

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 8, 2008

1:05 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Anna Fairclough
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg
Representative Scott Kawasaki

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 336

"An Act directing the Alaska Energy Authority to conduct a study of and to prepare a proposal for an appropriately sized Susitna River hydroelectric power project; and providing for an effective date."

- MOVED CSHB 336(RES) OUT OF COMMITTEE

HOUSE BILL NO. 256

"An Act relating to active game management and to the airborne or same day airborne taking of certain game animals; making conforming amendments; and providing for an effective date."

- MOVED CSHB 256(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 336

SHORT TITLE: SUSITNA HYDROELECTRIC PROJECT

SPONSOR(S): REPRESENTATIVE(S) JOHNSON

01/22/08 (H) READ THE FIRST TIME - REFERRALS

01/22/08	(H)	RES, FIN
01/28/08	(H)	RES AT 1:00 PM BARNES 124
01/28/08	(H)	Heard & Held
01/28/08	(H)	MINUTE(RES)
02/06/08	(H)	RES AT 1:00 PM BARNES 124
02/06/08	(H)	Heard & Held
02/06/08	(H)	MINUTE(RES)
02/08/08	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 256

SHORT TITLE: ACTIVE GAME MANAGEMENT/AIRBORNE SHOOTING
 SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/11/07	(H)	READ THE FIRST TIME - REFERRALS
05/11/07	(H)	RES, JUD
01/30/08	(H)	RES AT 1:00 PM BARNES 124
01/30/08	(H)	Heard & Held
01/30/08	(H)	MINUTE(RES)
02/04/08	(H)	RES AT 1:00 PM BARNES 124
02/04/08	(H)	Heard & Held
02/04/08	(H)	MINUTE(RES)
02/08/08	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

BOYD BROWNFIELD, PE
 Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 336, provided information regarding the proposed Susitna Hydropower Project on which he worked as an engineer during the 1970s and 1980s.

GREG ROCZICKA, Director
 Natural Resource Program
 Orutsaramiut Native Council
 Bethel, Alaska

POSITION STATEMENT: Supported HB 256.

VIC VANBALLENBERGHE, PhD
 Biologist
 Anchorage, Alaska

POSITION STATEMENT: Opposed HB 256.

WADE WILLIS
 Biologist
 Anchorage, Alaska

POSITION STATEMENT: Opposed HB 256.

ANDREA VEACH

Anchorage, Alaska

POSITION STATEMENT: Opposed HB 256.

KEVIN SAXBY, Senior Assistant Attorney General

Natural Resources Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 256.

KEN TAYLOR, Deputy Commissioner

Office of the Commissioner

Alaska Department of Fish & Game (ADF&G)

Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 256.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Resources Standing Committee meeting to order at [1:05:08 PM](#). Representatives Wilson, Seaton, Roses, Guttenberg, Edgmon, Kawasaki, Gatto, and Johnson were present at the call to order. Representative Fairclough arrived as the meeting was in progress.

HB 336-SUSITNA HYDROELECTRIC PROJECT

[1:05:21 PM](#)

CO-CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 336, "An Act directing the Alaska Energy Authority to conduct a study of and to prepare a proposal for an appropriately sized Susitna River hydroelectric power project; and providing for an effective date."

CO-CHAIR JOHNSON noted that the committee had expressed a desire to talk to someone who had been involved with the 1984 Susitna Hydropower Project and Mr. Boyd Brownfield is one such person.

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BOYD BROWNFIELD stated he was involved with the proposed Susitna Hydropower Project ("Susitna Project"), along with the Federal Energy Regulatory Commission (FERC) process, from 1972-1976 when he was the Deputy District Engineer for Alaska in the U.S. Army Civil Works Program under the U.S. Army Corps of Engineers.

When the project was transferred to the state of Alaska's jurisdiction, he retired from the federal government to oversee the project for the Alaska Power Authority from 1980-1985 or 1986.

MR. BROWNFIELD said he thinks the Susitna Project is as viable today as it was before. It would be the economic engine to provide power at a reasonable price not only for the Railbelt area but other areas that rely on fossil fuel. He said he believes the project would be in place now if the state had not taken it over from the federal government. It faltered due to cost issues, not environmental issues. It was a \$5.2 billion project in 1982 funds and the state decided it was too much to start at that time. He recalled that the project could have been built in steps and generating power incrementally to help pay the costs as it was completed so that the whole \$5.2 billion would not have had to be spent all at one time. Hydropower is a clean, renewable resource, he said, and Susitna is one of the cleanest projects he has ever seen. Due to a natural blockage, anadromous fish go up the river only as far as Portage Creek which is before the site where the Devil's Canyon dam would be built. He urged that the state get on with this project.

