers.

MR. SOMERVILLE answered that the fiscal note is a guess. The last time the federal-state land-use planning commission was in existence, in 1979, "it was about ... \$670,000 ahead," he said, indicating it costs more today to do things [because of inflation]. He added that the federal-state land use planning commission created in the Alaska Native Claims Settlement Act (ANCSA) had a much broader agenda: it was looking at all land and water uses; at the subsistence issues; and at "a wide variety of things related to the potential withdrawal of 80 million acres, which was in the law, which ended up being a 120-million-acre withdrawal at 1980." He indicated both Representative Porter and Senator Halford had said this is a CIP [capital improvement project], and he remarked that the legislature can add money to it if ... "it's doing a good job and there's need for additional funds." He added:

So it certainly will probably get us through the first year. But you don't look at a whole, big staffing, for instance, for a two-year project. You're talking about using DNR [Department of Natural Resources] staff, [Alaska Department of] Fish and Game staff, Department of Transportation [& Public Facilities], [and] DEC [Department of Environmental Conservation] in the state - and ... [U.S. Department of] Agriculture [and U.S. Department of the] Interior, in particular, in the federal agencies - to provide the background information that is already on the records; you can already make that decision.

Number 0853

ROD ARNO, Alaska Outdoor Council (AOC), told members he would reiterate from the last hearing on [HB] 266. He said, "Our membership in the [AOC] depends on these waterways for access for hunting, for fishing - for recreation. So we do support passage of this legislation and hope that the state, then, can receive title to as many of the public waterways as possible."

CO-CHAIR MASEK asked whether anyone else wished to testify; she then closed public testimony.

Number 0945

CO-CHAIR SCALZI moved to report HB 266 [version 22-LS0966\C, Cook, 3/27/02] out of committee with individual recommendations and the accompanying fiscal note. He spoke in favor of resolving the submerged lands issue in an expedited manner in order to avoid becoming further and further detached from the original guidelines for determining "navigable water and the lands beneath it." He also expressed support for the attached fiscal note as described by Mr. Somerville.

CO-CHAIR MASEK emphasized the importance of the legislation in order to get this commission up and working, but expressed hope that it wouldn't require more resources [than in the fiscal note].

Number 1034

CO-CHAIR MASEK requested adoption of the proposed CS.

REPRESENTATIVE FATE responded, "So moved."

Number 1044

CO-CHAIR SCALZI renewed his motion to report [version 22-LS0966\C, Cook, 3/27/02] out of committee with individual recommendations and the attached fiscal note. There being no objection, CSHB 266(RES) was moved out of the House Resources Standing Committee.

HB 178-MANAGEMENT OF FISH AND GAME

CO-CHAIR MASEK announced the next order of business, 3d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 178, "An Act relating to the powers and duties of the commissioner of fish and game, the Department of Fish and Game, and the Board of Game, to taking and use of certain game animals, and to consideration of the budget of the Department of Fish and Game by the legislature; and providing for an effective date."

Number 1176

REPRESENTATIVE FATE, sponsor, explained that the bill provides for a maximum sustained yield of game animals based on an "historic high population," which is clarified in the bill, and it takes into account the habitat and the historic climates. It mandates active management of wildlife resources to comply with the "maximum benefit clause" of the state constitution, he asserted, adding that the bill allows for not only "high human harvest," but also high game populations, "increasing the aesthetic value of having large numbers of animals." He said a harvest goal is 15 percent to 33 percent of surplus animals, which would be "identified from after calving and after the survival rate of after calving."

REPRESENTATIVE FATE told members the bill reconfirms and clarifies the duty of the commissioner and the board. One change, he said, is that the statute says something to the effect that it is the board's duty to manage, whereas he believes it is the administration's duty to manage. Therefore, the bill uses the word "allocate" instead. Furthermore, the bill removes the ability to hire specific enforcement officers, but retains the right of the state troopers who have fish-and-game protection and enforcement responsibility. Furthermore, it retains the responsibility of the commissioner to deputize those people in the Alaska Department of Fish and Game (ADF&G) who are in the field, and clarifies those people who are in the field who have the ability to enforce game laws. He concluded, "In

the main, this bill just simply mandates active management of fish and game with a priority for a goal of high human harvest."

Number 1467

REPRESENTATIVE FATE, in response to Representative Kerttula, said the 15-to-33 percent is in line with "other game taking of other states." He added:

At the present time, ... the human harvest of game is so low that it's almost ... negligible, somewhere in the neighborhood of maybe 3 percent. And this is an endeavor ... to not specify how much you have to take - because nobody knows how much is going to be taken - but at least establish some kind of a goal which goes along with the active management for high yield, for abundance of the game animal - as it says, the harvestable surplus, which is usually considered after the survivability of the ... calf population of that particular year. So it's ... simply designed to make that a goal of human harvest, rather than to try to dictate what that human harvest is going to be.

Number 1577

REPRESENTATIVE KERTTULA referred to Section 2, page 2, [paragraph] (1), with regard to the commissioner's powers. She said, "I'm not sure if that really changes what we have at this point, but I was reading the language together. Is ... your goal to change how the commissioner is now allocating or not, with that language?"

REPRESENTATIVE FATE answered that one of the primary duties of the Board of Game is to make allocations. He added:

When I mentioned that before, there was, in several of the duties enumerated in the original bill, one of them was to manage. We feel it's not the board's responsibility to manage; it's the commissioner's and his staff's responsibility to manage. That doesn't change ... his responsibility. It's the board's responsibility to help allocate those resources and, of course, among other things, to advise the [commissioner], as you see in the bill, of the other duties of the board.

