

HB

58

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 3, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/8/95

The FINANCE Committee considered:

HB 58

HOUSE BILL NO. 58

CHICKALOON FLATS CRITICAL HABITAT AREA

"An Act establishing the Chickaloon Flats Critical Habitat Area."

recommends it be replaced with the following committee substitute C.S HB 58 (Res) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) F & G

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard [Signature]</i>	Roster		*		
<i>Mark Hanley</i>	Hanley			X	
<i>Alan Mulder</i>	Mulder			X	
<i>Terry Martin</i>	Martin	✓			
<i>Sean Parnell</i>	Parnell	✓			
<i>Ben Gussendorf</i>	Gussendorf	X			
<i>Mike Navarre</i>	Navarre	X			
<i>Tom Brown</i>	Brown	✓			
<i>Pete Kelly</i>	Kelly			X	
<i>Gene Theriault</i>	Theriault			X	

CHAIR'S SIGNATURE *Mark Hanley* *Richard [Signature]*

FISCAL NOTE

STATE OF ALASKA
99th LEGISLATIVE SESSION

NO. 1
Bill Version: CSHB 58(RES)
(H) Publish Date: 2/3/95

Revision Date: _____
Title: Chukchiot Flat Critical Habitat Area
Sponsor: Representative Bunde
Requestor: House Oil and Gas

Dept. Affected: Fish and Game
SRU: Habitat and Restoration
Component: Habitat
COMPONENT SERIAL NO. _____

Expenditures/Revenues	(Thousands of Dollars)					
	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES /	0	0	0	0	0	0

FUND SOURCE	(Thousands of Dollars)					
002 Federal Receipts						
003 GF Match						
004 GF						
005 GF/Program Receipts						
006 GF/METLA						
Other						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Frank Rue Phone: 465-3065
 Division: Habitat and Restoration Date: _____
 Approved by Commissioner: [Signature]
 Agency: Alaska Department of Fish and Game Date: _____

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REPRESENTATIVE CON BUNDE
CO-CHAIR HEALTH, EDUCATION
& SOCIAL SERVICES
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Alaska State Legislature
House of Representatives

DURING SESSION:
STATE CAPITOL, ROOM 108
JUNEAU, ALASKA 99801-1182
1 (907) 465-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168

SPONSOR STATEMENT

HB 58

"An Act establishing the Chickaloon Flats Critical Habitat Area"

Chickaloon Flats is on the northeast side of the Kenai Peninsula, on the Turnagain Arm facing the Anchorage Coastal Refuge and Potter Flats. The area has a local nesting population of ducks and geese. The most important use of this area is as a feeding and resting area for migrating ducks, geese and shore birds. Up to 25,000 birds a day use the mudflats and tidal marsh. For example, the area is often used when Portage Pass is closed due to bad weather. The waterfowl that normally transit the pass have to have a place to rest and feed. Chickaloon Flats is the principal place they use on Turnagain Arm.

The purpose of this bill is to assure adequate habitat for waterfowl rather than create a stumbling block for future development of resources. There are currently no valid oil and gas leases in the proposed critical habitat area that would be disrupted by the formation of a critical habitat area. Additionally, there is nothing in this bill that would preclude the future exploration of this area.

I urge your positive support of this proposed legislation.

PROPOSED CHICKALOON FLATS
CRITICAL HABITAT AREA
BACKGROUND INFORMATION

LOCATION: The proposed Chickaloon Flats Critical Habitat Area is located on the south side of Turnagain Arm at the head of Cook Inlet and is bisected by the Chickaloon River.

AREA DESCRIPTION: The proposed Chickaloon Flats Critical Habitat Area encompasses a large expanse of state-owned tidelands lying within the Kenai Peninsula Borough. Adjacent uplands are managed by the Kenai National Wildlife Refuge.

FISH AND WILDLIFE RESOURCES: Chickaloon Flats is one of a handful of key waterfowl and shorebird habitats in Cook Inlet which provide vital staging habitat for arctic nesting birds on their way to and from nesting grounds in the north. The mudflats and tidal marsh at the mouth of the Chickaloon River, created by the dramatic tidal action of Turnagain Arm, are critical waterfowl and shorebird feeding and resting habitat during spring and fall migration. In the fall, waterfowl waiting out bad weather replenish energy reserves on Chickaloon Flats before flying south through Turnagain Pass. Up to 25,000 birds a day use the mudflats and tidal marsh for resting and feeding during fall migration, including up to 5,000 lesser Canada geese at a time. Fall migrants include: tundra and trumpeter swans; lesser Canada geese; white-fronted geese; sandhill cranes; mallards; pintails; green-winged teal; shovelers; gadwalls; and American wigeon. Additional waterfowl species found during ice free months include: red-breasted mergansers, canvasbacks, common merganser, greater scaup, and common goldeneye. Snow geese and swans are most numerous on the flats during spring migration.