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MR. BROWNFIELD, in response to Co-Chair Gatto, explained that Portage Creek is more the size of a river than a creek and is about a mile before Devils Canyon. The gradient at Devils Canyon is so steep and has so many blocks that the salmon cannot go beyond that spot and instead go up Portage Creek to spawn in the creek and in small lakes, depending on the salmon species. In response to further questions from Co-Chair Gatto, Mr. Brownfield said the Susitna River makes a sharp bend to the east near Talkeetna and Devils Canyon is located about 4-5 miles after that bend. Cook Inlet Region, Incorporated (CIRI) used to own the land around Devil's Canyon and probably still does, he related. Mr. Brownfield said the Susitna Project would take 10-15 years to build and further study is still needed for some features.

CO-CHAIR GATTO inquired whether the Susitna Project would power a different population area than would a gas line coming into Southcentral Alaska.

MR. BROWNFIELD replied it would be the Railbelt area primarily.

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REPRESENTATIVE SEATON asked for Mr. Brownfield's opinion regarding an appropriate size for the project.

MR. BROWNFIELD couched his response because it is based from 28 years ago. He said the project was sized at about 1600 megawatts, but more could have been squeezed out of it. Under the federal project there was a four-dam system that included the Devil's Canyon and Watona Dams along with two others, he said. The state reduced the project to a two-dam system that included Devils Canyon and Watona. Devil's Canyon does not have the ability to hold enough water during the low water seasons so, at the least, two dams are needed. He said the two-dam system could produce 1600 megawatts and he recommends starting the project with no less than that. The studies need to be updated, but they are still valid, he added.

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REPRESENTATIVE WILSON inquired whether Mr. Brownfield had seen the paper with the side-by-side comparison of the Susitna and Chakachamna hydropower projects.

MR. BROWNFIELD answered no.

REPRESENTATIVE WILSON estimated that the 1985 construction cost of \$5.4 billion for the Susitna Project would probably be about \$60 billion today.

MR. BROWNFIELD said yes.

REPRESENTATIVE WILSON observed that the side-by-side comparison states \$1 billion is needed for new transmission lines to bring power to load centers, but only 42 miles of transmission lines would be required for the Chakachamna Project. She asked how many miles of transmission lines would be needed for the Susitna Project.

MR. BROWNFIELD responded that transmission lines are already in place for the Susitna Project. That is one the project's advantages because transmission lines stretching from Anchorage to Fairbanks are already in use. In further response to Representative Wilson, he said he believes the \$1 billion is for upgrading of the current lines. He noted that he was involved in Chakachamna when it was a federal project and in Bradley Lake which has been built. He said he was also involved in the Rampart Dam, but even from the federal standpoint Rampart was

considered too large of a project for Alaska. He said there is no question of the Susitna Project's viability as far as the long range benefits for the Railbelt area and transmission lines to villages that are paying a premium for fossil fuels.

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MR. BROWNFIELD, in response to Co-Chair Gatto, said he did not know what the cost for the Susitna Project would be in today's dollars.

CO-CHAIR JOHNSON pointed out that the \$1 million in HB 336 will determine what the project will cost on an energy basis.

[1:24:23 PM](#)

REPRESENTATIVE KAWASAKI asked what appropriately sized means to Mr. Brownfield in terms of the Railbelt grid and the river and to take advantage of the most power.

MR. BROWNFIELD replied all those factors are important. Of huge importance is how much can be gotten from that particular topography and how many dams are needed behind it. The Railbelt would be an area to be served because the transmission lines are already there, along with outlying areas that are close enough where transmission lines would not be too expensive. He said he would start at 1600 megawatts and see where that leads.

REPRESENTATIVE KAWASAKI inquired whether Mr. Brownfield is considering this to be current needs or in 15 years when the power is online.

MR. BROWNFIELD said any study must look at the future.

CO-CHAIR GATTO, in response to Representative Kawasaki, stated that the side-by-side comparison of the Susitna and Chakachamna Projects came from Jim Sykes [a member of the Working Advisory Group to the legislatively-funded Alaska Energy Authority].

REPRESENTATIVE KAWASAKI inquired whether the side-by-side comparison was correct in stating that the Susitna Project would produce 6.5 billion kilowatts from two world class dams versus 1.6 billion kilowatts from one small diversion dam for the Chakachamna Project.

MR. BROWNFIELD recalled that the two-dam system for the Susitna Project was 1600 megawatts.

REPRESENTATIVE KAWASAKI asked whether it would be technically possible to build one dam at a time for the Susitna Project.

MR. BROWNFIELD said yes, that was what was considered before so that the project could be paid for incrementally by using income from the power as it came online. A three-dam system could be used if impoundment was found to be a problem, he added.

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MR. BROWNFIELD, in response to Representative Guttenberg, stated that he worked on the Susitna Hydropower Project from about 1973-1976 when it was a federal project under the U.S. Army Corps of Engineers and again when it was a state project from about 1980-1985. In further response to Representative Guttenberg, Mr. Brownfield said he did not stay intimately involved in the project after 1985, although he has had many conversations about it in general terms.

REPRESENTATIVE GUTTENBERG inquired about FERC's involvement during the time of Mr. Brownfield's tenure with the project.