REPRESENTATIVE KERTTULA clarified that she was asking about managing for abundance for maximum sustained yield - how that differs from what is done now, and how Representative Fate envisions that working.

CO-CHAIR MASEK noted that it is on page 2, lines 9-12.

Number 1679

REPRESENTATIVE FATE said there are many different ways; he mentioned predator control and habitat enhancement including prescribed burns and "water habitat facilitation." He added:

It's not our intent to dictate how this is done, but to simply say that active management is what will ... enhance the population of the game. And another thing in here, in ... talking with the department, we did provide in here a caveat: for example, one of the game animals on the Alaska [Peninsula] is a brown bear; it's ... not an ungulate or a prey animal at all. And so, in here we tried to make room for that, and for permit drawings, for example, and ... special seasons. We made reference to the ... musk ox, which is a separate thing.

We've really tried to facilitate everything we can think of. But as far as active and passive management, there is a difference. Active management manages for ... an historic high game population, whatever that was, determined by ... records of the Department of Fish and Game. And ... the effort and the goal is to manage for that. Passive management, basically, is "let nature take its course," and if there's not a lot of game out there, why, that's just tough - don't do anything. ... So, there is a difference between active and passive game management, and we're advocating the active game management.

Number 1786

REPRESENTATIVE KAPSNER referred to Representative Fate's mention of a 3-percent harvest rate that is almost negligible. She offered her understanding that it is the subsistence harvest, rather than the overall harvest; she asked Gordy Williams of ADF&G to respond.

Number 1818

GORDY WILLIAMS, Legislative Liaison, Office of the Commissioner, Alaska Department of Fish and Game, came forward accompanied by Matt Robus, whom he introduced.

CO-CHAIR MASEK asked them to address Section 2, page 2, lines 9-12.

Number 1841

MATT ROBUS, Deputy Director, Division of Wildlife Conservation, Alaska Department of Fish and Game, responded:

The answer is that there is probably a different level of harvest on every population across the state. And in some places the total harvest on ungulate populations may be in the neighborhood of 3 to 5 percent, but in other places it's as high as 10 percent on moose populations, for instance, and then has a lot to do with the capability of the land, the situation with the habitat, [and] other factors such as weather and predators and human demands on the population.

And just as an example, when the Board of Game looked at intensive-management populations to develop harvest and population goals, they used 10 percent as kind of the upper limit for moose populations, as a starting point for developing some of those ... management objectives, just because of all the different factors that ungulate populations have to face in this state. So it's really not possible to say 3 percent across the board or 5 percent across the board. It really varies, depending on what species and what location you're talking about.

Number 1914

REPRESENTATIVE KAPSNER asked, "How do we currently evaluate how the commissioner and the department [are] doing, and how would this new system, if implemented, be measured?"

REPRESENTATIVE FATE answered:

First, ... in this state legislature, there's missions and measures. This is one way we have, certainly, of evaluating at least the efficiency as far as the

dollars go. But I think the other way of evaluating ... the efficiency and the management itself is ... by the public itself. In those units where there's a paucity of game animals of the kind that they're trying to take -- and we've already seen that the board will advise one method of alleviating ... the scarcity of those animals, and sometimes that's not followed. So ... what we're really trying to do here is literally put in law what's basically (indisc.) already in law, and certainly is in the constitution. The measurement, as I've said, of those things will come both from the statutes and from the public.

MR. ROBUS responded:

The performance measures that Representative Fate mentioned certainly are measures, and we worked up performance measures that have to do with how many permits the department issues ... for big-game hunting a year; how many surveys we fly, in order to show whether or not we're getting ... adequate coverage with our inventory operations; visitors to our refuges; and that type of thing.

However, another method of feedback that we get is at the Board of Game meetings and telephone calls to our offices. It becomes pretty clear when we're not achieving what the public generally conceives of as the proper way to manage populations. And I don't know if you've ever been to a Board of Game meeting recently, but there's spirited discussion there about the method, ... our approach to management, our success or lack of success in getting to where the public feels we ought to be. And then the most tangible result is, we get proposals from the public at every Board of Game meeting that are the avenue for people to change the way that we manage wildlife. If it makes good sense and seems to be in the public interest, then the Board of Game can adopt those, and off we go in a new management direction. So that's the type of feedback we get in terms of the success.

Number 2078

REPRESENTATIVE KERTTULA noted that the constitution requires management for sustained yield, rather than maximum sustained

yield. She asked whether there are any cases or analyses that talk about abundance for maximum sustained yield.

MR. ROBUS answered:

We believe that there is a difference. The sustained yield principle, as generally stated in the constitution, gives us a lot of flexibility in how we manage the balance between different types of animals. And, in fact, this is kind of testifying before our testimony, but one of the problems we see ... with the bill is that it calls for maximum sustained yield of all wildlife. And we're finding out that if you want to maximize an ungulate population in a particular place, ... we're not going for a maximum sustained yield of predator populations. In order to manage your way through that, you'd probably want to depress predator populations in some cases. So the lack of flexibility in the language of this bill, as it stands, is of great concern.

And the other thing is the liability of managing right at the knife's edge of MSY [maximum sustained yield]. As I've said before, there's a lot of very serious, uncontrollable factors such as winter snow levels, habitat conditions, things that are very difficult ... to measure. And if we push too far and think we're at MSY and try to hold the population there, and we're wrong or we have bad luck in terms of winter conditions or so forth, we could be plunging a population into a situation that's very difficult to recover from. So a general, flexible, sustainable-yield approach is preferable to us.