Northern phalaropes, glaucous-winged gulls, mew gulls, Bonaparte's gulls, arctic terns, common snipe, yellowlegs, dowitchers, semipalmated plovers, sandpipers, whimbrels, and godwits also feed on the productive estuarine tideflats.

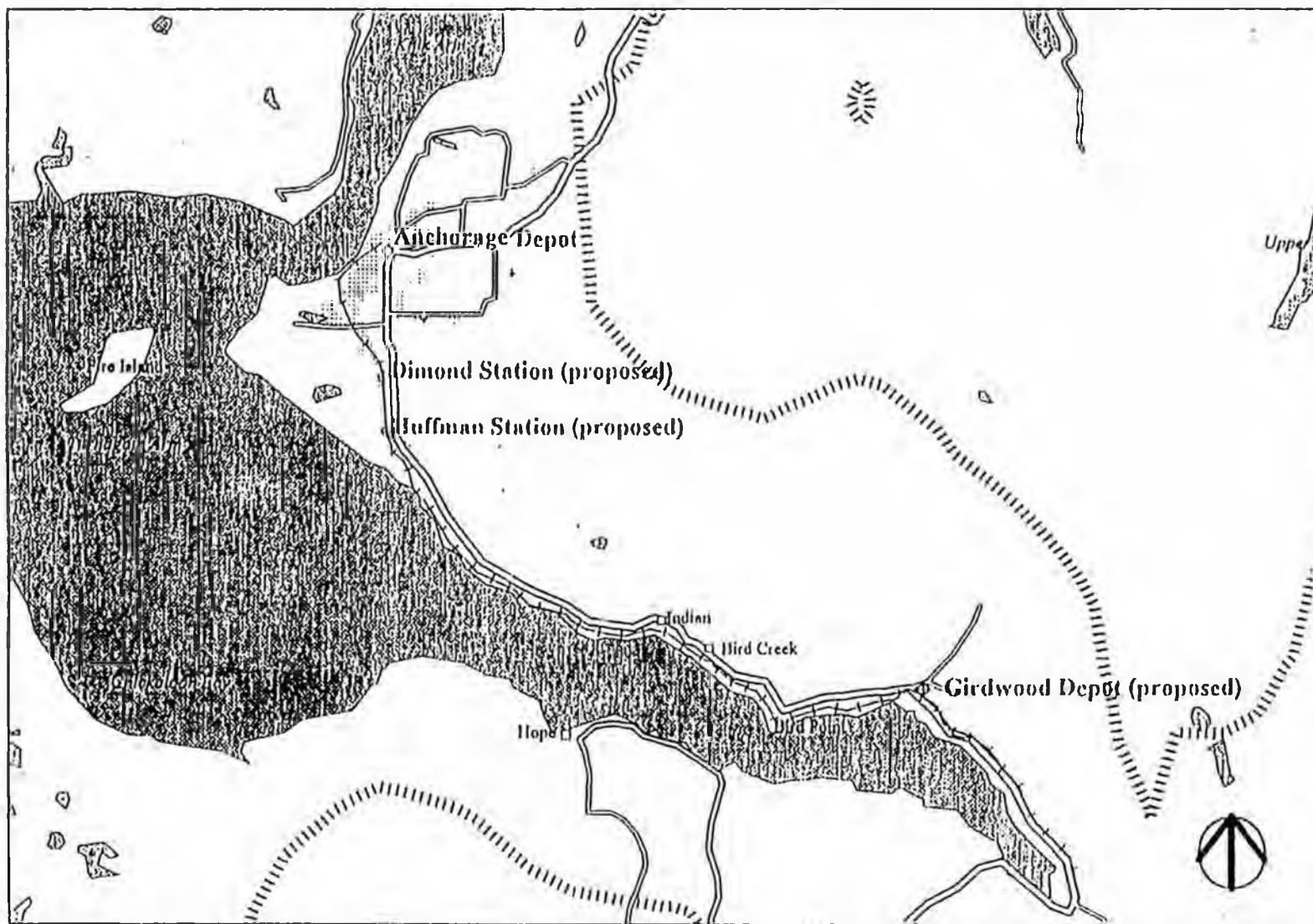
PUBLIC USE AND ACCESS: Chickaloon Flats has long been recognized as an important waterfowl hunting area in Cook Inlet. Fall waterfowl hunters access Chickaloon Flats by floatplane, landing on river channels and larger ponds or arrive by boat from the nearby community of Hope. Four-wheel drive vehicles are also used to access the area along unmaintained pipeline access roads through the Kenai National Wildlife Refuge. Mallards, pintails, wigeon, and green-winged teal are most frequently harvested.

