

HB

20

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STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 3, 1977

SUBJECT: Comments on HB 18 and HB 20
TO: Representative Alvin Osterback
FROM: Joel F. Bennett *J.F.B.*
Legislative Counsel

You have asked me to comment on the bill analysis done by the Department of Fish and Game on HB 18 and HB 20, both by Representative Swanson.

HB 18 seeks to institute wolf control by allowing private persons full license to hunt, at any time, by any means. The Department of Fish and Game objected to this on two grounds: (1) that it violated article VIII, section 4; and (2) that it violated federal law (P.L. 92-159). The "General Authority" provision of Alaska Constitution, article VIII, section 2, empowers that legislature to provide for the "utilization, development and conservation of all natural resources..." In section 4 it further specifies that this shall be done on the sustained yield principle, subject to preferences among beneficial uses." I find no clear violation of article VIII, section 4. HB 18 is merely a legislative scheme for the management of wolves, presumably having biological as well as public policy justification. As evidence of concern for the potential overharvest of wolves, a notification procedure was established. At the beginning of each year the legislature will evaluate the number of animals taken and where, and determine whether a proper balance of wolves has been attained.

Furthermore, in reviewing the minutes of the Constitutional Convention (Part 4) on article VIII, section 4, I find no clear-cut interpretation or helpful elaboration of the sustained yield concept. It was intentionally loosely defined. The Secretary of the committee on Resources discusses it briefly on P.2451 as follows:

"...in our reference to sustained yield, we have in mind no narrow definition of "sustained yield, "as is used, for example, in forestry, but the broad premise that insofar as possible a principle

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of sustained yield shall be used with respect to administration of those resources which are susceptible of sustained yield, and where it is desirable. For example, predators would not be maintained on a sustained yield basis...." and on P.2457: "For fish, for wild life, and for some other replenishable resources, such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors by which a calculated sustained yield will be determined. Yet, the term "sustained yield principle" is used in connection with the management of such resources. When so used in this article, it denotes conscious application insofar as practicable, of principles of management intended to sustain the yield of the resource being managed."

(2) The second objection to HB 18 is well founded and will require an amendment that prohibits taking of wolves by means of aircraft. Although resisted by the U.S. Attorney General on legal grounds, an amendment to the Fish and Wildlife Act of 1956 (P.L. 92-159) imposed a federal criminal penalty of \$5,000 or 1 year imprisonment for the offense. This, of course, subjects those taking wolves from aircraft under HB 18 to federal prosecution, regardless of state law.

HB 20 clearly removes a management function from the Department of Fish and Game. Without judging the merits of such a policy, it must be concluded that it is within the authority of the legislature to do so. Under article III, section 22:

"...executive and administrative departments and agencies of the state government and their respective functions, powers and duties shall be allocated by law among and within not more than twenty principal departments..."

What authority the legislature grants under law it can take away. By the passage of an Act such as HB 20, it is presumed that management guidelines and data were fully considered and that the legislature has acted in the best interest of the state, with attention to the dictates of article VIII, sections 1-7 of the Alaska Constitution. There is no apparent violation of the sustained yield principle in HB 20. Presumably, the intent of the bill is to restore moose to their former levels, at numbers compatible with other species. It could be argued that the bill further's sustained yield by producing more moose for the "utilization, development, and conservation of all natural resources...for the maximum benefit of the people." (article VIII, section 2).

In addition, the "sustained yield" and "wildlife...reserved to the people for common use, phrases in the Alaska Const:

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tution are not necessarily synonymous with "harvest" - "use" may reasonably be interpreted as availability for recreational viewing, photography or scientific study. "Sustained yield" in the sense of "harvest" may give way to preferences for certain non-consumptive uses under a reasonable interpretation of article VIII, section 4. I might add that the legislature recognizes other legitimate "uses" of wildlife when it creates state parks, and game sanctuaries, not oriented to hunting. Chapter 219 SLA 1975 further illustrates this expanded use concept, in the preamble to creation of the Department's wildlife photography concept:

"...encourage other necessary public uses of wildlife in addition to their legitimate harvest."

The fact that HB 20 goes against the current local option, antlerless scheme, and effectively takes a portion of the management authority from the board of game may or may not be poor policy but it violates no constitutional law.