REPRESENTATIVE FATE responded:

Under the present situation, the determination of what is sustained yield sometimes is at the lower end of what the people need out there. If you describe it as "maximum sustained yield," you are telling the Department of Fish and Game that you want the maximum number ... of animals that habitat will carry, and that has an historic ... number of animals to back that up; it's not just something you're grabbing out of the sky. But if you just simply say "sustained yield," you could have five animals out there, and

that will sustain it. So you're ... not describing any boundaries, any parameters. And it hasn't worked.

Number 2259

CO-CHAIR SCALZI remarked that it has always been a good debate with regard to sustained yield, maximum sustained yield, and optimum sustained yield. He said, "Optimum sustained yield is essentially subjective sustained yield management, if I understand it right." He offered his opinion that the constitution says "sustained yield to the maximum benefit of all users." He also offered his opinion that it isn't as problematic as the department believes it to be.

Number 2318

REPRESENTATIVE KAPSNER voiced concern about trying to balance the ungulates versus the predators, because there is a natural cycle that has fluctuations. After a cycle when the ungulate population is depressed and there are more predators, it balances over time because the predators won't have a food source, for example. She expressed concern about a public outcry during a natural cycle, and the pointing of fingers at the managers for what is actually a natural phenomenon.

REPRESENTATIVE FATE recalled anecdotes from his wife's family about long-lasting cycles of over 40 years, and therefore questioned the idea of natural cycles that balance over time.

Number 2419

MR. WILLIAMS informed the committee that ADF&G has some serious concerns about provisions in the bill and potential effects. For example, some ambiguity might lead to increased litigation and confusion in fish and game management. Noting that Mr. Robus would speak about the game biology, Mr. Williams pointed out that the bill speaks to fish and game in some places. He informed members that Kevin Saxby from the Department of Law was supposed to be online, but was also involved in another committee hearing and might not be available.

MR. WILLIAMS expressed appreciation for the sponsor's comments on the [removal of] "enforcement agents" in Section 1, which he indicated had been a concern of the department because the legislative intent wasn't clear as to why that language had been removed. He explained:

We think that it's very important that ... there's an enforcement presence in the field, by the number of biologists and people that we have out, because we have a fairly small number of fish and wildlife protection officers that are employed. So we appreciate the intent that it's ... a clarification - it's not to affect the current situation. All of our enforcement agents go through training....

REPRESENTATIVE FATE responded:

To even further clarify, it says an employee of the department authorized by the commissioner that can be deputized - a police officer of the state, they already have that - or any other person authorized by the commissioner. So the commissioner can deputize just about whoever he sees fit within that department, as well ... as enforcement officers through the Department of Safety.

Number 2532

MR. WILLIAMS referred to Section 1, page 2, lines 1-2, which read, "**(B) to achieve an abundance of fish and wildlife resources sufficient to provide the maximum sustained yield of those resources;**". He told members it would be added to the commissioner's duties, but pointed out that it speaks to all fish and wildlife resources and would include predators, prey, resident fish, and anadromous fish, for example, and would be virtually impossible to manage. There are conflicts, he said, and some of those resources aren't used much by humans.

MR. WILLIAMS turned attention to Section 2, noting that paragraph (1) [page 2, beginning on line 9] removes some language about assisting the [U.S.] Fish and Wildlife Service in the enforcement of federal laws and regulations. He said the constitution provides for a level of cooperation between the state and federal governments. He explained:

Practically, again, this may not have a lot of effect, but we'd be interested, again, to make sure that it's not the legislative intent that we can't participate with the federal government on waterfowl management, the Lacey Act -- there's various federal regulations that we're involved with, and things that we don't manage on the state level. And we think it's very

important that the state is able to assist with ...
that type of management.

Number 2628

MR. WILLIAMS requested clarification about page 3, paragraph (7) [Section 2], which relates to public facilities and removes language with regard to entering into cooperative agreements. He pointed out that the department does enter into cooperative agreements on things such as boat-launch ramps, for management with the Department of Natural Resources. He advised the committee, "We would not want to have that ability to do that removed. And we don't think that's the intent of the bill, but, again, ... we're not sure."

MR. WILLIAMS turned attention to paragraph (9) [Section 2, page 3] and informed members:

The Department of Law has told us this is a problem. It puts the boards of fish and game, or the Board of Game, into the fiscal matters of the department. Currently, ... the boards of fish and game are both prohibited from being involved in fiscal matters of the department. And by this paragraph assigning the highest priority to plans, programs, and regulations adopted by the board, it's kind of a de facto entrance into our ... fiscal management of the department. And that's seen as a potential legal problem.

MR. WILLIAMS referred to Section 3, page 5, which adds a new subsection saying that before entering into a cooperative arrangement with any entity for the management of fish and game, [the department] must provide public notice and a reasonable opportunity [to comment], and must inform the presiding officers [of each house of the legislature]. He pointed out that "cooperative arrangement" isn't defined, and cautioned that without that, it would have to be read very broadly. Highlighting ADF&G's indeterminate fiscal note for this legislation, he explained:

We enter into contracts. We enter into agreements ... to receive federal funds in a lot of areas. We contract with an airline service to do game surveys - all those kind of things. And ... the Department of Law says those would all be cooperative arrangements. If we had to publicly notice each and every one of those and take out ads in newspapers and everything,

we could see a relatively enormous fiscal note. So we don't exactly know what, again, the intent is there, ... but if we had to comply with this as written, we would have a very extensive fiscal note.

