

SB

77

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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MEMORANDUM

March 2, 1993

SUBJECT: CSSB 77(Resources); Intensive management of big game

TO: Senator Bert Sharp

FROM: George Utermöhle *GU*
Legislative Counsel

You have asked two questions in regard to CSSB 77(Resources); An Act relating to the powers of the Board of Game and to intensive management of big game to achieve higher sustained yield for human harvest.

ONE; In the context of CSSB 77(Resources), what do "shall" and "may" mean?

Use of the word "shall" means to impose a duty on someone. Manual of Legislative Drafting, Legislative Affairs Agency, p. 51, 1993. "Shall" denotes a mandatory intent. Fowler v. Anchorage, 583 P.2d 817 (Alaska 1978).

Use of the word "may" means to grant a privilege or discretionary power. Use of the phrase "may not" means to impose a prohibition upon someone. Manual of Legislative Drafting, Legislative Affairs Agency, p. 51, 1993.

In the context of AS 16.05.255(a) as amended by Section 1 of CSSB 77(Resources), the replacement of the word "may" by the word "shall" converts the discretionary power of the Board of Game to adopt regulations for the management of game and for intensive management to a duty to adopt regulations for those purposes.

In the context of the new AS 16.05.255(e), added by Section 2 of CSSB 77(Resources), the phrase "may not" is used to prohibit the board from adopting regulations to significantly reduce the taking of certain game populations unless the board has previously adopted regulations providing for intensive management of the population. Except in certain situations where intensive management is not a viable management option, the board has a duty to adopt regulations providing for the intensive management of a big game population before the board is allowed to reduce the harvest of the population through the board's traditional powers under AS 16.05.255(a).

Senator Bert Sharp
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TWO; Does CSSB 77(Resources) change the power of the Governor in regard to the adoption of regulations by the Board of Game?

The answer is no. Whatever power the Governor has in regard to the adoption of regulations by the Board of Game, whether through AS 16.05.270^{1/}, the budgeting process, the power of persuasion, or otherwise, is unchanged by the provisions of CSSB 77(Resources).

If I may be of further assistance, please advise.

GU:lmb
93-056.lmb

^{1/} AS 16.05.270 states:

DELEGATION OF AUTHORITY TO COMMISSIONER. For the purpose of administering AS 16.05.251 and 16.05.255, each board may delegate authority to the commissioner to act in its behalf. If there is a conflict between the board and the commissioner on proposed regulations, public hearings shall be held concerning the issues in question. If, after the public hearings, the board and the commissioner continue to disagree, the issue shall be certified in writing by the board and the commissioner to the governor who shall make a decision. The decision of the governor is final.

DEPARTMENT OF FISH AND GAME
POSITION PAPER

Bill No: SB 77 (1/29/93)

Sponsor: Senators Sharp, Frank, Taylor

Division: Wildlife Conservation

Bill Title: An Act relating to the powers of the Board of Game and to intensive game management to achieve higher sustained yield for human harvest.

Department Position: Neutral pending significant amendments.

Background/Legislative Intent: The purpose of this bill is to mandate intensive management of declining game populations to enhance consumptive use opportunities.

Analysis of Bill/Program Effects: As written, this bill would direct the board and require the department to undertake intensive management programs, even when such programs are not needed or desirable. Currently, both the board and department already have the authority and discretion to use intensive management to enhance game populations. By statutorily eliminating flexibility, this bill could compromise the biological basis for decision-making and make the board process extremely cumbersome.

Amendments Proposed:

Sec. 1. (page 1, lines 5-10)

(a) The Board of Game shall adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) to provide for the management of game, and for intensive management of identified big game populations [SPECIES] to maintain or restore high levels of [GAME POPULATIONS TO ACHIEVE HIGHER] sustained yield for human harvest where the board has determined that consumptive use of those big game populations [SPECIES] is the preferred use....

(This amendment alters wording to parallel that suggested elsewhere in the bill and clarifies the intent to focus intensive management on identified populations of big game rather than species on a statewide basis.)

Sec. 2. (page 3, lines 3-11)

(e) The Board of Game may not significantly reduce the taking of an identified big game population under this section unless the board has previously considered [ADOPTED REGULATIONS] providing for the use of intensive management to increase the take of the identified big game population for human harvest consistent with (a)(11) of this section. After considering [ADOPTING REGULATIONS] providing for intensive management of an identified big game population subject to this subsection, the board may consider and adopt regulations relating to development or regulation of access to the population

and to management of the population by customary adjustments in seasons, bag limits, open and closed areas, methods and means, or by other customary means authorized under (a) of this section.