MR. BROWNFIELD responded that FERC was involved during both the federal and state studies for the project. The FERC process was well along, there was no outstanding showstopper, and the project was viable, he recalled.

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REPRESENTATIVE KAWASAKI stated he has heard three different reasons for why the Susitna Project failed: the price of gas, not enough money in the state's budget at the time for a \$5.4 billion project, and environmental concerns. He asked for Mr. Brownfield's opinion on why the project did not go forward.

MR. BROWNFIELD replied that environmentally the Susitna Project cannot be challenged. It is a clean project because there are no issues with anadromous fish. Although there is the issue of impoundment from behind the dam, every environmental issue is solvable. He acknowledged there is a [geologic] fault, but that "engineeringly" it can be solved. He noted that he was there during the midst of the studies, but is unsure of the results. He understood the project was stopped because the state did not have enough money. He said he believes that was misleading, however, because it could have been done in increments and paid for itself as it was being built.

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MR. BROWNFIELD, in response to Representative Wilson, explained that when Susitna was a federal project the plan was to have three dams with a fourth dam to be built later. When the project was transferred to the state, the plan was reduced to two dams. With only two dams, the second impoundment - which does not produce electricity - must be bigger because there must always be enough water behind the turbines to produce power all the time. For instance, Cook Inlet tidal power is viable, but it is on-again/off-again because electricity cannot be produced during certain times of the tide; resolving that loses some of the top-end power that can be produced. He said future studies can determine whether two or four dams are needed and those studies can be based, to a large extent, on the studies that have already been done.

REPRESENTATIVE WILSON inquired whether there is a danger in not having enough water to fill the dam due to climate change if the Susitna River is glacier fed.

MR. BROWNFIELD speculated the answer is no. While the river is glacier fed and the glaciers are receding, he said he did not think they would diminish to that point during the project's lifetime. However, he allowed, this is a question that should be looked at.

[1:38:38 PM](#)

CO-CHAIR GATTO asked what the life of a dam would be given the amount of silt in the Susitna River.

MR. BROWNFIELD said the life of a dam is related to where and how it is built, and guessed it would probably be 40-50 years or more for the Susitna Project.

CO-CHAIR GATTO expressed his concern that silt would cause problems with the impellers. He surmised the first dam would take out the silt and the second would produce the electricity.

MR. BROWNFIELD agreed with that assessment and that silt does come down the Susitna River. He said silt was considered in the studies he was involved in, but he does not remember the results.

[1:41:23 PM](#)

REPRESENTATIVE EDGMON stated his hope that the \$1 million study under HB 336 will be able to determine a return on value calculation with a time value of money analysis for the generation of 1600 megawatts.

CO-CHAIR GATTO agreed.

CO-CHAIR GATTO announced that public testimony was previously closed; therefore he is disallowed from permitting public testimony today because there was no notice. However, public testimony will be taken in the next committee of referral, he advised.

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CO-CHAIR JOHNSON moved to report HB 336, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GUTTENBERG objected for discussion purposes. He said he has made a lot of phone calls regarding numerous proposed energy projects, such as Susitna, coal-to-gas, and biomass. One concept that was discussed is that Alaska's oil and gas are worth more to the state selling it to others when alternate resources are more reasonable to Alaskans. Part of that concept was that the Susitna Project not be too big, resulting in Alaska having all its eggs in one basket. He noted that there are other things going on in the state, one of which is a Railbelt energy assessment. The Susitna Project needs to be an option, he said, and should be re-examined. The people of Alaska need to be given energy options so all of the state's energy options are not in one basket.

CO-CHAIR GATTO agreed with the point that Alaska cannot sell its hydropower out of state, but it can sell its oil.

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REPRESENTATIVE SEATON urged that sight not be lost regarding the balancing of cost, size, and usefulness, and that a 200-300 megawatt project be investigated as well as a 1600 megawatt project. He noted that the side-by-side comparison says the Chakachamna Project was shelved by the Alaska Power Authority in 1983 because it competed for the Susitna market. He expressed his concern with projects not going forward because of competition. He also expressed his concern with projects being

considered only on the basis of cheap power. There are other considerations which could prevent something from moving forward, such as mercury from coal. He supported HB 336.

REPRESENTATIVE GUTTENBERG withdrew his objection.

There being no further objection, CSHB 336(RES) was reported from the House Resources Standing Committee.

HB 256-ACTIVE GAME MANAGEMENT/AIRBORNE SHOOTING

1:50:09 PM

CO-CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 256, "An Act relating to active game management and to the airborne or same day airborne taking of certain game animals; making conforming amendments; and providing for an effective date."

1:50:47 PM

GREG ROCZICKA, Director, Natural Resource Program, Orutsaramiut Native Council, noted that he has 20 years of direct resource management experience and served two terms on the Board of Game starting in 1996. He was on the board that helped develop the intensive management law. He said the board spent two years addressing each moose population one-by-one throughout the state to determine if it met the criteria. The board looked at all the habitat issues and carrying capacity. The historical highs were pared down so that the biological K-Factor was not exceeded, he said. Out of the approximately 69 game management units and subunits, there are 65 separately managed moose populations and, of those, the board found 32 that met the intensive management criteria. In 2000 and again in 2002, 18 of those 32 populations were either declining, or in a state of decline, or depressed.