Number 2755

MR. WILLIAMS turned attention to Section 5, page 5, and pointed out that it begins, "The Board of Game, as it considers necessary to allocate, protect, maintain, improve, and extend the game resources of the state to achieve abundance for maximum sustained yield of game and for other purposes, may adopt regulations [IT CONSIDERS ADVISABLE]...." Noting that the phrase "it considers advisable" is in the current statute, he explained that the department doesn't believe it is a good change to put the word "necessary" in there. He explained:

The Board of Game makes a lot of decisions on what they feel is advisable for good fish and game allocation in the state, whether it's restriction on a particular type of weapon that can be used in an area or a certain area next to a highway that might be closed for one type of (indisc.--coughing) or another. Those may not be necessary to allocate, protect, and maintain, but they are ... certainly advisable on things that they're reacting to the public or to agency input on.

Again, the Department of Law feels that they're often defending cases every year about the word "necessary," where people go into court and say, ... "It wasn't necessary that they had that regulation." And that's not a standard that we have to meet to defend those cases. It's a regulation that was passed by the board, that they felt was in the best interest of the state. And we wouldn't like to see that jeopardized.

MR. WILLIAMS addressed Section 6, [beginning on] page 6. He informed members, "Our reading of this is, current intensive game management is not restricted to areas where there's a drawing permit." He explained that usually the drawing hunts and permits are in areas where the game population is relatively healthy but the carrying capacity of the habitat and the size of the resource aren't enough to meet all the demands. He cautioned, "Restricting it to only areas where there's a drawing permit would be a significant restriction on the current intensive game management laws that are on the books now."

Number 2858

MR. WILLIAMS turned attention to Section 7 [page 7], noting that he would ask Mr. Robus to correct him if necessary. Mr. Williams noted that Section 7 removes the language, "or has scheduled for adoption at the next regularly scheduled meeting of the board regulations", which is part of the intensive game management laws. If a view is brought to the board, the board can make some decisions at a meeting with regard to the harvest of that resource, although it wouldn't have a proposal before it and wouldn't have given the public time to work with the department and board to craft a balanced intensive game management program. Mr. Williams remarked:

Again, these are complicated, [on a] case-by-case basis, often with wolves and bears and habitat carrying capacity; indeed, this is the kind of thing that needs study. So that's why I believe this was put on the books, is that it's not possible, at a lot of these meetings, for the board to have the type of proposal in front of them that the public knows about, and to adopt that. So they could take some ... management actions to keep the population from being ... further depressed, but without having adopted ... a formal intensive game management program. So if this was to go forward this way, I think there's a danger that the harvest of the population would continue at a rate that further drives ... the population down to a very low level.

MR. WILLIAMS turned attention to Section 8, noting that it speaks to historic high population levels, which in Alaska were reached during the end of territorial days and early statehood, "when there was widespread poisoning, widespread aerial taking of animals." He said it isn't a sustainable population for many of these resources or, to his belief, a politically acceptable method of fish and game management in the current times.

Number 2956

CO-CHAIR SCALZI pondered whether Section 8 could work in reverse with regard to maximum sustained yield, resulting in never being able to achieve those high levels. He said historic high levels are often artificial, and achieving maximum sustained yield would be difficult in certain [circumstances].

TAPE 02-26, SIDE B
Number 2980

MR. WILLIAMS reiterated an earlier point that the bill applies to both fish and game in several instances.

MR. ROBUS emphasized some points discussed by Mr. Williams. He referred to Section 6 and said:

Under the present intensive-management law and regulations, the Board of Game has identified ungulate populations around the state that qualify as being, quote, "important for high levels of human consumptive use," unquote. Anytime the biological analysis of a situation leads the board to determine that intensive management is needed for one of those populations, they can and have gone ahead and implemented intensive management for those populations.

And the rewording proposed in the bill here would take that away from most of the areas where that's happened and limit it only to areas for populations where we have drawing hunts. And I can't think of an intensive-management situation where we have a drawing hunt, because by the time you get to intensive management, you're down into a limited registration permit or a Tier I or a Tier II permit, usually. So this section ... would radically alter the intensive-management program and limit it to the type of populations where intensive management really is not called for or appropriate.

Number 2915

MR. ROBUS turned attention to Section 7 and said:

The procedure that the Board of Game goes through at their meetings is that for each area, they hear proposals for ungulate populations first; then they hear proposals for predator populations. And sometimes it works out that they decide that we need to restrict harvest on a moose population, say, because it's not doing very well, and, by good fortune, there may be a predator proposal later on in that same meeting where they can actually take some intensive-management action and begin curing the problem right there.

But it's much more common not to have an appropriate ... predator-related proposal at that meeting. And so the way this law would be worded is that ... the board would be prevented from taking restrictive action to protect the population that's in trouble, because they didn't have an appropriate proposal before them at that meeting and they would not be given the slack that's in the present law, which allows a proposal to be circulated before the public, come back at the next regularly scheduled meeting, and the board takes action at that point to start, usually, increasing the take of the predator.

The only way we would have to protect that moose population under this wording would be to draw up an emergency order on it midway through a season, when we figure that enough is enough in terms of harvest. And we think it's much preferable to retain the existing language that lets the board take action as soon as possible under their public-notice procedures, but allow them to take restrictive action if they really think it needs to be done, because ... that type of decision involves the public much more than an emergency order that an area biologist or a director puts into effect as an emergency way ... to keep a herd from being ... overharvested. So we ... don't feel that this is, ... procedurally, a very good way to proceed.

Number 2801

CO-CHAIR SCALZI asked about emergency orders (EOs) for closures, and whether Mr. Robus was testifying that EOs aren't the best method to use for shutting down an opening when a critical problem is discovered.

MR. ROBUS replied:

Emergency orders are certainly a valid and useful way for our department to ... modify or close off the taking of a population when we discover that there's ... no more animals that can be taken ... with safety. What I was trying to say here ... is that when the Board of Game is hearing the biological evidence from the department, listening to public testimony, and deciding that harvest regulations need to be modified,

that's going on with a whole lot of public input. And the ... implementation of the intensive-management law deserves that amount of public input. And if the board, at that point, feels there needs to be restriction, they should be allowed ... to modify the regulations for that ... population right then if they need to, and then pass the appropriate intensive-management regulation as soon as procedurally possible, either at that meeting or at the next meeting.