(Unless this bill is amended, hundreds of regulatory proposals sent to the board annually will not be able to be considered or adopted unless a companion proposal is also submitted dealing with intensive management. The resulting burden on the board, public and department would overload the regulatory process. This amendment would require the Board of Game to consider, rather than adopt, intensive management before a significant restriction in harvest of a big game population is imposed. This amendment would also preserve the flexibility of the board and department in making customary adjustments in seasons, bag limits, open and closed areas, methods and means, access, etc. in those cases where "intensive management" of a game population would be inappropriate, ineffective, or restricted by a federal or private landowner.)

Example 1: On Admiralty Island, the habitat is prime and there is no significant predation on black-tailed deer. If the deer population crashed due to a severe winter, the only appropriate action to speed recovery may be to significantly reduce human harvest. As written, however, SB 77 would prevent a reduction in season or bag limit to aid recovery.

Example 2: Game populations of many species (e.g., caribou, ptarmigan, grouse, hares, lynx, muskrats) are cyclic and not always clearly driven by food availability or predation. Some of these populations are managed primarily by monitoring them and regulating human harvest. As written, SB 77 would prevent regulation of harvest until regulations for "intensive management" are adopted, even though no "intensive management" technique may be effective or appropriate.)

Commissioner's Signature

Date

2/10/93

SPONSOR STATEMENT

SB-77

Senator Bert Sharp

The primary thrust of SB-77 is to provide clear legislative direction to the Board of Game in regard to priority management goals and mission of the Department of Fish and Game particularly in the management of the larger species of game. Recent political actions accentuate a dire need for a strong legislative mandate.

For close to 30 years, the mission of the Board of Game and the Department of Fish and Game has gradually become distorted by parochial pressures, and the result has been a steady decline in the populations of the game resource. The value and use of biologically sound aggressive scientific management has been severely eroded, resulting with Alaska's current game management policies that manage people, not the resource.

The management process presently employs only passive techniques such as shortening hunting seasons, changing methods and means, permit-only hunts, just flat out closing seasons entirely; each of which have resulted in taking away the hunting opportunities for vast numbers of Alaskans.

The stark reality is that every reduction in hunting seasons without corresponding reductions of predators has in fact been a re-allocation of the resource from people to predator.

These past passive management actions have created the current situation where the Alaskan people harvest 4 to 5 percent of the game, while predators take 70 to 80 percent.

Time and time again surveys and studies of game populations have revealed that during the first 30 days after calving season up to 90

percent of the new born are gone. Do the mothers suddenly abandon them; do they starve; does a plague decimate only the newborn? The answer is none of the above. The answer is the same today as it was 5 years ago or 10 years ago or 20 years ago. Predators are very selective and efficient in killing newborn caribou and moose. Absolutely no question about it. We've literally spent tens of millions of dollars doing population surveys and watching it happen.

The lack of a clear legislative mandate encourages Administration, the Board and the Department to play it safe by continually needing just a couple more years to obtain updated studies to support any proposed change from the passive management to effective intensive management action.

There has been very few uses of controlled burns or other proven habitat enhancement methods.

Today's volatile problem of allocating existing game resources could be minimized and in many cases eliminated by increasing game populations up to historically proven maximum sustainable levels.

Adequate game stock is the common sense answer to solving current personal use, subsistence and sport hunting needs. We have allowed ourselves to become divided by quarreling over an ever declining game resource. Many Alaskans have personally watched the gradual decline of moose populations to precarious levels. I personally have witnessed this happen in an area from lower Birch Creek up the Yukon to the Nation, Kandik and Charlie River Drainages, over into the Forty Mile country, up and down the entire Tanana River Drainage and into the Denali Paxon area.

These areas were teeming with Moose in the late 50's and through the 60's. Why, because we inherited high game stocks from the Federal Government that had a super aggressive predator control system, and reacted in a timely manner to the beginning of a downward trend.

This bill states a clear legislative mandate to mark the course and set a clear goal of aggressive game management for the Board and Department. It requires the maintenance of the State's game resource at a high sustainable yield level.

Alaska long ago took this course in the management of its commercial fisheries that put dollars into fishermen's pockets. Let's

do the same to put meat into the cooking pots of thousands of Alaskans.

This resource has the potential to provide hundred of millions of dollars in consumptive use value as well as contributing to meeting cultural needs for the people throughout Alaska. I ask for your support of this legislative effort. Thank you Mr. Chairman and members of this Committee for the opportunity to present this legislation.

SECTIONAL ANALYSIS

SB - 77

SECTION 1. AS 16.05.255(a) : is amended to provide for game management, and to include intensive management of game populations to achieve higher yield for human harvest. This would target areas where the Board determined that consumptive use was the preferred use of that area.

SECTION 1. AS 16.05.255(a)(11): is added to require the Department of Fish and Game to conduct intensive management programs to restore the productivity of a game population necessary to achieve human consumptive goals of the Board in areas where the Board has determined;

(A) game populations are declining and would, or are, resulting in the reduction of human harvest of the game population;

(B) it is feasible that there is an enhancement of productivity of game population; and

(C) intensive management is justified by the expected benefits to human consumptive use of the game population.