I hope this will be of some assistance to the committee.

JFB:smh

803(b) (42 U.S.C. 296b 'b'))⁸³ is amended by striking out "Surgeon General's" and inserting in lieu thereof "Secretary's". Section 841 (a) (42 U.S.C. 298(a))⁸⁴ is amended by striking out "Surgeon General" and inserting in lieu thereof "Secretary (or his delegate)".
Approved November 18, 1971.

FISH AND WILDLIFE—SHOOTING FROM AIRCRAFT

For Legislative History of Act, see p. 1735

PUBLIC LAW 92-159; 85 STAT. 480

[H. R. 5060]

An Act to amend the Fish and Wildlife Act of 1956 to provide a criminal penalty for shooting at certain birds, fish, and other animals from an aircraft.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The Fish and Wildlife Act of 1956 is amended by adding at the end thereof the following new section:

"Sec. 13. (a) Any person who—

"(1) while airborne in an aircraft shoots or attempts to shoot for the purpose of capturing or killing any bird, fish, or other animal; or

"(2) uses an aircraft to harass any bird, fish, or other animal; or

"(3) knowingly participates in using an aircraft for any purpose referred to in paragraph (1) or (2);

shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

"(b)(1) This section shall not apply to any person if such person is employed by, or is an authorized agent of or is operating under a license or permit of, any State or the United States to administer or protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops, and each such person so operating under a license or permit shall report to the applicable issuing authority each calendar quarter the number and type of animals so taken.

"(2) In any case in which a State, or any agency thereof, issues a permit referred to in paragraph (1) of this subsection, it shall file with the Secretary of the Interior an annual report containing such information as the Secretary shall prescribe, including but not limited to—

"(A) the name and address of each person to whom a permit was issued;

"(B) a description of the animals authorized to be taken thereunder, the number of animals authorized to be taken, and a description of the area from which the animals are authorized to be taken;

83. 42 U.S.C.A. § 296b(b).

84. 42 U.S.C.A. § 298(a).

“(C) the number and type of animals taken by such person to whom a permit was issued; and

“(D) the reason for issuing the permit.

“(c) As used in this section, the term ‘aircraft’ means any contrivance used for flight in the air.”

Sec. 2. (a) Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429)⁸⁵ is amended by inserting “(a)” immediately after “Sec. 609.” and by adding at the end thereof the following new subsection:

“VIOLATION OF CERTAIN LAWS

“(b) The Administrator, in his discretion, may issue an order amending, modifying, suspending, or revoking any airman certificate upon conviction of the holder of such certificate of any violation of subsection (a) of section 13 of the Fish and Wildlife Act of 1956, regarding the use or operation of an aircraft.”

(b)(1) Immediately after the section heading of such section 609, insert the following:

“PROCEDURE”

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

“Sec. 609. Amendment, suspension, and revocation of certification.” is amended by adding the following:

“(a) Procedure.

“(b) Violation of certain laws.”

Sec. 3. The amendments made by the first section of this Act shall take effect as of the thirtieth day after the date of enactment of such section; except that, in any case in which a State is not authorized to issue any permit referred to in the amendments made by such first section, such amendments shall take effect in any such State as of the thirtieth day after the expiration of the next regular session of the legislature of such State which begins on or after the date of enactment of this Act.

Approved November 18, 1971.

MILITARY CONSTRUCTION APPROPRIATION ACT, 1972

PUBLIC LAW 92-160; 85 STAT. 482

[H. R. 11418]

An Act making appropriations for military construction for the Department of Defense for the fiscal year ending June 30, 1972, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1972, for military

85. 49 U.S.C.A. § 1429(a), (b).

Nov. 18 MILIT

construction function other purposes, namel

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6 For an Act entitled: "An Act prohibiting the taking of antlerless moose."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 16.05.780 is repealed and re-enacted to read:

9 Sec. 16.05.780. TAKING OF ANTLERLESS MOOSE PROHIBITED. The taking
10 of antlerless moose at any time in any game management unit or subunit
11 is prohibited.
12
13

We the following Alaskians Concur with
Representatives Don Burnett and Red Subrason
on this bill.