I didn't mean to say that EOs were not a valid way ... of protecting a herd. But in the case where the Board of Game can make a determination that a restriction needs to happen, it would be more appropriate, I think, to do it through that process and leave the emergency orders for situations where ... we find through surveys or through harvest reporting ... that we cannot afford to take any more animals in a given hunt.

Number 2700

CO-CHAIR SCALZI said he'd wanted to get on record that [ADF&G] still supports that methodology of management, rather than going back to "federal-type management."

MR. ROBUS affirmed that, adding that Mr. Williams had just reminded him of another difference. He explained, "The Board of Game can tweak those seasons in any way that they feel is appropriate. An emergency order basically is a 'light switch' that we have to turn the season off at a given point. So it's a less flexible way of managing a population."

Number 2654

CO-CHAIR SCALZI read from the state constitution, Article VIII, Section 2, which talks about the maximum benefit of the people. He offered his view that the bill tries to merge that concept with the sustained yield principle [Article VIII, Section 4]. He asked Mr. Robus for his interpretation of the department's stand on "maximum benefit versus maximum sustained yield."

MR. ROBUS replied:

Not being a fisheries biologist, I don't have much personal experience with the term "maximum sustained

yield," because that's not the way the department is managed on the game side of things. So I'm probably not all that well qualified to answer your question ... in detail.

My feeling, from sitting at Board of Game meetings and being in the department for a fair amount of time, is that we're always straining at trying to achieve the maximum benefit to the people by adjusting the way populations ... are managed and harvested. There's no doubt that we've got difficulties. ... Our resources are limited. The state's huge. The productivity per acre in this state is low compared to ... almost everywhere else on the continent, or at least the Lower 48. There are some really tough challenges in providing the maximum benefit, but that's where the Board of Game and the department are always aiming towards.

This is getting a little away from your question, but I'll point out that we have population and harvest objectives established for every ungulate population in the state - or every deer, caribou, and moose population in the state - that has been found to be important for high levels of human consumptive use. So we already have targets to aim at, and the Board of Game is already working really hard to produce those population levels and the harvest levels that go with that, to the extent possible. So maximum benefit is always going to be a goal out there in front of us somewhere, but I think that's definitely where both the board and the department aim their efforts.

Number 2524

CO-CHAIR SCALZI asked, fisheries aside, whether Mr. Robus believes maximum sustained yield is or isn't consistent with maximum benefit.

MR. ROBUS replied that he thinks this language takes away some flexibility and places difficult, arbitrary standards. He added his belief that "the maximum benefit to the people" isn't consistent with the language in this bill.

Number 2484

REPRESENTATIVE FATE responded to points made by the ADF&G representatives. First, he said, "I don't think that we should mandate the State of Alaska, through the commissioner, to assist the federal government in enforcing federal laws on federal land." He also offered his belief that [the bill] doesn't take away the ability of the commissioner to make arrangements with other entities and organization, and that it provides clarification in this regard, whereas he believes it was arbitrary previously. Speaking of the commissioner, he added, "That ability is still in place for him to make arrangements with any other entity that he so - really, basically - desires."

REPRESENTATIVE FATE returned attention to Section 5, page 5, subsection (a), line 27, and said:

When the Board of Game needs a solution that they think is necessary, they should articulate that immediacy to the commissioner, and ... if they feel that's necessary, then they should articulate that; if it's "advisable", then that could be misconstrued by the commissioner. And they may not take action if it's only advisable. It doesn't disallow, certainly, the board being advisors, because that, by nature, is what it is.

Number 2354

REPRESENTATIVE FATE referred to page 6, [beginning at] line 28 [with regard to drawing permits]. He suggested perhaps the wording isn't quite what was meant, and said:

If you look at that, I think it was stated that you wouldn't have intensive [management] where you have a drawing anyway, because if you have a drawing, it implies that there's plenty of game animals there, and so why is there a need for intensive management? But that's not really what it says here. ... What it says, basically, is if there is a ... necessity because of the scarcity of game animals, but where there is an area where [a] drawing has taken place, I suppose there's two things that could happen. By emergency order, you could just simply stop it. But this is saying that in those areas, ... then you should adopt intensive management to build up the population, which is the effort. And that precludes the musk ox, which come under a different set of regulations. So ... it's really aimed at helping ... the Board of Game and

the commissioner, where there [have] been drawings and ... where there is now a scarcity of that game animal, to institute the intensive-management program. And that's the meaning of that.

REPRESENTATIVE FATE offered to clear up that language if necessary. Turning attention to page 7, beginning at line 11, he conveyed his belief that it is "generally needed because it does clarify rather than make arbitrary the taking of the identified population species."

Number 2175

REPRESENTATIVE FATE called these management goals for the taking of animals, rather than dictating "that these will happen, because we know that often they won't." He offered his understanding from ADF&G records that "they can establish high population records under different habitat scenarios." He said, "It's up to them to do that; we're not dictating what that high population is going to be, but you can do that, and that's all that we're attempting here." Noting that Section 8 says "consistent with these high population levels", he remarked, "These are goals, but consistent with the present-day maximum carrying capacity; we're not going to hang the amount of animals that we're trying to establish as a goal on [an] historic high, but we will marry that historic high to the capacity of the habitat of the present time to carry those animals."

