

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 13, 2008

1:06 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 JOINT RESOLUTION NO. 31

Opposing the enactment of the Protect America's Wildlife Act of 2007 that intends to prohibit aerial hunting of wildlife, which is essential for predator control in Alaska.

- HEARD AND HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 348

"An Act relating to the adoption of regulations by the Board of Game."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 31

SHORT TITLE: OPPOSE FED LAW RE AERIAL HUNTING

SPONSOR(S): REPRESENTATIVE(S) KELLER

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|----------|-----|---------------------------------|
| 01/30/08 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/30/08 | (H) | RES |
| 02/13/08 | (H) | RES AT 1:00 PM BARNES 124 |

BILL: HB 348

SHORT TITLE: BOARD OF GAME REGULATIONS
SPONSOR(S): REPRESENTATIVE(S) KELLER

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|----------|-----|---------------------------------|
| 01/31/08 | (H) | READ THE FIRST TIME - REFERRALS |
| 01/31/08 | (H) | FSH, RES |
| 02/06/08 | (H) | SPONSOR SUBSTITUTE INTRODUCED |
| 02/06/08 | (H) | READ THE FIRST TIME - REFERRALS |
| 02/06/08 | (H) | RES, FIN |
| 02/13/08 | (H) | RES AT 1:00 PM BARNES 124 |

WITNESS REGISTER

REPRESENTATIVE WES KELLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented his sponsor statement for HJR 31.

JIM POUND, Staff
to Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HJR 31.

ROD ARNO, Executive Director
Alaska Outdoor Council
Wasilla, Alaska

POSITION STATEMENT: Supported HJR 31.

ROBERT FITHIAN, Executive Director
Alaska Professional Hunters Association (APHA)
Lower Tonsina, Alaska

POSITION STATEMENT: Supported HJR 31.

JERRY MCCUTCHEON
Anchorage, Alaska

POSITION STATEMENT: Supported the basic premise of HJR 31.

SCOTT OGAN, President
Sportsmen for Fish and Wildlife (SFW)
Palmer, Alaska

POSITION STATEMENT: Supported HJR 31.

DOUG LARSON, Director
Division of Wildlife Conservation
Alaska Department of Fish & Game
Juneau, Alaska

POSITION STATEMENT: During hearing on HJR 31, answered questions.

REPRESENTATIVE WES KELLER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented his sponsor statement for HB 348.

KEVIN SAXBY, Senior Assistant Attorney General
Natural Resources Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding SSHB 348.

ROD ARNO, Executive Director
Alaska Outdoor Council
Wasilla, Alaska

POSITION STATEMENT: Supported SSHB 348.

SCOTT OGAN, President
Sportsmen for Fish and Wildlife (SFW)
Palmer, Alaska

POSITION STATEMENT: Supported the concept of SSHB 348.

ROBERT FITHIAN, Executive Director
Alaska Professional Hunters Association (APHA)
Lower Tonsina, Alaska

POSITION STATEMENT: Supported SSHB 348.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Resources Standing Committee meeting to order at [1:06:24 PM](#). Representatives Seaton, Roses, Kawasaki, Fairclough, Johnson, and Gatto were present at the call to order. Representatives Guttenberg, Edgmon, and Wilson arrived as the meeting was in progress.

CO-CHAIR GATTO stated that the House Resources Standing Committee would not be meeting on Friday [2/15/08].

HJR 31-OPPOSE FED LAW RE AERIAL HUNTING

[1:07:31 PM](#)

CO-CHAIR GATTO announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 31, Opposing the enactment of the Protect America's Wildlife Act of 2007 that intends to prohibit aerial hunting of wildlife, which is essential for predator control in Alaska.

[1:07:45 PM](#)

REPRESENTATIVE WES KELLER, Alaska State Legislature, speaking as the sponsor of HJR 31, stated that outside groups have for years tried to manage Alaska's assets of fish and game. The latest attack is coming from the U.S. Congress with the introduction of H.R. 3663, [the Protect America's Wildlife Act of 2007]. While the bill language does not specify that it is directed at Alaska, a press release on the bill is aimed specifically at Alaska. He said HJR 31 says no to federal legislation and says Alaska's biologists and [Board of Game] members know better than the Washington politicians. The resolution asks members of the U.S. Congress to join Alaska's Congressional Delegation in saying no.

JIM POUND, Staff, to Representative Wes Keller, Alaska State Legislature, in response to Co-Chair Gatto, confirmed that copies of H.R. 3663 are in the committee's packets.

[1:09:37 PM](#)

CO-CHAIR GATTO inquired who the sponsor of H.R. 3663 is.

MR. POUND responded Congressman George Miller of California.

CO-CHAIR GATTO noted the bill's nickname, the PAW Act. He said Congressman Miller is a member of the U.S. House Committee on Natural Resources and has some clout.

MR. POUND replied correct.

CO-CHAIR GATTO opened public testimony on HJR 31.