Jimmie W. Snyder 916 Galena St. Fairbanks Alaska
~~LeRoy Rich~~ 3795 Grand St. College Ak.
Ray J. Green 102 "B" St #6 Fairbanks AK

Bob Hartney 6 1/2 Mile Bodey Rd Ebr., Ak
C. H. Hayes 1067 Lakewood Terrace - Fairbanks, Ak
J. M. Ruckman 2535 Dole Rd - Fairbanks -
M. H. Rogers #409 NORTHWARD BLDG, Fairbanks

John H. Bethune 1607 2125 Ave FAIRBANKS AK.
Frank Brumson 1010 Evergreen Fairbanks AK
J. H. Carver 1902 MARYANN FBKS. AK.
J. A. Finch 1320 6th Ave FBKS AK.

Jimmy Sunday 3033 Rivanna DR FBKS. AK
J. Thomas Meyer 7 Mi. Old Richardson FBKS, AK.
SR. Box 60343

Cliff Hife 10 miles Steese FAIRBANKS AK.
David Copeland 1 M. NELSON RR, NORTH POLE
PO BOX 60398
Selwyn Cant 425 B St. FBK.

Samuel Gray 101 OAK DRIVE FBKS ALASKA

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting the taking of antlerless moose."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 16.05.780 is repealed and re-enacted to read:

Sec. 16.05.780. TAKING OF ANTLERLESS MOOSE PROHIBITED. The taking of antlerless moose at any time in any game management unit or subunit is prohibited.

We the following Alaskians Concur with Representatives Don Burnett and Red Swanson on this bill.

- Fred DeLeon 327 Antoinette St Fairbanks Alaska
- Harold J Fuller 417 Juniper St Fairbanks, Alaska
- Paul Kachuk 2095-A JACK ST. Fairbanks, Alaska.
- Tom Hoffman 2113 JACK ST. Fbks, AK.
- James A Hart 24 N. E. Hurst Rd. Fairbanks Alaska
- Wallace O. Turner 6 1/2 mile Badger Rd. Fairbanks Alaska
- Gary Seybold 516 Jewell FAIRBANKS AK.
- Allen Fleming 304 Badger Street Fairbanks, AK
- Lu Richards 967 Stewart St Fairbanks Ak.
- Quane Anderson 501 Ketchikan FBK.
- H. E. Woods Box 594 FBKS.
- Dave Knight Box 60654 FBKS.
- Art Matrya 137 8th FBKS.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUPPORT BUILDING
JUNEAU 99801

February 9, 1977

The Honorable Alvin Osterback, Chairman
House Resource Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

Re: Request for information on wolf harvest and cost to state of
wolf control, Unit 20A

I have attached statewide wolf harvest information for the year 1976.

The cost figure for the wolf control effort in game management Unit 20A
follows:

Helicopter Charter	\$16,759.00
Estimated line item 100, 200, 300 & 400 costs	<u>\$ 8,000.00</u>
	\$24,759.00

Total wolves taken - 66

Sale of 50 wolf skins @\$275+ per skin	(13,789)
Remaining skins held by Div. of Admin.	<u>(4,000) Est.</u>
Net cost to state of central operations	6,970

The average net cost per wolf killed equals approximately \$106.00.

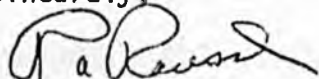
During questions on House Bill 20 Representative Union requested information
on the 1976 harvest of moose in Unit 16. The projected harvest follows:

16B	215 Bulls and 135 females	- 350
16A	80 Bulls and 40 females	- <u>120</u>

Total 470

If you should require additional information, please contact me.

Sincerely,



Robert A. Rausch, Director
Division of Game

cc: Commissioner Brooks

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Alaska Wolf Harvest
1959 - 1974