[Co-Chair Masek called upon Kevin Saxby of the Department of Law, but was informed via teleconference by Captain [Al] Cain of the Department of Public Safety that Mr. Saxby was attending another meeting; Captain Cain offered to answer questions.]

Number 2030

VIC VAN BALLEMBERGHE testified via teleconference, noting that he has about 35 years of professional wildlife biologist experience, 28 of those in Alaska. Cautioning that the bill might work counter to the goal of having abundant wildlife populations, he said:

I think there are numerous problems with the bill, one of which occurs at the bottom of page 7, Section 8, the part that refers to historic high wildlife population goals that the board would establish. There are biological problems with that concept, ... one fact being that these historic highs in Alaska

were often reached in the 1960s following more than a decade of poisoning and shooting of predators by the federal government. That resulted in the virtual elimination of predators, not only wolves, but drastic reductions in bear populations, wolverines, carnivores - all the things that ate that poison.

I think, as a society, the state of Alaska decided when that poisoning program was over that we really didn't want to go down that road again. In fact, this state has never used poison to reduce predators as a matter of policy since statehood. And in order to get back to those historic highs - in order to try to reestablish them - it would virtually require the same kind of predator-control effort that occurred during the federal program.

Secondly, these highs resulted in habitat damage, and they obviously were not sustainable. Even if we could return to those high population levels, they are not sustainable - they weren't sustainable originally, and they're not sustainable now.

Thirdly, habitat conditions since those highs have changed over time, and we can no longer support those past highs in many, many areas, due in part to fire suppression, which has resulted in much lower carrying capacities than we had during the 1960s. I'm not aware of a single competent wildlife biologist that would advise the legislature or the Department of Fish and Game to try to manage for historic high levels. And, in fact, establishing those levels, even ... if we could get there, would run counter to the concept of trying to provide maximum sustained yields, because those yields do not occur at high levels; they occur at intermediate levels ... of wildlife populations.

There are several good, real-world examples that we have good data on, including the Nelchina caribou herd and the moose population on the Kenai Peninsula, that if we had more time, I would like to tell you about, and perhaps we could do that later.

Number 1840

MR. VAN BALLEMBERGHE turned attention to Section 1, subparagraph (B) [page 2], with regard to the concept of trying to get the commissioner to manage at maximum sustained yield. He said:

Again, I'm not aware of a single wildlife agency in Canada or the rest of the United States that, as a matter of statute or regulation or public policy, tries to manage deliberately for maximum sustained yield. And the reasons for that are good, and you've heard some of them today. I think Mr. Robus mentioned that there's really no margin for error when you're trying to manage for maximum sustained yield. You can rapidly get into problems where populations crash as a result of trying to do that, from ... weather and other factors. There is no margin for error.

I think the Alaska State Constitution and all the existing statutes to date scrupulously avoid establishing maximum sustained yield as a management goal, because the recognition of these problems has been around for years and years. And, in fact, I'm not a fisheries biologist, but I understand that two decades ago fisheries biologists decided that managing for maximum sustained yield was too risky.

I think the costs are too high to determine the biological parameters necessary to manage for maximum sustained yield. And for that and other reasons, I believe that incorporating that ... in legislation is an unwise decision.

Number 1735

REPRESENTATIVE FATE asked Mr. Van Ballenberghe what his definition is of maximum sustained yield.

MR. VAN BALLEMBERGHE responded:

I think therein lies the problem, listening to the discussion as it's gone on today so far. The term "maximum sustained yield" has a very specific definition to biologists, and that definition is not the definition that's found in this bill. ... The best way to do this maybe is through an example. Let's say that we have a ... moose population, and let's say that moose population contains 1,000 individual moose at carrying capacity, okay? And carrying capacity,

again, has a specific definition, and that's the point ... where there is no room for human harvest: at carrying capacity, a moose population produces just enough calves to replace the adults that die, and if you have a human harvest on top of that, the population declines.

So ... let's assume that there's 1,000 moose at carrying capacity in this population. The point of maximum sustained yield for moose and caribou and deer and other ungulates is right about half - a little more than half, but let's say about half - of that maximum carrying-capacity level; in this case, it would be 500 animals. And that's the point at which the maximum number of animals are available for harvest for that population. The animals are reproducing at a maximum rate, and the maximum number are available for yield from that population. And, again, this has a very precise biological definition that biologists ... would all agree on, and that varies from ... the more generic or layman's definition.

And ... in response to one other point that was raised earlier, this is certainly much different from the concept of maximum benefit [in the constitution].

REPRESENTATIVE FATE asked:

Then you would agree, it sounds like, that the highest number of a population that can be removed for human use without reducing its ability to propagate would be -- is that your -- 'cause that's basically what you've said. In other words, if ... the highest number of population that can propagate isn't enough to sustain human harvest, it's still the maximum sustained yield, correct?

MR. VAN BALLEMBERGHE replied:

No, Representative. There is only one point for any given population in any one confined area. There's only one point, one density of animals, that represents the maximum sustained yield. And ... as I tried to illustrate, if ... the carrying capacity is, say, 1,000 animals, that maximum-sustained-yield point occurs pretty close to 500, and that's ... where the

animals are low enough density where they've got enough food to reproduce at maximum rates to produce the maximum number of young animals available for harvest. And that's why there is virtually no room for error. If you ... harvest just a small fraction more than that number, you put the population into a decline.

Number 1500

REPRESENTATIVE FATE responded:

Thank you. Basically, I think that that's what the ... definition of sustained yield in this was - which was also looked at by other biologists - was basically what you're saying. In other words, ... in this, the maximum sustained yield is simply: if there's not enough population ... to be sustained by a habitat at the maximum level, and that maximum level is not enough to sustain that population with hunting, with consumption, why, then, ... the maximum sustained yield at that point simply can't entertain any harvesting. So ... that's what maximum sustained yield is, and this is basically what you're saying.