[1:10:27 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, testified that his organization of over 10,000 Alaskans supports HJR 31 because it is extremely important that the U.S. Congress know the Alaska State Legislature is behind Alaska's Congressional Delegation in opposing H.R. 3663. He said the Alaska Outdoor Council requests that one amendment be made to HJR 31 on page 2,

line 6, which reads: "Whereas moose and caribou represent livestock to many Alaskans". Alaskans do not consider their wild food harvest to be livestock, he stated. The definition of livestock is horse, cattle, sheep, and other useful animals kept or raised on a farm or ranch. In response to Co-Chair Gatto, Mr. Arno agreed that using the term "food stock" would be fine. In further response to Co-Chair Gatto, Mr. Arno confirmed that he is familiar with H.R. 3663.

1:11:40 PM

CO-CHAIR GATTO asked what is included in the federal legislation that should prompt the Alaska State Legislature to oppose it.

MR. ARNO answered that Congressman Miller is joining in consort with the Defenders of Wildlife, the national organization behind the 2008 Airborne Wolf Ballot Initiative which would ban same day airborne or aerial control of predators. He said H.R. 3663 would make changes to the federal Airborne Hunting Act [of 1972] to stop Alaska's ability to do predator-prey management.

CO-CHAIR GATTO said he sees it that way also.

1:13:29 PM

ROBERT FITHIAN, Executive Director, Alaska Professional Hunters Association (APHA), stated that the APHA supports HJR 31 because it is vital to the integrity and fiber of Alaska's rural lifestyles, the guided hunting industry, and hunters in general.

REPRESENTATIVE WILSON inquired whether many people in APHA think moose and caribou are livestock.

MR. FITHIAN responded no, APHA concurs with Mr. Arno's proposed amendment.

CO-CHAIR GATTO asked whether the term food stock would be satisfactory.

MR. FITHIAN said he is unsure that food stock is the right term and is thinking perhaps wildlife resources. He deferred to what Mr. Kevin Saxby would recommend.

REPRESENTATIVE GUTTENBERG inquired how many clients the Alaska Professional Hunters Association has in a year.

MR. FITHIAN stated that APHA has 150-160 individual professional members that provide guide service in Alaska. He said he does not know the exact total number of clients, but the average number per APHA member would be about 15-20. His organization represents an industry of over \$200 million per year, he noted.

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JERRY MCCUTCHEON spoke on behalf of himself in support of the basic premise of HJR 31. He has watched wolves and other game for more years than most of the committee members have been alive, he remarked. He said he remembers when Don Sheldon used to complain about the federal government poisoning wolves and how it caused the deaths of other kinds of animals as well. He also remembered an aerial hunting accident that wrecked the plane, killed two people, and injured two people back in the days when Lowell Thomas, Don Sheldon, and Jay Hammond used to hunt. Why does the federal government now want to protect the wolves it used to poison, he asked. The wolves ate themselves out of house and home in [Denali National Park and Preserve] and then migrated out to state land. He said he does not see why the state needs to feed the wolves like the "greenies" think should be done.

[1:18:57 PM](#)

SCOTT OGAN, President, Sportsmen for Fish and Wildlife (SFW), pointed out that he is testifying on his own time and his comments do not represent his employer, the Department of Natural Resources, State of Alaska. He said his organization strongly supports HJR 31 and the only regrettable thing is that the [U.S. Fish and Wildlife Service] is underutilized in doing predator control in Alaska.

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

[1:20:01 PM](#)

CO-CHAIR GATTO moved that the committee adopt Amendment 1 as follows:

Page 2, line 6:
Delete "livestock"
Insert "food stock"

REPRESENTATIVE FAIRCLOUGH objected to Amendment 1.

[1:20:35 PM](#)

REPRESENTATIVE FAIRCLOUGH moved that the committee adopt an amendment to Amendment 1 as follows: delete "livestock" and insert "a subsistence and urban food supply source". She said the problem with using food stock is that it is a food and a value to Alaskans in different ways. It is not just a hunting for the kill; it is to supply families with nourishing food. Thus, Amendment 1, as amended, would be as follows:

Page 2, line 6:

Delete "livestock"

Insert "a subsistence and urban food supply source"

[1:21:49 PM](#)

REPRESENTATIVE SEATON objected for discussion purposes.

[1:22:02 PM](#)

REPRESENTATIVE KAWASAKI said he does not think subsistence and urban covers everybody, for instance people living in Delta.

CO-CHAIR GATTO commented that someone could be a rural user but not a subsistence user. He said 100 percent coverage could be provided by saying, "both subsistence and nonsubsistence". Picking out the two groups of subsistence and hunting leaves some people out. Representative Fairclough's amendment to Amendment 1 tends not to cover everybody.