REFERENCES:

- Quimby, Roland L. 1972 Waterbird Habitat and Use of Chickaloon Flats. pp 86.
- U.S. Fish and Wildlife Service. 1985 Kenai National Wildlife Refuge Final Comprehensive Conservation Plan. pp 195.

Figure 1. Area Map

Girdwood Rail Service Feasibility



HRRES - 02/01/95

HB 58 - CHICKALOON FLATS CRITICAL HABITAT AREA

REPRESENTATIVE CON BUNDE, PRIME SPONSOR, stated HB 58 was requested by businessmen from Anchorage who are duck hunters. He said while these people are business, development, and resource oriented people, they are also duck oriented. He explained HB 58 establishes on the Kenai Peninsula, across from Anchorage, a critical habitat area. On a map, Representative Bunde showed that the area encompasses the mud flats below mean high water, follows the meander of the bay, and in a straight line connects the two ends of the meander.

REPRESENTATIVE BUNDE stated Chickaloon Flats is on the northeast side of the Kenai Peninsula, on the Turnagain Arm facing the Anchorage Coastal Refuge and Potter Flats. The area has a local nesting population of ducks and geese. He said the most important use of this area is as a feeding and resting area for migrating ducks, geese, and shore birds. Up to 25,000 birds a day use the mud flats and tidal marsh. He noted this area is often used when Portage Pass is closed due to bad weather. The waterfowl that normally transit the pass need a place to rest and feed. He stressed Chickaloon Flats is the principal place the waterfowl use on Turnagain Arm.

REPRESENTATIVE BUNDE explained the purpose of HB 58 is to assure adequate habitat for waterfowl rather than create a stumbling block for future development of resources. He noted there are currently no valid oil and gas leases in the proposed critical habitat area that would be disrupted by the formation of a critical habitat area. He added there is nothing in HB 58 which would preclude future exploration of this area. He urged committee members to pass HB 58 out of committee.

Number 045

REPRESENTATIVE PETE KOTT agreed with the intent of the bill. He asked Representative Bunde to again review the geographical longitude description.

REPRESENTATIVE BUNDE responded the area goes east to west on the mean high water line (curved line) and then comes straight back in a straight line. Therefore, it is a half moon shape.

REPRESENTATIVE KOTT felt lines 1-3, page 2 are inconsistent with other habitat areas already created. He wondered why the statement "The department shall permit the following public uses to continue without further approval by the department unless the department determines that the use is not compatible with the purposes..." was included in HB 58.

REPRESENTATIVE BUNDE replied the word permit is defined as allow. For example, if there is some huge industrial activity in the area at the peak of migration, that would be incompatible. If it was done three months later when everything is frozen up, it would be compatible.

REPRESENTATIVE KOTT reiterated that the words "without further approval by the department" is not contained in any of the other

critical habitat areas which have been promulgated in statute. He felt the words enumerate concerns for allowances and thought it would be a negative inference in the sense that anything which is not enumerated would then have to be approved by the department.

REPRESENTATIVE BUNDE said the purposes outlined in lines 5-12, page 2, would be allowed without further approval. Department approval would be required for anything beyond those purposes outlined.

Number 091

REPRESENTATIVE JOHN DAVIES thought lines 10-12, page 2, generalize the concept and gives the department a certain amount of flexibility to address Representative Kott's concerns.

REPRESENTATIVE BUNDE said the term "other related uses" falls in the realm of outdoor recreation.