MR. ROCZICKA said it seems that if the science agrees with a certain organization's point of view it is good science, and if it does not then it is bad science - what it boils down to is political science. He has been to national and international conferences and Alaska's professionals are highly regarded, he related. He attended the Wildlife Society conference referenced by previous speakers and agreed that [aerial predator control] was a matter of great debate at the conference, but that it was split down the middle. The Wildlife Society also has a paper

that says predator management is not appropriate for ballot initiatives, he said.

MR. ROCZICKA submitted that HB 256 would return the balance that was in place before the first initiative passed. Within five years of the first initiative, he said, the averages dropped 60-80 percent or more. Should Alaska's fisheries be managed the same as the state's moose populations have been for the past 10 years, he asked. Right now, the state is getting nothing equivalent to escapement. Only 6-10 calves are surviving from birth to one year old, so there is no recruitment despite mild weather and good habitat. Survival of 15-20 calves per year is needed just to maintain a stable population. He urged that Alaska's professionals be allowed to do their jobs.

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VIC VANBALLEMBERGHE, PhD, said he started his career as a biologist studying moose and wolves in 1967 and has continued doing so for the last 34 years in Alaska. He served three terms on the Board of Game - one term in the late 1980s, again in the mid-1990s, and in the early 2000s. He said his comments will pertain specifically to HB 256 and the problems he sees in the bill. He was on the Board of Game before and after the intensive management statute was passed. He was around during the deliberations on that bill and in 1998 when there were amendments and additions. He also recalls the deliberations that went into the same-day airborne hunting law.

MR. VANBALLEMBERGHE noted that the intensive management statute contains very specific terms and conditions for when the Board of Game can adopt intensive management programs and when it cannot. The board must consider that a prey population has been depleted or its productivity has been reduced, and the predator control or intensive management programs must be feasibly achievable using techniques that are recognized and prudent. Those terms are all included specifically in the act, but those standards would be deleted if HB 256 passes and that is a matter of concern. One professional biologist organization has sent three different letters of concern to Alaska's governors about the state's predator control programs and the standards used by the state to adopt, implement, and evaluate those programs.

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MR. VANBALLEMBERGHE cautioned against deleting the things he has enumerated by passing HB 256. Passing HB 256 would give the

Board of Game the authority to not consider whether a prey population or its productivity is reduced, to conduct programs that are not feasibly achievable, and to use techniques that are not part of a game management program. The board would not have to determine that predation is causing the problem and that reducing predation would solve the problem. Those are serious things to delete from the existing regulations, he said. The board is given free rein. These regulations are replaced with the statement that the board can adopt intensive management predator control programs only if the board considers them to be "conducive" to solving the problems and that is a very open-ended statement. The most controversial programs in the state - predator control programs - would be operating standard free.

[2:03:07 PM](#)

REPRESENTATIVE ROSES surmised that Mr. Vanballenberghe opposes HB 256 because it takes the science out of game management and gives control to the Board of Game instead of the biologists working in the field.

MR. VANBALLEMBERGHE responded that HB 256 abolishes the process that has been in place since the first intensive management statute was passed in 1994. The bill abolishes the whole framework of constraints on the board that require management to be conducted in a reasonable and biologically acceptable manner. He said the ability to adopt programs that the board deems conducive to meeting the objectives is a standardless way to operate. While biologists may have disagreements, they are in agreement that it is necessary to have standards in place.

CO-CHAIR GATTO said he has a graduate degree in biology and he disagrees with Mr. Vanballenberghe on several points.

[2:05:13 PM](#)

REPRESENTATIVE WILSON inquired whether it is possible that using scientifically-based methods can take too long to determine the problem and result in season closures that must last for many years. She surmised that whoever wrote the bill thinks a scientifically-based method takes too long.

MR. VANBALLEMBERGHE replied that two different things are being talked about here. He said he is talking about constraints on the Board of Game for adopting predator control programs as part of intensive or active management. For example, Section 8, page 4, deletes the following constraints: the requirement that

predator control be conducted as part of a game management plan, the requirement that decisions be based on information provided by the Alaska Department of Fish & Game, the requirement that it be determined that predation is preventing a moose or caribou population from increasing, and the requirement that there is reasonable expectation that predator control will work. He said the point he is raising is that this process of requirements is being deleted and replaced with the broad statement that the board can do predator control simply if the board thinks it is conducive. In regard to the different point being raised by Representative Wilson, he said there are some areas where there is adequate biological information to proceed and other areas where there is not, and in those areas it will take time to gather the data to determine whether predation is the problem.

CO-CHAIR GATTO stated that, typically, field biologists collect the data and present their findings and conclusions to their supervisor or the Board of Game. The board then makes a decision based on what several biologists say. The board is the one empowered to make the decision. He said he trusts that the board will make its decisions based on the information received from the field.