[1:24:36 PM](#)

REPRESENTATIVE FAIRCLOUGH, in response to comments from the committee members, withdrew her amendment to Amendment 1 and moved that the committee adopt a new amendment to Amendment 1 as follows: delete "food stock", insert "a food supply source for all Alaskans". Thus, Amendment 1, as amended, would be as follows:

Page 2, line 6:

Delete "livestock"

Insert "a food supply source for all Alaskans"

[1:24:47 PM](#)

CO-CHAIR JOHNSON requested the committee entertain adding the word "asset", such as, "a valuable asset and food source [for all Alaskans]". He said this is a clearer definition of what the committee believes and is consistent with SSHB 348, a bill that is coming before the committee next.

[1:25:21 PM](#)

REPRESENTATIVE SEATON said the committee needs to look at the federal legislation [H.R. 3663] because it deals with all wildlife, not just predator control. He noted that HJR 31 specifies moose and caribou, thus the resolution excludes other important food sources such as sheep, goat, and rabbits. The federal legislation would result in being unable to fly somewhere and hunt rabbits that same day, unless the hunter flew on a regularly scheduled commercial aircraft. He expressed his concern that the request for rejection of H.R. 3663 is being too narrowly defined by basing it solely on the idea of predator control for two species. This does not cover the full parameters on which the request for rejection is based, he said. For instance, there could be a subsistence emergency in a rural area that would necessitate the Board of Game passing special regulations allowing flights to another area to take extra game animals. He urged the committee to keep the objection broad enough to cover a multitude of circumstances.

[1:28:38 PM](#)

REPRESENTATIVE SEATON, in response to Co-Chair Gatto regarding the amendment to Amendment 1, stated he does not object to the broad idea of saying, "a food source for Alaskans", but he would prefer it to say, "moose, caribou, and other wildlife represent an important food source for Alaskans".

[1:29:55 PM](#)

CO-CHAIR GATTO suggested, "regular and dependable food source for Alaskans".

REPRESENTATIVE FAIRCLOUGH withdrew her amendment to Amendment 1.

CO-CHAIR GATTO withdrew Amendment 1.

[1:30:15 PM](#)

REPRESENTATIVE ROSES moved that the committee adopt Amendment 2 as follows:

Page 2, line 6:

Delete "moose and caribou represent livestock"

Insert "much of Alaska's wildlife represents a natural food source"

[1:31:47 PM](#)

REPRESENTATIVE WILSON objected to Amendment 2. She offered an amendment to Amendment 2 as follows: Page 2, line 6, delete "to", insert "for". Thus, Amendment 2, as amended, would be as follows:

Page 2, line 6:

Delete "moose and caribou represent livestock to"

Insert "much of Alaska's wildlife represents a natural food source for"

There being no objection, the amendment to Amendment 2 was adopted.

REPRESENTATIVE WILSON withdrew her objection to Amendment 2.

There being no objection, Amendment 2, as amended, was adopted.

[1:33:47 PM](#)

REPRESENTATIVE FAIRCLOUGH said she would like the committee to consider some additional language and have the maker of the resolution comment on it.

[1:34:15 PM](#)

REPRESENTATIVE KELLER, in response to Co-Chair Gatto, said he has no problem with the language of Amendment 2, as amended. He explained that the word livestock was chosen because H.R. 3663 provides an exemption that allows the killing of predators by aerial or any other means in order to protect livestock.

[1:34:45 PM](#)

REPRESENTATIVE WILSON moved that the committee adopt Amendment 3 as follows:

Page 2, line 11, after "sent":

Insert "electronically"

There being no objection, Amendment 3 was adopted.

[1:36:14 PM](#)

REPRESENTATIVE FAIRCLOUGH asked for the sponsor's opinion regarding insertion of the following language:

Page 2, after line 6:

WHEREAS airborne hunting is illegal in Alaska;
and

WHEREAS [the] Alaska predator control program is mandated by the Alaska State Legislature, and regulated by the independent Alaska Board [of] Game;
and

WHEREAS Alaska's wildlife management programs are conducted entirely within the tenets of the Airborne Hunting Act; and

WHEREAS predator management in specific areas of the state increases opportunities for Alaskans to put healthy food on their families' dinner table[s];

REPRESENTATIVE FAIRCLOUGH noted that much of the aforementioned language is taken from the governor's [2/27/07] letter to Congressman George Miller of California.

REPRESENTATIVE KELLER said he thinks the language would have to be, "airborne hunting 'of game' is illegal"

[1:37:48 PM](#)

DOUG LARSON, Director, Division of Wildlife Conservation, Alaska Department of Fish & Game, noted that airborne hunting is something that comes up repeatedly. Predator control activity is not hunting, he pointed out. The two are different. Thus, it is appropriate that airborne hunting is not hunting in regard to Alaska's predator control programs.

CO-CHAIR GATTO asked whether Mr. Larson has any suggestions for changes or deletions in the resolution's language.

MR. LARSON replied he did not get all the details of what was put forward, but he did not hear anything out of place relative

to the information put out by ADF&G and what the governor sent in her letter to Congressman Miller.