REPRESENTATIVE KOTT said he understands the intent of lines 10-12, page 2. He felt perhaps in line 2, page 2, the words "without further approval by the department" should be eliminated because that verbiage is not consistent with other statutory habitat areas which have been created. He assumed the Alaska Department of Fish and Game (ADF&G) will restrict any uses, either public or oil and gas, which are not compatible with the purpose to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife. However, he thought the words left it open in regard to the discretion of the department. The department might place restrictions which in their wisdom do not fall within the clause contained in lines 10-12, page 2.

GERON BRUCE, REPRESENTATIVE, ADF&G, said the recreational activities listed in HB 58 have been ongoing and the sponsor wants them to continue. He stressed these activities are normally allowed in legislatively specially designated areas because they do not pose a threat to fish and wildlife habitat; the protection of which is the critical component in designating the areas. He agreed the activities specified in HB 58 are more detailed than other plans but he felt they are consistent with the way the other areas are managed. Recreational uses of the critical habitat areas, game sanctuaries, etc. are allowed as long as they do not conflict with the protection of the habitat involved.

REPRESENTATIVE BUNDE reiterated that the activities listed are traditional activities and he did not want some future change of administration to decide that if someone wants to hunt in the area, they would have to get a permit. He stressed he did not want these traditional activities to be restricted in the future.

Number 153

REPRESENTATIVE DAVIES made a MOTION to AMEND HB 58 eliminating the word "permit" in line 1, page 2, and substituting the word "allow" and in line 2, page 2, eliminating the phrase "without further approval by the department".

REPRESENTATIVE BUNDE responded that amendment is fine.

REPRESENTATIVE KOTT thought the amendment would be an improvement. He noted, however, the word "permit" has been used in every other statutory creation of a habitat area. He reiterated that the phrase "without further approval by the department" concerned him because it offers a negative inference that if another type of activity not listed would need authorization or approval by the department. An example is three wheeling. He wondered if three wheeling falls within the category as outlined in lines 10-12, page 2.

REPRESENTATIVE BUNDE said at the mouth of the Susitna River there is a critical habitat area and the department has specifically limited the use of all-terrain vehicles to commercial fishermen during the fishing season and to within a quarter of a mile of salt water.

MR. BRUCE stated ADF&G supports HB 58. He noted the Department of Labor estimates that Alaska's population will grow by 40 percent over the next 15 years and a significant portion of that growth will occur in Anchorage. The department believes it is important to establish areas for people to enjoy recreational activities related to Alaska's fish and wildlife. The department also feels it is important to look toward the future and potential growth, so these opportunities will be there for future Alaskans.

Number 220

REPRESENTATIVE SCOTT OGAN asked what the difference is between establishing a critical habitat area and leaving an area as is.

MR. BRUCE responded a critical habitat designation allows the department to manage the area with the primary purpose of protecting habitat critical to fish and wildlife populations inhabiting that area. He added there is a need to ensure that someone coming into the area, wanting to engage in some type of activity does not damage that habitat and degrade it. He noted a critical habitat designation is the most mild form of land use designation and simply elevates fish and wildlife habitat in consideration, but does not preclude other uses.

REPRESENTATIVE OGAN questioned if the Chickaloon Flats area had been explored for oil and gas.

REPRESENTATIVE BUNDE replied the Kenai has been thoroughly examined on a seismic basis. There are no oil or gas leases presently and no leases are contemplated. He also had a discussion with the Alaska Miners and was assured there is no offshore mining potential in the area.

Number 258

DR. JIM SCOTT, REPRESENTATIVE, BIRD LEARNING CENTER, testified via teleconference and said the area being discussed is not a big area, but is an area which people have enjoyed for numerous years. He stressed the most important point is that the area is critical to waterfowl under certain kinds of circumstances. He explained when the need is there, the birds have the opportunity to wait in the area until Portage Pass opens up. Otherwise, a large number of birds may be lost. He added it is ridiculous to think that someone

might put a golf course on the mud flats. He stated it is important to think about the waterfowl and other birds who stage there. He urged support of HB 58.

Number 280

JOHN HENDRICKSON, PRESIDENT, ALASKA WATERFOWL ASSN., testified via teleconference. He said the Chickaloon Flats area encompasses about 22,000 acres and is important for migrating ducks, geese and thousands of shore birds. He noted the establishment of the critical habitat area will be compatible with the Kenai National Wildlife Refuge. He expressed support for the amendment proposed. He stressed HB 58 is an example of legislation which provides careful oversight of the land without any costs involved and no extra employees are needed.