So, anyway, I have a couple of other points here - habitat damage, and you mentioned habitat change. And I thoroughly agree with you. But, ... once again, over a long period of time, when you look at the history ... of the highest sustained yield, you will notice ... that not only the migratory patterns - for example, the caribou and even the moose - are changed, but there's still a history. And that's what we're getting at. There is still a history of what that maximum amount is, regardless of where they went or how many there were. This is [an] ... historic note here that we're looking at, as far as the historic habitat, historic amount of animals, and this type of thing. So this isn't intended, once again, in this bill, to dictate what the historic high yield is or what the historic high population is. It's simply a footnote that you can determine that through the history that is already on record.

Number 1330

MICHAEL PURVIANCE testified via teleconference. A farmer in Delta Junction, he referred to Article 2, Nuisance and Other Game [Section 11, page 8, of the bill], recounting how large numbers of moose, buffalo, and brown bears had converged on his crops, causing extensive damage. Mr. Purviance said he is tired of the excuse that wildlife lived there before him, and that he cannot afford a fence because the animals have destroyed the crops that will allow him to earn enough to construct one. He suggested the public doesn't care because it doesn't affect most people's ability to produce income.

MR. PURVIANCE said it is time for the state to accept responsibility for damage done to crops [by wild animals] in the state and on state agricultural land. He proposed that the commissioner of the Department of Natural Resources be included in "the decision-making process of farmers' destroying animals to protect their crops," that the commissioner should assess crop damage by these animals, and that farmers should be compensated for losses on designated state agricultural land. He also proposed that interest-free loans be provided to farmers on state agricultural land in order to fence out these animals and protect crops. Every year, he said, he sees thousands of dollars being raked in for buffalo and moose permits to hunt [near] Delta Junction, when farmers there must sustain the crops and crop losses and must feed those animals at their own expense.

MR. PURVIANCE, noting that he is a former ADF&G employee and federal game warden, said he doesn't take the killing of these animals lightly; however, farmers cannot survive with the huge yearly losses from these nuisance animals. He urged the committee to rewrite this section of law in order for farmers to protect their land, way of life, and income. He said he would gladly grow his crops for these nuisance animals so long as he was being compensated and could pay his loans. In the alternative, he suggested that farmers who don't want to fence should be given a special farm tag such as is done in Missouri, "and they can either shoot the animal on their land or sell the permit to someone else as compensation for crop losses caused by moose and game."

CO-CHAIR MASEK asked that Mr. Purviance fax any written testimony to the committee.

Number 0931

JOEL BENNETT, Defenders of Wildlife, testified in opposition to 3d SSHB 178, noting that Defenders of Wildlife is a national and state group composed of conservationists, hunters, and other wildlife enthusiasts, and that he is a 32-year Alaska resident and active hunter. He told members:

We oppose this bill because of several provisions which we find to be particularly troublesome, having to do with the mandates and ... numerical standards that are imposed by some of the sections. And I just would draw your attention primarily to the "sustained yield" language, because [in] numerable ... discussions and meetings over the decades, this constitutional provision has been explored and never changed. It's very clear in ... Article VIII of the Alaska constitution that the sustained yield principle is left - without the word "maximum" or any other modifying word preceding it - in order to give the department and the board the greatest amount of flexibility in management.

We see a clear effort here, in ... Section 1 of the bill, to not establish a goal, but to establish a mandate, ... with language that actually says the commissioner shall manage according to maximum sustained yield. And that runs against, as I said, ... the main constitutional provision that has guided the department and the board with regard to wildlife in the past.

We believe that the existing intensive-management statute provides clear direction for achieving a productive return to people in Alaska - hunters in Alaska - who want to utilize resources. And it doesn't need any further amendment.

MR. BENNETT called attention to a 1999 case, Native Village of Elim v. State, which has language addressing the sustained yield provision. He told members:

I might just take a second to read a note that's under the constitutional provision. It says, under this case, "To require the use of a predetermined formula under the sustained yield clause would consume an amount of time, money, and energy wholly disproportionate to potential benefits, and would be a counterproductive use of resources, limiting the in-

season flexibility that fisheries management requires." And I think if you look at that case, you'll see that it was a wholehearted endorsement of leaving as much flexibility as possible to the department.

Number 0652

MR. BENNETT expressed concern about the provision in the bill which specifies that the high yield of human harvest wouldn't be less than 15 percent. He explained:

There have been suggestions in the past to impose percentage requirements like this, and ... they've never been adopted, and I think with good reason. ... You could have several years of difficult winters, which would drive down a population of ungulates, and then have a normal year. And for very good reasons, the department might not want to allow 15-percent harvest of the surplus in that year, in order to ... build the general population back up.

MR. BENNETT concluded by offering testimony as an individual hunter. He told members:

I've never had any problem harvesting resources in this state, whether it be mountain sheep or mountain goats or caribou or deer or anything else. So ... I'm entirely satisfied with the regulations as they are, and I don't see the need to try to impose further mandates for people like myself.

Number 0542

REPRESENTATIVE FATE reiterated his belief that the bill doesn't specify a harvest of 15 percent, but states it as a goal.

Number 0491

ROD ARNO, Alaska Outdoor Council (AOC), testified in support of the intent of HB 178, saying AOC would like to see the bill move out of committee. He suggested that the tools given to the board to date by the legislature haven't been adequate to supply a reasonable harvestable surplus. He reported that last year the caribou harvest was down 4,000 from the last five-year average; moose were down 1,000, from 8,000 to 7,000; and sheep were down to 780 from an average of 1,000. He said ungulate

populations are falling to the point where it is reflected in the harvestable surplus.