REPRESENTATIVE ROSES said aerial hunting is illegal in Alaska and his understanding is that Representative Fairclough was just stating that.

[1:39:12 PM](#)

REPRESENTATIVE SEATON understood the Board of Game has not allowed same day airborne hunting of bear, but that it could, and that is why bear was put [into HB 256]. "Was that then illegal, or was it just not happening at the current time but the Board of Game has the ability to allow that," he asked.

MR. LARSON answered yes. Currently, if a proposal is brought forward to include bears for landing and shooting, the Board of Game could do that as a viable method under the hunting regulations. He said [HB 256] would add brown bears as a species for which the board could not allow [land and shoot] under hunting regulations.

[1:40:51 PM](#)

REPRESENTATIVE SEATON said he is removing his objection in case he had made one.

[1:41:00 PM](#)

REPRESENTATIVE SEATON moved that the committee adopt Amendment 4 as follows:

Page 2, line 3, after "livestock":
Insert "or biological emergencies"

REPRESENTATIVE SEATON explained he is adding this language because H.R. 3663, Section 3, is a provision for biological emergencies. In response to Co-Chair Gatto, Representative Seaton agreed to make Amendment 4 conceptual in case this issue appears elsewhere in HJR 31.

REPRESENTATIVE KAWASAKI said he does not have a problem with Amendment 4, but thinks lines 2-3 are false given his interpretation of the backup material provided for H.R. 3663, Section 3.

[1:43:00 PM](#)

REPRESENTATIVE SEATON cited Section 4 of H.R. 3663 which states that predators can be shot from the air under certain conditions, one of those being a biological emergency. He said he thought he and Representative Kawasaki were talking about the same thing in not wanting the resolution to be limited to the protection of livestock because there is nothing in Section 4 that says it is for the protection of livestock, it says for biological emergency.

CO-CHAIR GATTO commented that the problem with the language in H.R. 3663, "to prevent a biological emergency", is that it means once you have it there is nothing that can be done about it.

CO-CHAIR JOHNSON pointed out the use of the term "irreversible" in the definition of biological emergency in Section 4 of H.R. 3663. He asked whether the state of Alaska's definition of biological emergency is the same as that in H.R. 3663.

MR. LARSON replied that this clause concerns ADF&G because once there is an irreversible decline, it is too late. That is why [HB 256] talks about active management, he said. When it is seen that something is happening in a population, taking some sort of action under those circumstances makes sense. What would be the point of doing anything once it reaches the point of being irreversible, he asked.

[1:45:10 PM](#)

CO-CHAIR GATTO noted that H.R. 3663 limits the state to proving that the irreversible decline is caused by predators. He said it does not matter what causes the decline because the state needs the ability to act on it before it is irreversible. He asked whether the language in HJR 31 should be clarified to reflect the term irreversible decline when defining biological emergency.

MR. LARSON explained that the existing intensive management law speaks to population objectives and harvest objectives. The law's premise is that information will be obtained relative to populations, and that when those objectives are not being met the department will provide information as to the cause. To the extent that predators play into that, the department would take on predator management. He said H.R. 3663 is a whole different paradigm with biological emergency because it is totally different from the intensive management law and how the department is currently expected to operate.

[1:47:02 PM](#)

REPRESENTATIVE SEATON pointed out that he is not arguing to change Alaska's laws to correspond with federal laws. Rather, he is arguing that on page 2 of HJR 31 it is important to address aerial predator control as it relates to both livestock and biological emergencies.

CO-CHAIR GATTO commented that members do not want something to be said that is untrue and have the U.S. Congress say the Alaska State Legislature does not know what it is talking about.

[1:48:42 PM](#)

REPRESENTATIVE ROSES said this is a resolution, not a bill. While it is important to be accurate, the reality is that most people will not read past the first two lines on the first page. There is even the question of how effective resolutions are anyway, but that does not diminish the fact that it needs to be done. The committee is getting nitpicky, he said, and this does not change the end result that a resolution is passed that opposes H.R. 3663.

[1:49:38 PM](#)

REPRESENTATIVE FAIRCLOUGH said she would offer her additional language in another committee so the resolution will not be held up and can go forward.

[1:49:59 PM](#)

CO-CHAIR GATTO said he does not think the congressmen themselves will read the resolution but their aides will, and any misstatements in the resolution will take away from what Alaska wants to do now and in the future.

[1:50:48 PM](#)

REPRESENTATIVE SEATON withdrew Amendment 4. He moved that the committee adopt Amendment 5 as follows:

Page 2, line 3:

Delete "except for the protection of livestock"

There being no objection, Amendment 5 was adopted.

[1:53:16 PM](#)

REPRESENTATIVE FAIRCLOUGH declined to offer her four suggested "whereas's" as an amendment. She agreed the resolution needs to be accurate and said she will leave it to the sponsor to choose whether to incorporate her suggested language.