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REPRESENTATIVE SEATON said "conducive to achieving" is a standard with no sideboards. He asked whether parameters would be given by replacement language that states, "can reasonably be expected to aid in the achievement of".

MR. VANBALLEMBERGHE answered that, at a minimum, he would recommend retention of the clause being deleted under Section 8 [beginning on page 4, line 21].

[2:11:03 PM](#)

REPRESENTATIVE GUTTENBERG inquired what Mr. Vanballenberghe thought the Board of Game will do if the science is taken out.

MR. VANBALLEMBERGHE responded that if the bill passes as written, the board has free rein. He recently attended a Board of Game meeting in which the board members agreed that local input can in some cases supersede everything else, he said. To him that means local fish and game advisory committees can ask for predator control programs and intensive management actions and the board will proceed.

2:12:49 PM

WADE WILLIS, a former state wildlife biologist, rebutted statements made by Co-Chair Gatto, Mr. Rod Arno, and the Alaska Department of Fish & Game that regulations requiring science-based predator control are unnecessary. However, nobody says why the science-based parameters should be removed from the regulatory process and replaced by nonbinding promises. "When 57,000 Alaska residents sign a petition to put aerial predator control back on the ballot for the third time, the legislature should have an overwhelming respect for the citizens' intent," he said. Rather than bringing the people of Alaska to the table, HB 256 overrides the will of the majority by the will of a few. This committee should do the right thing and send a clear message to the Board of Game, the ADF&G, the legislature, and the governor that the time has come when all Alaskan's will be allowed to participate in the management of our state's wildlife resources. The state constitution requires the Board of Game and ADF&G to manage predators and prey for all user groups. The largest user group is wildlife watchers, and nobody talks about their rights and needs. In the last initiative, this user group voted that it could deal with predator control if it is run by ADF&G, especially if it is science based. Hunters' rights cannot be protected if nonhunters are excluded from the process, Mr. Willis said. State-run predator control programs would provide the transparency the citizens require for such a drastic wildlife management technique. Why would the legislature prefer HB 256 to such a win-win proposition, he asked.

REPRESENTATIVE ROSES commented that signing an initiative does not equate to all of those people voting for or against the bill. He said he has signed ballot initiatives simply because he felt state residents should have the opportunity to vote on it, and that signing the initiative did not mean he necessarily supported the stance taken by the initiative.

2:17:35 PM

ANDREA VEACH disclosed that she is a secretary for the Department of Transportation & Public Facilities, but that her testimony is unrelated to her employment and is her personal opinion. She stated:

As you know, Alaskans have twice voted - in 1996 and 2000 - against the airborne shooting of wolves by the public. Both times, putting this issue on the ballot

required the labor intensive gathering of thousands of signatures. Despite the clarity of the voters on this issue, the state legislature and the Board of Game have disregarded the ... Alaskan voters, as did the trophy hunter, Governor Murkowski, and now Governor Palin. Governor Palin's position on this subject does not give much credence to her frequently stated wish to represent the will of Alaskans and respect their input. Native subsistence hunters did not traditionally depend on airborne elimination of their competition to gain an advantage. Why is that necessary now? I suggest that if something has changed it is ... that there are more hunters expecting a bounty a cold harsh land cannot naturally provide. Historically, the predator most dangerous to the environment and the balance of nature is not wolves and bears, it is man. Management is needed, but it is man that needs to be managed, not the wolves and bears. The human population is now 6.5 billion and is projected to be 9.3 billion by 2050. Wolves and bears around the world can be counted in the thousands. These numbers alone should tell the story of what species needs to have its population controlled. ... As their name suggests, the Board of Game views animals as solely something to be killed for human consumption. Many Alaskans, and certainly many people from Outside and other countries, do not view animals as something just to kill and consume. We need a broader view, such as a Board of Wildlife to mitigate this single narrow view of the use of other species. ... Please stop the cruel airborne shooting of wolves and bears and any other animals.

[2:21:21 PM](#)

CO-CHAIR GATTO surmised that Ms. Veach's point of view is that wildlife viewing has been given the short end of the stick and has not been sufficiently considered.

MS. VEACH responded, "Absolutely."

CO-CHAIR GATTO related that he no longer sees the same number of moose that he used to see in prior years and wants this to change. [Predator] control is aimed at restoring the more natural number of moose, he said. There are no statistics showing that hunters are responsible for the greatest decline in moose, he said. The bill is attempting to set up some standards

to deal with predation when it is believed that is the problem. In those cases where this assumption is subsequently found to be wrong, wolves have a high reproductive rate and moose do not. When no moose calves are being seen, should this not be addressed, he asked.

MS. VEACH replied that the larger picture should be looked at. These animals need habitat so they can balance themselves and let nature take its course. Humans are overwhelming in numbers and in the need to hunt and in taking over the habitat. She is not opposed to subsistence hunting, but this should be done without the aid of shooting the competition from airplanes. Rural Native subsistence hunters should have priority over urban [hunters], she said.