MR. ARNO said he was glad to hear that there were no concerns over the enforcement agents and that the commissioner will remain able to deputize. He also offered his opinion that there is "a lot of smoke over maximum sustained yield," because it is defined on page 8; he questioned that as a concern. As far as having the board report back with regard to what achievements have been met "on the intensive-management side," he said he thinks that is important. Noting that the fish and game fund is a dedicated fund, he said nonresident hunters, the first to be excluded during a decline, pay 80 percent of that fund, which "amounts to 80 percent of the department of wildlife conservation's entire budget." He said AOC supports passage of the bill, and reiterated concern that there isn't enough of a harvestable surplus.

CO-CHAIR MASEK asked whether anyone else wished to testify; there was no response. She closed public testimony.

Number 0212

REPRESENTATIVE FATE remarked that it had been a good discussion, and noted the two different interpretations of maximum sustained yield. He offered his opinion that as stated in the bill, the intent is similar with both descriptions. He said he wouldn't object to bringing the legislation up for a vote after some of the issues had been addressed.

CO-CHAIR MASEK indicated 3d SSHB 178 would be held over and taken up at a later date.

CO-CHAIR MASEK turned the gavel over to Co-Chair Scalzi.

HJR 48-TERMINATION OF FED LAND WITHDRAWALS

CO-CHAIR SCALZI announced the final order of business, HOUSE JOINT RESOLUTION NO. 48, Relating to federal land withdrawals.

Number 0013

JUDY OHMER, Staff to Representative Pete Kott, Alaska State Legislature, presented HJR 48 on behalf of the House Rules Standing Committee, sponsor, which Representative Kott chairs.

TAPE 02-27, SIDE A

Number 0001

MS. OHMER told members that throughout many states, especially Western states, the federal government has withdrawn lands for various reasons; those lands aren't available to other kinds of selections and designations such as the state's rights-of-way, state selection, mining claims, or Native allotments. Many federal withdrawals are for public purposes such as for parks and refuges, while others occur in order to provide agencies the flexibility to consider proposed uses for the land. Sometimes, federal withdrawals have seemed to occur for political purposes.

MS. OHMER explained that when federal lands are withdrawn, those lands are closed until the withdrawal is removed. In some cases, [removing] the withdrawal takes an Act of Congress. Therefore, the lands remain closed to public entry even when the original purpose has been accomplished or has lapsed. In Alaska, many of these federally withdrawn lands have been selected by the State of Alaska in accordance with the Alaska Statehood Act for transfer to become state-owned lands. Ms. Ohmer noted that some of the lands in withdrawal status have high mineral potential, while other lands have been selected as access corridors. In all cases, these state-selected lands can't be transferred, and therefore Alaska loses opportunity. Ms. Ohmer pointed out that the committee packet should include a letter from the Bristol Bay Native Corporation that refers to federal land withdrawals as "speed bumps" on the corporation's "highway to economic prosperity."

MS. OHMER noted that HJR 48 requests that Congress amend the public land withdrawals so the withdrawals will sunset after ten years unless the agency responsible for managing the land provides Congress with a justification. It also requests that Congress require all federal land-managing agencies to compile a comprehensive list of the withdrawn lands under their jurisdiction. This is requested in order to accomplish the following: to extract the geographical coordinates of the withdrawn land, to [obtain] the legal authority for the withdrawal, and to document establishing the withdrawal and the proposed disposition of the affected lands. A plan defining how the withdrawals will be terminated would be filed with Congress within a year. Ms. Ohmer reiterated that HJR 48 encourages Congress to amend the public land laws to provide a timely way that those withdrawn lands can be returned to fuller use.

Number 0362

STEVE BORELL, Executive Director, Alaska Miners Association, Incorporated, testified via teleconference, indicating committee packets should include a letter from the association. Mr. Borell mentioned [the association's] knowledge of this issue for many years, especially in the Fortymile district. He explained that prior to the Alaska National Interest Lands Conservation Act (ANILCA), a swath of land a mile wide on either side of the river was designated as a closure; when ANILCA passed, the swath of land became only one-half mile on either side. That strip remains closed to anything including mining claims. Suggesting it has become more crucial within the last couple of years, he pointed out that a lot of state selections have been transferred to [the State of] Alaska now. Although there are approximately 10 million acres yet to be transferred, many of the state-selected lands are closed due to a federal withdrawal.

MR. BORELL said part of the reason the association supports HJR 48 is because no one has a list or description of the [federally withdrawn] lands, although DNR has done some work to determine [the location] of all the withdrawals. He explained that one factor that has brought this to light is that companies have been exploring for minerals, especially platinum group elements. In the process of that exploration and working on land status, [the companies] have determined that the lands of interest are closed. This resolution basically requests that the agencies specify exactly what lands are closed, the authority by which the lands were closed, and whether there is any reason for those lands to remain closed.

Number 0658

SANDRA SINGER, Realty Services Section, Division of Mining, Land and Water, Department of Natural Resources (DNR), testifying via teleconference, stated support for HJR 48 because these federal withdrawals continue to impede DNR's ability to acquire lands with high resource or development potential. Although the state has "top-filed" essentially all withdrawn lands, the state must continue to hold aside that portion of the state's statehood entitlement acreage necessary to ensure the future conveyance of these high-priority withdrawn lands.

CO-CHAIR SCALZI, upon determining that no one else wished to testify, announced that public testimony was closed.

Number 0753

CO-CHAIR MASEK moved to report HJR 48 out of committee with individual recommendations and the [accompanying fiscal notes]. There being no objection, HJR 48 was moved out of the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:00 p.m.