CO-CHAIR GATTO said the resolution will not be heard again until next Wednesday [2/20/08].

REPRESENTATIVE FAIRCLOUGH said she is not offering a formal amendment because she does not want to slow down the process on this urgent matter since the session is only 90 days.

[1:56:22 PM](#)

REPRESENTATIVE KELLER, in response to Co-Chair Gatto, stated that the next stop for the resolution is the House floor.

CO-CHAIR GATTO advised that the committee must then get it right. Following discussion about whether to hold HJR 31 or report it from committee as amended, Co-Chair Gatto said he would hold the resolution.

[1:57:29 PM](#)

REPRESENTATIVE KELLER spoke to Representative Fairclough's suggested additional ["whereas"] language. The intent of the resolution is not to be specific and to analyze the federal act, he said, the intent is to simply say that Alaska is managing its own. Therefore, he is happy to not include extra language as the resolution is accurate as amended.

CO-CHAIR GATTO held HJR 31.

HB 348-BOARD OF GAME REGULATIONS

[1:58:15 PM](#)

CO-CHAIR GATTO announced that the next order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 348, "An Act relating to the adoption of regulations by the Board of Game."

CO-CHAIR JOHNSON moved to [place] SSHB 348 [before the committee]. There being no objection, it was so ordered.

[1:59:26 PM](#)

REPRESENTATIVE WES KELLER, Alaska State Legislature, speaking as the sponsor of HB 348, stated that Alaska's wildlife managers are trained professionals who consult with the Board of Game and the public to ensure an abundant wildlife resource. For more than 10 years there has been repeated outside attacks on Alaska's knowledge, and these attacks are money raising schemes having nothing to do with science, he charged. The Lower 48 needs to get the message that people in Alaska understand wildlife management and are doing a good job. Wildlife is a valuable asset that generates income for Alaska through viewing, hunting, and guiding. He said SSHB 348 sends a message by codifying Alaska Supreme Court language that calls game an asset. The bill clarifies that Board of Game regulations adjusting the methods, means, seasons, and bag limits are all allocative in nature. He acknowledged that SSHB 348 may result in more work for the Board of Game but asserted that this is good management. The bill brings Alaska's constitutional language into statute by adding the term preferential use. Using supreme court and constitutional language in statute provides a rich context for clarifying the intent of Alaska's Board of Game, he opined. This bill and HJR 31 go together to show Alaska's negative reaction to Congressman George Miller's bill, H.R. 3663.

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CO-CHAIR GATTO asked whether Mr. Saxby can address constitutional questions about a statute.

KEVIN SAXBY, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law (DOL), responded that it depends on the question.

CO-CHAIR GATTO opened public testimony on SSHB 348.

[2:04:11 PM](#)

ROD ARNO, Executive Director, Alaska Outdoor Council, testified that his organization wholeheartedly supports SSHB 348. Changing Title 16 by adding "asset of game" would be of value to all Alaskans who use that wild food source, he said.

REPRESENTATIVE GUTTENBERG inquired why the change of language would be so important.

MR. ARNO replied he clearly sees the reason from discussions with the Division of Habitat over the past year. Alaska has clear parameters for protecting fish habitat and fish streams, he said, but there are few parameters for uplands. For example, the value of the Nelchina caribou herd could be quantified as an asset to the 7,000 Alaskans who annually apply for that permit. If an open pit mine was proposed for the uplands used by the Nelchina caribou herd, the value of that caribou resource could be considered during the permitting process.

REPRESENTATIVE GUTTENBERG asked why calling [game] an asset changes their function and how they are dealt with.

MR. ARNO answered he is a hunting guide not a lawyer, but his understanding is that if game are considered an asset lawsuits could then be brought for civil damages.

[2:06:37 PM](#)

CO-CHAIR GATTO inquired what Title 16 is.

MR. ARNO stated Title 16 is the fish and game code.

CO-CHAIR GATTO said he wants to make sure what the bill proposes to do is legal.

REPRESENTATIVE EDGMON requested the Department of Law to address how SSHB 348 merges with HB 256 in terms of harvestable surplus and higher levels of human consumption.

[2:07:44 PM](#)

CO-CHAIR GATTO reiterated his question about what Title 16 is.

MR. SAXBY responded that Title 16 is the fish and game code. In further response to Co-Chair Gatto, Mr. Saxby said he drafted HB 256 and he is the senior assistant attorney general assigned to game issues.

CO-CHAIR GATTO expressed his concern that using the word asset might be a constitutional issue.

MR. SAXBY agreed. The wrong statute is being used to address the issue, he said.