CO-CHAIR GATTO closed public testimony after ascertaining that no one else wished to speak.

[2:25:51 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 1, labeled 25-GH1076\A.1, Kane, 2/5/08, written as follows:

Page 4, line 17:

Delete "would be conducive to achieving"

Insert "can reasonably be expected to aid in the achievement of"

CO-CHAIR JOHNSON objected.

REPRESENTATIVE SEATON said the purpose of Amendment 1 is to prevent the unintended consequence of moving from a standard to a standard without much definition. He does not think anyone would be able to say what "conducive to achieving" is, so the amendment reinstates a portion of the language deleted from page 4, line 28.

[2:28:40 PM](#)

REPRESENTATIVE KAWASAKI stated he, too, does not know what to think of the word conducive, but he thinks the amendment is unclear also. Additionally, there are other places in the bill where the word conducive is found. He requested the Department of Law to comment on the word conducive.

CO-CHAIR GATTO asked whether there could be a situation where conducive would be inadequate and Amendment 1 would be superior.

KEVIN SAXBY, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), answered that since conducive is not defined in statute, the ordinary dictionary definition of conducive would apply when interpreting this law. He noted that the word conducive is used on both line 17 and line 19 [page 4]. Eliminating the word in one place and not the other will beg the question of whether the words are to be viewed as different standards and whether there is intention to have a different standard on line 19. He said he thinks the words being deleted are a more simplified way of saying the words that would be inserted. In further response to Co-Chair Gatto, Mr. Saxby confirmed that he does not think the difference in language is relevant.

[2:31:44 PM](#)

REPRESENTATIVE WILSON said she does not have a problem with what the bill wants to do, except she is leery about removing the language regarding scientific data. What would happen if science was taken out of fish management, she asked. She suggested that scientific-based management be retained and that the other parts of the bill remain the same. She said she did not think the amendment quite reaches this.

CO-CHAIR GATTO responded that what is being asked for is a second subject and an amendment can be taken in that regard after Representative Seaton's first three amendments are considered.

[2:33:42 PM](#)

CO-CHAIR JOHNSON agreed there is not much difference between the current and proposed language. He asked whether the language in Amendment 1 would apply to all the places in the bill where the word conducive appears.

REPRESENTATIVE SEATON replied yes.

CO-CHAIR JOHNSON maintained his objection to Amendment 1 for purposes of discussion.

[2:34:41 PM](#)

REPRESENTATIVE EDGMON said it appears to him that Amendment 1 is softer language and adds more words when one of the purposes of the bill is to make the language simpler.

CO-CHAIR GATTO asked whether Mr. Ken Taylor, as an ADF&G employee charged with enforcing the laws, believes the amendment substantively changes the content of the original language.

KEN TAYLOR, Deputy Commissioner, Office of the Commissioner, Alaska Department of Fish & Game (ADF&G), answered no.

[2:36:45 PM](#)

REPRESENTATIVE ROSES agreed Amendment 1 would not substantively change what is trying to be accomplished, but said he thinks conducive has a higher standard of proof than does reasonable expectation. He therefore opposed the amendment because it would lower the standard of expectation.

CO-CHAIR JOHNSON added that he shares this same concern because reasonable is in the eye of the beholder. He inquired whether the type of change in Amendment 1 would affect any action that may or may not be before the courts.

MR. SAXBY responded that he cannot predict what a court would do, but he can say that if HB 256 is adopted, the language of the bill would definitely be relevant to the court on some of the issues that it is considering. The state would be obligated to inform the court as quickly as possible of whatever new language applied.

[2:39:39 PM](#)

REPRESENTATIVE SEATON said he thinks there is a different standard between conducive and reasonable expectation, and that conducive is no standard at all. Although conducive could be defined in statute to mean that it is reasonably expected to accomplish the goal, it seems it is better to change the words [in the bill] to what is currently in the statute.

REPRESENTATIVE WILSON agreed. Reasonable means it would be something that someone else with the same facts would do. Conducive does not have to have the facts, it only needs to maybe point in that direction.

REPRESENTATIVE FAIRCLOUGH said it is reasonable that the committee discuss aerial wolf hunting and conducive to let the House Judiciary Standing Committee decide on the appropriate language.

A roll call vote was taken. Representatives Wilson, Seaton, Guttenberg, and Kawasaki voted in favor of Amendment 1. Representatives Roses, Edgmon, Fairclough, Johnson, and Gatto voted against it. Therefore, Amendment 1 failed adoption by a vote of 4-5.

[2:43:19 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 2, labeled 25-GH1076\A.2, Kane, 2/5/08, written as follows:

Page 2, line 23, following "programs.":

Insert "However, nothing in (e) of this section or this subsection requires the board to establish that human harvest is the only beneficial use of moose, caribou, and deer populations or precludes the board from establishing specific areas exclusively for other beneficial uses of moose, caribou, and deer populations."