SPECIES: Wolf

x Bounty Records

** From Aerial Permits & Bounty Records

*** Mandatory Sealing

Unit	YEAR														
	x	x	x	x	x	x	x*	x	x	x	**	**	***	***	***
1			67	23	36	36	17	24	53	41	53	67	97	35	50
2			12	43	53	57	50	66	78	113	83	59	42	29	15
3			18	26	37	27	52	40	82	15	72	38	57	24	27
5					1	4	7	3	6	8	2	10	2	5	2
6					1	1	5	0	0	0	1	0	0	3	3
7	-----Closed-----														
9			4	9	16	44	27	51	24	22	26	7	24	24	31
10	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-
11			8	21	24	30	117	70	40	7	10	23	56	48	28
12		1	8	-	17	24	47	38	57	31	123	14	94	64	37
13							64	31	120	1	41	91	111	80	75
14				3	8	11	19	30	17	1	1	8	12	16	8
15	-----Closed-----														
16				5	21	37	84	36	66	6	2	21	40	13	13
17				15	14	1	18	26	24	15	3	13	28	20	20
18	0	0	2	2	0	0	0	1	3	0	0	0	4	0	2
19	1	1	12	34	53	57	110	147	17	18	21	42	95	59	39
20	24	49	90	95	237	267	262	366	265	134	256	141	249	296	304
21	11	14	75	132	43	33	187	189	105	26	32	32	93	48	102
22	-	-	-	6	0	4	11	15	28	6	7	2	11	5	7
23	18	20	71	23	41	35	47	164	177	134	80	4	70	83	240
24	5	47	12	85	12	45	67	219	276	58	35	23	129	100	60
25	32	62	82	86	50	25	59	59	145	61	34	36	121	47	56
26	117	63	45	37	49	59	41	102	83	67	47	0	0	71	46
Unk	3	0	15	4	0	3	1	2	45	0	-	4	0	41	-
Total	211	257	605	675	713	800	1292	1679	1711	764	929	635	1335	1071	970

SPECIES: Wolf

x Bounty Records

** From Aerial Permits & Bounty Records

*** Mandatory Sealing

Unit	YEAR	
	*** 74-75	*** 75-76
1	62	65
2	10	44
3	11	24
5	9	11
6	4	7
7	1	9
9	52	27
10	1	0
11	34	18
12	40	40
13	103	110
14	24	19
15	5	12
16	41	34
17	111	47
18	4	3
19	63	82
20	291	335
21	37	77
22	21	2
23	47	144
24	65	45
25	48	49
26	6	34
Unk	--	5
Total	1090	1243

1/ Records for these three years are incomplete because of the transition from statewide bounties to a mandatory sealing provision..

ASSIGNMENT DATE _____

UNASSIGNED _____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Fish and Game	Rep. Swanson	HB 20
DEPARTMENT POSITION		
The Department of Fish and Game opposes HB 20		
DIVISION DIRECTOR	DATE	COMMISSIONER
<i>Robert A. Rausch</i> Robert A. Rausch	1/31/77	<i>James W. Brooks</i> James W. Brooks
		DATE
		1/31/77
GOVERNOR'S OFFICE USE		
<input type="checkbox"/> POSITION NOTED <input type="checkbox"/> POSITION APPROVED <input type="checkbox"/> POSITION DISAPPROVED		
BY: _____ DATE: _____		
SUMMARY		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)		
none		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL	/	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
unknown		unknown
(3) PROGRAM EFFECTS OF BILL		
<p>The bill would place an additional drain on alternate food species in rural areas, e.g., caribou, sheep and goats. Further, it would prohibit presently legal, local option antlerless moose hunts and it would prohibit moose management programs designed to maintain moose populations in optimum balance with available range.</p>		
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		
none		

(6) COMMENTS: The enactment of this bill, prohibiting the taking of antlerless moose at any time in any game management unit, would appear to violate Article VIII, Section 4 of the State Constitution which requires that "...resources belonging to the State shall be utilized, developed and maintained on the sustained yield principle, subject to preferences among beneficial uses." A continuous closure on a species such as moose could hardly qualify as sustained yield of beneficial uses. At present the authority for establishing antlerless moose seasons is vested with the Board of Game and they are limited by a complex system which requires that the department recommend such a season and that the advisory committee(s) for a game management unit or a subunit favorably recommend on the department's proposal. The present system provides an indepth review of such proposals by the public and the board. There are relatively few antlerless moose seasons in the State of Alaska at this time and all of them have the support of the appropriate advisory committees if such exist. The proposals that will be before the Board of Game at the next meeting, March 1977, will all have been favorably considered by the appropriate advisory committees. Imposition of this bill would seriously detract from a progressive systems management