[2:09:13 PM](#)

MR. SAXBY began his testimony with the disclaimer that his personal view is closely aligned with that of the sponsor, but that he is charged with giving the most objective legal analysis that he can. He said the Department of Law's testimony is page 2 of the fiscal note submitted by the department. He specified:

SSHB 348 was written for the purpose of emphasizing, in statute, the allocative nature of many game regulation decisions, so that such decisions would not be subjected to the whims of political change through the initiative process. Unfortunately, the way the bill is worded, it could easily be interpreted - and I actually think it will be interpreted - as serving primarily to limit the Board of Game's ability to exercise many of its most important powers to only those situations in which the regulations are being done "as a means to allocate the asset of game." Because of this danger, the board would be forced to build a record for every regulation during its meetings which illustrates how the board is allocating game through that regulation. This would likely add several days to each major board meeting, with resulting costs, and to more legal arguments and challenges regarding whether, and how, the board is allocating, also with resulting costs. And perhaps I can illustrate it this way. The underlying purpose of [SSHB 348] is to affect what the public can or cannot do vis-à-vis the initiative process. But what the bill actually does is say what the Board of Game can or cannot do.... It ... effectively limits many of the board's most important powers to only those situations where the board is able to show that it is in fact allocating game. ... That raises a real potential conflict with the board's enabling statute, AS 16.05.221(b), which says, "For purposes of the conservation and development of the game resources of the state, there is created a Board of Game" So the board is created for the purpose of not just developing, allocating, but also for adopting regulations that are related to a conservation rationale. So, that ... is the effect that we see with the current language in the bill.

[2:12:10 PM](#)

CO-CHAIR JOHNSON inquired how the goal can be accomplished without handcuffing the Board of Game.

MR. SAXBY replied the more direct route would be to directly say what the public can or cannot do rather than say what the board can or cannot do. He said he cannot come up with a specific amendment right now, but offered to approach the governor's office and the ADF&G commissioner about tasking him with that job if it is the committee's desire.

CO-CHAIR JOHNSON said he cannot speak for the committee, but as an individual representative he would like Mr. Saxby to do so.

REPRESENTATIVE SEATON stated no.

[2:13:19 PM](#)

REPRESENTATIVE KAWASAKI noted that the term asset is referenced in the finance section of the index of the statutes. If game is considered an asset, does that mean it can be sold and traded, he asked.

MR. SAXBY understood the sponsor's purpose in using the term asset in SSHB 348 is to come within some of the language that the Alaska Supreme Court has already issued, especially in the Pullen v. Ulmer case. There was an initiative that would have directly allocated up to five percent of escapement, essentially harvestable surplus, of salmon to sport and personal use fishing. The [Alaska] Supreme Court ruled that was an improper subject for the initiative process under the constitutional language governing initiatives. Thus, the initiative was not allowed to proceed to the ballot because it was a direct allocation of a state asset - fish were an asset. He said he thought it could be deduced from that ruling that game is likewise an asset. So, in some circumstances, an attempt to allocate game through the initiative process would run afoul of that supreme court case. He understood that SSHB 348 is an attempt to create that situation generally.

[2:15:06 PM](#)

REPRESENTATIVE SEATON said a 2/5/08 legal opinion from Brian Kane, Legislative Counsel, Legislative Legal and Research Services identifies the same problem noted by Mr. Saxby. [The opinion addresses the question, "What does SSHB 348 do, and how would this bill change the legislature's constitutional mandate to manage fish and game resources?"] He read the second to last paragraph of the opinion which states (original punctuation provided):

The main effect of these changes could be that the Board of Game is limited in the reasons for which it can adopt regulations under AS 16.05.255(a)(2), (a)(3), or (a)(4). Under the added language, it is possible that "to allocate the asset of game" would be the only reason the board could have for adopting regulations to carry out the provisions of AS 16.05.255(a)(2), (a)(3), or (a)(4).

[2:16:36 PM](#)

REPRESENTATIVE GUTTENBERG observed that fish are sold and bartered and asked whether there could be a domino effect on Alaska's game laws. Additionally, he asked, would this turn over the legislature's fiscal responsibilities to the Board of Game, creating a separation of powers issue.

MR. SAXBY answered the second question first. He said there is a difference between money and an asset, and there is probably enough discussion in the Pullen case to be able to draw that distinction. He cited two reasons for why he does not think there would be a problem of running afoul of separation of powers issues: 1) assets do not necessarily include just money, they include state property such as computers and other things; 2) Article 8 of the constitution gives the legislature the authority to regulate the state's natural resources. The legislature has delegated that authority to the Board of Game and the board cannot exceed the legislature's guidelines and directives. Regarding the first question about the domino effect, Mr. Saxby stated that both he and legislative counsel Brian Kane are saying there is a potential domino effect the committee should be aware of should SSHB 348 pass as worded.

[2:19:07 PM](#)

REPRESENTATIVE SEATON directed attention to a 2/11/08 legal opinion from Mr. Kane addressing the question, "Would SSHB 348 prohibit citizens' initiatives that restrict predator control programs by restricting greatly or prohibiting outright the same day airborne shooting of wolves?" He read a portion of paragraph 2 in the opinion, which states [original punctuation provided]:

I do not think that the additions to AS 16.05.255(a) by the bill will necessarily prohibit a citizens' initiative regarding predator control or the same day

airborne shooting of wolves. As I stated in my February 8 memo to your office, the court will examine the provisions of the state constitution without being required to look at any statutory sections that might relate to those constitutional provisions. The court will look at the constitutional provision in question and make its own determination based on that provision alone.