CO-CHAIR JOHNSON objected for the purpose of providing time to read the amendment.

[2:43:32 PM](#)

REPRESENTATIVE SEATON explained that the purpose of Amendment 2 is to ensure the Board of Game knows that management of an area's ungulate population does not have to be the sole consideration. This would preclude the unintended consequence of the board interpreting that an area must be used for intensive management. For example, the board could establish a bear viewing area.

CO-CHAIR JOHNSON maintained his objection.

REPRESENTATIVE FAIRCLOUGH requested an interpretation of Amendment 2 from the Alaska Department of Fish & Game.

MR. TAYLOR replied, "The intensive management bill has never precluded the board from establishing viewing areas, and I'm not certain that the amendment would be necessary." He deferred to Mr. Saxby for a legal interpretation.

MR. SAXBY agreed the language is superfluous, but that it could be adopted. The way current law reads and the way it would read under the bill, "there is no requirement that the board must establish human harvest as the only beneficial use and ... there

is nothing that precludes the board from establishing specific areas exclusively for other beneficial uses, ... and the board has done so in a number of places."

[2:48:26 PM](#)

CO-CHAIR GATTO inquired whether Mr. Saxby objected to Amendment 2 or thought it would hurt anything by being in the bill.

MR. SAXBY said the amendment does not hurt anything, but the charge was to simplify this law and a good legislative drafter provides the minimum amount of language necessary. However, it will not matter one way or the other in the long run.

REPRESENTATIVE FAIRCLOUGH asked what findings are necessary to establish beneficial uses other than predator control.

MR. TAYLOR responded the findings might be that a given area should be set aside for, say, viewing waterfowl. For instance, the [Anchorage Coastal Wildlife Refuge] is divided into different areas and hunting is disallowed in Potter Marsh where viewing is the highest priority. Another example is the Cooper Landing area where there is sheep viewing and no hunting.

[2:51:21 PM](#)

REPRESENTATIVE WILSON supported Amendment 2 because she interprets the bill, as written, to require the board to manage for human harvest.

REPRESENTATIVE EDGMON agreed with the intent of Amendment 2, but said he interprets the bill, as written, as already providing the amendment's intent. In response to Co-Chair Gatto, he confirmed he is saying that the process of identifying areas also means identifying areas for not doing something.

[2:53:02 PM](#)

REPRESENTATIVE SEATON argued that the problem is nowhere in the bill does it say that the Board of Game can balance, it says the board shall. If someone comes to the Board of Game and says an area is important for moose, deer, or caribou, then under HB 256 the statute would say that the board shall do this and shall establish the objectives for human harvest and shall adopt the regulations to achieve that. The purpose of Amendment 2 is to ensure that by statute there is no unintended consequence of taking flexibility away from the Board of Game - that the board

is not mandated to follow the aforementioned procedure and can choose not to take that action.

CO-CHAIR JOHNSON said he objects to Amendment 2 because it does not do much and simplicity in law is important. However, because the amendment adds to the comfort level of some committee members, he withdrew his objection.

There being no further objection, Amendment 2 was adopted.

[2:54:57 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 3, labeled 25-GH1076\A.3, Kane, 2/8/08, written as follows:

Page 4, line 16, following "that":

Insert "objectives set by the board for the moose, caribou, or deer population identified under 16.05.255(e) have not been achieved, that predation is an important cause for the failure to achieve the objectives, and that"

CO-CHAIR JOHNSON objected for discussion purposes.

REPRESENTATIVE SEATON explained that Amendment 3 returns the standard of having to determine that predation is an important cause of the failure to achieve the objectives. Instead of a general idea that a predator should be eliminated, it gets back to a reasonable standard.

[2:56:10 PM](#)

CO-CHAIR JOHNSON requested a definition of the word important and asked whether using the word important would open the door to legal challenges because of different interpretations as to what is important.

MR. SAXBY related that in those areas where the state is currently engaged in predator control, it is being argued as to whether it is an important enough cause or it is a cause. Co-Chair Johnson is correct in that the more adjectives the more room for argument.

CO-CHAIR JOHNSON maintained his objection.

A roll call vote was taken. Representatives Kawasaki, Seaton, and Guttenberg voted in favor of Amendment 3. Representatives

Fairclough, Wilson, Roses, Edgmon, Gatto, and Johnson voted against it. Therefore, Amendment 3 failed adoption by a vote of 3-6.

2:58:40 PM

CO-CHAIR GATTO moved that the committee adopt Amendment 4 as follows:

Page 5, line 9:
Delete "an employee"
Insert "a person"

REPRESENTATIVE FAIRCLOUGH objected. She asked what the change would do from a legal perspective in terms of workmen's compensation and other issues that surround employment versus a person that is not employed by the department.