SECTION 2. AS 16.05.255(e): is added to prohibit the Board of Game from significantly reducing the taking of a game population without providing for intensive management of the population. After providing for the intensive management of the game population, the board may adopt other regulations relating to the game population.

SECTION 2. AS 16.05.255(f): is added to define the term "intensive management.:

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 77

Revision Date: _____

Department Affected: Fish and Game

Title: An Act relating to the powers of the Board of
Game and to intensive game management

BRU: Wildlife Conservation

Component: Wildlife Conservation

Sponsor: Senator Sharp

Requestor: Senate Resources

COMPONENT SERIAL NO. 0473

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary.)

Actual costs of implementing a given "intensive management" program will be considerable and cannot be estimated in advance.

Prepared By: Larry Jones

Phone: 465-6085

Division: Administration

Date: February 9, 1993

Approved by Commissioner: *Bruce S. Swannell*

Agency: Department of Fish and Game

Date: 3/10/93

PREPARER TO PROVIDE

OFFICE

8-LS02760
Utermohle
2/23/93

CS FOR SENATE BILL NO. 77()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Frank, Taylor, Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers of the Board of Game and to intensive
2 management of big game to achieve higher sustained yield for human harvest."

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

4 * Section 1. AS 16.05.255(a) is amended to read:

5 (a) The Board of Game shall [MAY] adopt regulations under [IT
6 CONSIDERS ADVISABLE IN ACCORDANCE WITH] AS 44.62 (Administrative
7 Procedure Act) to provide for the management of game, and for intensive
8 management of identified big game populations to maintain or restore high levels
9 of sustained yield for human harvest where the board has determined that
10 consumptive use of those big game populations is the preferred use. by [FOR]

11 (1) setting apart game reserve areas, refuges, and sanctuaries in the
12 water or on the land of the state over which it has jurisdiction, subject to the approval
13 of the legislature;

14 (2) establishing open and closed seasons and areas for the taking of

1 game;

2 (3) establishing the means and methods employed in the pursuit,
3 capture, and transport of game, including regulations, consistent with resource
4 conservation and development goals, establishing means and methods that may be
5 employed by persons with physical disabilities;

6 (4) setting quotas, bag limits, harvest levels, and sex, age, and size
7 limitations on the taking of game;

8 (5) classifying game as game birds, song birds, big game animals, fur
9 bearing animals, predators, or other categories;

10 (6) methods, means, and harvest levels necessary to control predation
11 and competition among game in the state;

12 (7) watershed and habitat improvement, and management, conservation,
13 protection, use, disposal, propagation, and stocking of game;

14 (8) prohibiting the live capture, possession, transport, or release of
15 native or exotic game or their eggs;

16 (9) establishing the times and dates during which the issuance of game
17 licenses, permits, and registrations and the transfer of permits and registrations between
18 registration areas and game management units or subunits is allowed;

19 (10) regulating sport hunting and subsistence hunting as needed for the
20 conservation, development, and utilization of game;

21 (11) requiring the department, within the department's ability, to
22 conduct intensive management programs to restore the abundance or productivity
23 of a big game population as necessary to achieve human consumptive use goals
24 of the board in an area where the board has determined that

25 (A) depletion of the big game population or reduction of the
26 productivity of the big game population has occurred and may result in a
27 significant reduction in the allowable human harvest of the big game
28 population; and

29 (B) enhancement of abundance or productivity of the big
30 game population is feasible.

31 * Sec. 2. AS 16.05.255 is amended by adding new subsections to read:

1 (e) The Board of Game may not significantly reduce the taking of an identified
2 big game population under this section unless the board has previously adopted
3 regulations providing for the use of intensive management to increase the take of the
4 identified big game population for human harvest consistent with (a)(11) of this
5 section. Except in areas where the board or department has determined that intensive
6 management would be ineffective or that intensive management would be inappropriate
7 due to land ownership patterns, the board shall first adopt regulations providing for
8 intensive management of a big game population subject to this subsection, before the
9 board may reduce the taking of the population by adopting regulations relating to
10 development or regulation of access to the population and to management of the
11 population by customary adjustments in seasons, bag limits, open and closed areas,
12 methods and means, or by other customary means authorized under (a) of this section.

13 (f) In this section,

14 (1) "intensive management" means management of a big game
15 population to enhance, extend, and develop the big game population to maintain high
16 levels or provide for higher levels of human harvest in accordance with the sustained
17 yield principle, including control of predation and prescribed or planned use of fire and
18 other habitat improvement techniques;

19 (2) "sustained yield" means the achievement and maintenance in
20 perpetuity of a high level of annual or regular periodic human harvest of game
21 resources of the state, consistent with multiple use, at harvest levels that do not
22 significantly impair the productivity of the game resource or game habitat.