REPRESENTATIVE SEATON thus advised that SSHB 348, as currently worded, would not accomplish its goal and could potentially have severe consequences to the operation of the Board of Game.

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REPRESENTATIVE GUTTENBERG cited a 2/13/08 legal opinion from Mr. Kane responding to the question of, "How does the court's view of an allocation of an asset factor into the prohibition of a citizens' initiative in relation to an appropriation?" The crux of SSHB 348, he said, is that it will make it a lot harder to get through a ballot initiative regarding game management. He read the second to last paragraph on page 2 of the opinion which states [original punctuation provided]:

Based on the court ruling in *Pullen*, the court would likely consider that an allocation of what it considers a state asset could not be allowed as an appropriation in a voter initiative.

REPRESENTATIVE SEATON said there is a distinction between Pullen v. Ulmer and SSHB 348. Pullen v. Ulmer is about the allocation of an asset between citizens of the state or groups of the state. However, SSHB 348 would ban an initiative that would prevent predator control, which is not an allocation between different groups of citizens of the state. Thus, he said, the committee needs to ensure that the action it takes will actually accomplish the intended goal.

REPRESENTATIVE GUTTENBERG asked Mr. Saxby what Mr. Arno was talking about when he stated that calling game an asset would provide the ability to sue for damages.

MR. SAXBY responded he would be guessing.

[2:23:26 PM](#)

CO-CHAIR JOHNSON suggested a broader look be taken at this than just aerial wolf hunting because it could include fishing, fur trapping, and other things. He said if SSHB 348 was a piece of legislation intended to stop a particular initiative, then he would have trouble with it. However, he said he sees the bill as an attempt to use the state's professionals to manage Alaska's game rather than the emotional outcry of outside groups. While one of the consequences may, in fact, be the wolf hunting initiative, he said he would hate to see the committee get wrapped around that topic when the real issue is to stop managing game and biology at the ballot box.

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SCOTT OGAN, President, Sportsmen for Fish and Wildlife (SFW), pointed out that he is testifying on his own time and his comments do not represent his employer, the Department of Natural Resources, State of Alaska. He said Sportsmen for Fish and Wildlife was founded with one main objective - to enable the Alaska Department of Fish & Game and the State of Alaska to manage for abundance. He maintained that SSHB 348 does not change existing laws on initiatives. It returns control of Alaska's game management to the preferential use of Alaskans, by Alaskans, for Alaskans, without the influence of outside special interests, as prescribed in Alaska's constitution. "The Alaska Department of Fish & Game would be allowed to manage game as an asset rather than managing people by unnecessarily limiting or cutting off seasons and bag limits", he stated. The department could establish scientific rather than political goals for predator-prey relations to manage for maximum sustained yield as prescribed in the constitution.

MR. OGAN cited Utah's management system of predator-prey relationship which stopped the mortality of young ungulates from cougars and resulted in the flourishing of that state's wildlife. Utah amended its constitution to require a two-thirds vote to pass wildlife initiatives, he related. He noted that when he was a member of the Alaska State Legislature, he opposed giving priority for fish and game to one group of people based on where they lived. However, he is now sitting on a board with a person with whom he previously disagreed and the two of them have put that issue aside to agree on the concept of SSHB 348. Alaskans have been divided and conquered long enough, he opined, and urban and rural Alaskans must unite and stand together against outsiders who are trying to run Alaska through the initiative process. The Alaska Supreme Court has spoken that fish are an asset of the state and not subject to an initiative.

This bill would bring game up to the same level of recognition as fish, he said.

CO-CHAIR GATTO closed public testimony.

[2:30:33 PM](#)

REPRESENTATIVE EDGMON inquired what the net effect would be if HB 256, SSHB 348, and the 2008 Aerial Wolf Ballot Initiative all became law.

MR. SAXBY replied that the underlying motives of HB 256 and SSHB 348 are similar - to manage for abundance and thereby reduce conflict. He said HB 256 is an effort to simplify and clarify the current laws and make them as workable as possible. He noted that each time a same day airborne law has been passed by the citizens, the legislature has had to act to simplify it and make it workable, and HB 256 would provide ways to make it even more workable. He said he views SSHB 348 as an attempt to ensure that game is treated as an asset and that regulation of game is viewed as allocation of assets. He said he thinks SSHB 348 will be unsuccessful and will result in more legal challenges, eventually serving to limit the Board of Game's powers rather than to make its decisions more defensible. [If HB 256] and the 2008 initiative pass, he said, the state will have a mandate to conduct active management for important game populations, which in some instances translates into a mandate to kill wolves, along with another law that makes it extremely difficult to kill wolves.