MR. SAXBY specified:

It will be a person who is authorized under powers and duties in AS 16.05.050 to take wolves, wolverine, or brown bears other than just an employee who is authorized under those duties. There are certain instances where the [Alaska Department of Fish & Game] issues permits to private individuals to control nuisance animals for example. In fact, the legislature passed a bill on that just within the last two or three years setting up that program. So, [the department] would have some private individuals who would be authorized under that statute that is referenced there [AS 16.05.050] to go out and take game and they would be able to do so on the same-day airborne, they would not have to necessarily be an employee of the department.

3:00:35 PM

CO-CHAIR GATTO understood that "a person" would include an employee of the department.

MR. SAXBY replied yes, or someone that the department hires to do its work for it.

MR. SAXBY, in response to Representative Kawasaki, stated that "a person" would include a contracted individual. "An employee" would be a much narrower category.

REPRESENTATIVE KAWASAKI understood that a person deputized under AS 16.05.050 would not be considered an employee.

MR. SAXBY stated correct.

[3:01:30 PM](#)

CO-CHAIR JOHNSON said the definition of "a person" in Alaska statute is everything but a government entity. He asked whether it is needed to identify this as an individual or could it be a corporation. He also inquired whether the Alaska Department of Fish & Game supports Amendment 4.

MR. TAYLOR responded there are different statutes here that are dealing with different parts of intensive management. He said AS 16.05.783 is the statute that addresses same-day airborne hunting and, in many respects, this statute parallels the federal airborne hunting act. Because the bill was carefully drafted, he said he is reluctant to support an amendment without careful review of what changing "an employee" to "a person" actually does. He requested Mr. Saxby's opinion.

[3:02:52 PM](#)

REPRESENTATIVE ROSES inquired whether the term "an employee or an agent" would accomplish the same objective. "Does it have to be authorized to do it," he asked.

CO-CHAIR GATTO said he prefers an appointment. He asked Mr. Saxby to address the difference between "an employee" and "a person" because an employee would be included in a person.

MR. SAXBY stated "a person" is the broader term of the categories that have been discussed. "An employee or agent" would be a subset of that and "an employee" would be the smallest subset. He said he thinks "a person" would be interpreted exactly the same way that it is interpreted under Section 9(b)(1) on page 5, line 7. A hunting or trapping license is required for taking game in Alaska and a corporation cannot obtain a hunting or trapping license. Therefore, he does not think there is a risk of opening this up too much by using "a person" in this instance. In further response to Co-Chair Gatto, Mr. Saxby agreed that "a person" keeps things more simple. However, in his opinion, it opens up the exception in Section 9(b)(2) to a slightly broader category of people, many of whom probably should be authorized to take game on the same-

day airborne, and this may be something that was overlooked. For example, there are people who are not ADF&G employees, such as public safety officers, who are authorized to go out to remote villages and take nuisance animals or to shoot animals for public safety reasons.

REPRESENTATIVE FAIRCLOUGH noted she is more comfortable with "an agent" than "a person" because of the breadth of the implication. However, to be conciliatory, she withdrew her objection to Amendment 4.

There being no further objection, Amendment 4 was adopted.

[3:05:42 PM](#)

REPRESENTATIVE GUTTENBERG moved that the committee adopt Conceptual Amendment 5 as follows:

Delete the eliminated language on page 4, line 21, through page 5, line 4, and reinsert the language.

CO-CHAIR GATTO objected.

CO-CHAIR JOHNSON objected.

REPRESENTATIVE GUTTENBERG said he just wanted it on the record that someone tried. He withdrew his amendment.

[3:06:50 PM](#)

CO-CHAIR JOHNSON moved to report HB 256, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GUTTENBERG objected.

REPRESENTATIVE SEATON related that he submitted several questions to the Alaska Department of Fish & Game and one of those questions dealt with the inclusion of bears in HB 256. Currently bears are "not on the exception" and the Board of Game could have a same-day airborne hunt for bears outside of a predator control program. By including them in HB 256, the Board of Game can only have a same-day hunt for brown bears under a predator control program. Since brown bears are a big game species in Alaska and the basis of a highly valued industry, he said he hopes the board will not be looking at

engaging in a predator control program for brown bears versus loosening some of the tag limits.

REPRESENTATIVE GUTTENBERG said he objects to HB 256 because it is anything but a cleanup measure - unless the result of not requiring scientific evaluation is a cleanup measure. Also, ongoing legal issues have been skirted and the public has twice spoken loudly about predator control. Overturning ballot initiatives concerns him, he said. The bill takes the ability of groups to stop the state from doing predator control and the validation for that is that HB 256 takes the science out. He said he does not think the courts will accept the position that science is not required for justification of the predator control program.

[3:10:58 PM](#)

CO-CHAIR GATTO stated that sometimes the public votes and does not get its way, the capital move being an example.

REPRESENTATIVE GUTTENBERG maintained his objection.

A roll call vote was taken. Representatives Wilson, Fairclough, Roses, Seaton, Edgmon, Kawasaki, Johnson, and Gatto voted in favor of HB 256, as amended. Representative Guttenberg voted against it. Therefore, CSHB 256(RES) was reported out of the House Resources Standing Committee by a vote of 8-1.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:12 p.m.