REPRESENTATIVE EDGMON agreed the state will have a mess on its hands if both HB 256 and the 2008 initiative become law.

[2:34:31 PM](#)

REPRESENTATIVE SEATON asked how classifying game as an asset will preclude mining operations in Alaska.

MR. SAXBY explained that game is already considered an asset under current law, just like fish is considered an asset. The dispute is over whether a given initiative is actually allocating an asset, he said. In Pullen v. Ulmer the court held that - in that case - the initiative was a direct allocation of a state asset. Regardless of whether or not SSHB 348 passes, that will be the test the court will look at should people choose to make that argument in the future. As to how classifying game as an asset might affect mining and other

resource uses in the state, he said he believes it is the desire of some groups to see more recognition of game as an important asset when the commissioner of the Department of Natural Resources is calculating a best interest finding for proposed resource development activities in the state. Thus, explicit legislative recognition of game as an asset will carry a bit more weight in some cases when these best interest findings are being made.

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REPRESENTATIVE SEATON inquired whether this would relate only to the agency process of balancing a best interest finding or would it promote a legal challenge to the utilization of mining as an asset versus the statutory designation of game as an asset.

MR. SAXBY answered he is unsure he fully understands the question. But, he said, having defended the state against challenges by environmental groups for a number of decades, he knows that any hook or argument available to an opponent of a particular development project will be used. If there is an argument that can be made based on legislative language that seems to add weight to an opponent's side of things, it certainly will be used at some point.

[2:39:04 PM](#)

CO-CHAIR GATTO said he is holding SSHB 348 so the sponsor can work with Mr. Saxby and others to come up with something that does not give the committee pause as far as constitutionality.

REPRESENTATIVE GUTTENBERG asked when HJR 31 is needed to meet the congressional timeline.

REPRESENTATIVE KELLER said he did not know [the congressional timeline].

MR. POUND stated that Congressman Young would like to have the resolution as soon as possible.

[2:41:52 PM](#)

CO-CHAIR GATTO reopened public testimony due to an error on the witness sign-up sheets.

ROBERT FITHIAN, Executive Director, Alaska Professional Hunters Association (APHA), stated that his organization supports SSHB

348 because it will protect and conserve Alaska's wildlife resources, bridge the urban/rural divide, and create sound and sustainable economy throughout rural Alaska. Alaska's stewardship failure due to ballot initiatives will rate in the top five of all historical wildlife conservation failures in North America's history, he said. This bill will facilitate an ending of this situation and allow the Alaska Department of Fish & Game to do its job as mandated by state constitution. He said APHA believes it is important to understand that Alaska's founding fathers had no knowledge and little foresight of the political arena into which the state would eventually be cast to effectively manage its wildlife as per their constitutional requirements. This bill would secure their work and provide for the best interests of the whole of Alaska and not special interests.

MR. FITHIAN noted that the long-term sustainability of the over \$200 million a year guide industry is dependent upon allocation of sustainable harvestable surpluses, and SSHB 348 will help generate this important requirement. He urged the committee to work together to accomplish the bill's goals, even if it means new language to resolve the Department of Law's concerns. He related that APHA's counsel, Bill Horn, has advised that the repeated references to fish and wildlife as assets is designed to prevent any fish and game oriented ballot initiatives. If fish and wildlife are assets they cannot be allocated by an initiative, which is good. Just as importantly, SSHB 348 does not impact the state's ability to allocate these resources among users, including providing preferential uses. Guide required rules and other plans to facilitate guided hunting and fishing likely fall within the scope of preferential uses. He noted that the one concern cited by Mr. Horn has been brought to the attention of the sponsor's staff.

[2:45:48 PM](#)

CO-CHAIR GATTO inquired whether Mr. Fithian objects to the state having an initiative process.

MR. FITHIAN responded no. In further response to Co-Chair Gatto, Mr. Fithian agreed that the initiative process belongs and is valuable.

CO-CHAIR GATTO pointed out that the cruise ship tax and the 90 day legislative session are both the result of initiatives, and a failed initiative is the reason why the state does not have a reserves tax. However, he said, there cannot be initiatives

that reappropriate or appropriate assets, especially money, because otherwise all the biggest cities would have all the projects. Thus, there are strong restrictions on what an initiative can do. The question is going to become whether the term asset will have to be defined in a very specific way, but right now, there may be a constitutional issue.

[2:46:55 PM](#)

MR. FITHIAN commented that that there is very little ability for the legislative body or the lieutenant governor's office to prohibit the initiative process. The initiative process is a method of fundraising for outside interests that care little about the effect of their actions on the state as a whole, he said. If SSHB 348 can be constructed to benefit the whole, then it starts to give some of the stewardship provisions that are needed.

CO-CHAIR GATTO agreed and said he would like the Alaska Department of Fish & Game to be the scientists and the managers.

[SSHB 348 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:48 p.m.