MR. HENDRICKSON stated there is also a significant red salmon run going up the Chickaloon River. Therefore, the oversight and protection is important to commercial and sport fishers. He acknowledged the designation is not to preclude oil and gas exploration and production which he pointed out is done in the Redoubt Bay Critical Habitat Area, Susitna Flats, etc. He felt HB 58 is consistent with the kind of protection already in place. He told committee members the state of Alaska has established, through its legislature, the finest coastal waterfowl habitat and refuge system in the world. He noted there is a thriving duck population which does nest in the area being discussed.

CO-CHAIRMAN WILLIAMS noted for the record that Representative BARNES had joined the committee at 8:25 a.m.

Number 347

ROD ARNOT, PRESIDENT, ALASKA OUTDOOR COUNCIL, testified via teleconference and expressed support for HB 58. He stressed that as the Anchorage urban population continues to grow, these tidal flats become even more critical. The area is particularly important for times when the weather blocks Portage Pass and waterfowl need an area to congregate and rest before going through the Pass. He also expressed support for the amendment.

REPRESENTATIVE KOTT noted the use of campfires has been allowed in the area. If at some point, it is determined that the use of campfires is no longer compatible with the purpose of protecting the habitat, he asked what actions would be taken by the department to notice the public.

MR. BRUCE replied it could be noticed in a number of ways. He said in the beginning, the department would post signs in the area saying campfires are allowed only in certain places or not allowed, etc. He stated it could also be included in the management plan which will be developed for the habitat area and would be available for people to pick up at local ADF&G offices before going to the area.

REPRESENTATIVE RAMONA BARNES asked what type of track record the department has in critical habitat areas in not allowing other uses to continue when they are part of the legislation.

MR. BRUCE felt he could not answer the question on the track record for all the refuges and critical habitat areas since they were established. He thought the general public in Alaska supports the program and enjoys the use of the areas and the wildlife and habitat it protects.

REPRESENTATIVE BARNES said she does not know many Alaskans who support critical habitat areas or the locking up of the land.

Number 428

REPRESENTATIVE OGAN clarified the amendment and stated lines 1 & 2, page 2, will read "The department shall allow the following public uses to continue unless the department..."

CO-CHAIRMAN WILLIAMS asked for a roll call vote on the amendment. Voting in favor of the motion were Representatives Austerman, Ogan, Davies, Kott, Barnes and Williams. The MOTION PASSED 6-0.

REPRESENTATIVE KOTT made a MOTION to MOVE CSHB 58 (RES) out of committee with accompanying zero fiscal notes WITH INDIVIDUAL RECOMMENDATIONS.

REPRESENTATIVE BARNES said she would not object to moving CSHB 58 (RES) out of committee but added she will not support passage of the bill.

CO-CHAIRMAN WILLIAMS asked for a roll call vote. Voting in favor of the motion were Representatives Kott, Ogan, Barnes, Davies, Austerman and Williams. The MOTION PASSED 6-0.

CO-CHAIRMAN WILLIAMS recessed the meeting until 1:00 p.m.

TAPE 95-7, SIDE B
Number 000

CO-CHAIRMAN WILLIAMS called the meeting back to order at 1:10 p.m. Members present at the call to order were Representatives Williams, Ogan, Austerman, Barnes, Davies, Kott and Nicholia. Members absent were Representatives Green and MacLean. He stated there was a quorum present.

B

HOUSE COMMITTEE REPORT

2/3/95

(9)

Date Referred: January 16, 1995

FURTHER REFERRALS:

Finance

Date of Committee Action: 2/1/95

The RESOURCES Committee considered:

HB 58

HOUSE BILL NO. 58

CHICKALOON FLATS CRITICAL HABITAT AREA

"An Act establishing the Chickaloon Flats Critical Habitat Area."

recommends it be replaced with the following committee substitute CS HB 58 (RES) [X] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s)

[X] zero fiscal note(s) ADF+G [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures and names like Ogan, Barnes, Austerman, Kott, Davies, Williams, and summary counts (3, 1, 2).

CHAIR'S SIGNATURE W.R. Williams Williams

Alaska Chapter

Waterfowl U.S.A.

3105A Lakeshore Drive • Suite 105 • Anchorage, Alaska 99517
(907) 243-3235

February 7, 1995

FAX TO 465-2418

Representative Mark Hanley
State Capital
Juneau, AK 99811

RE: HB 58 Chickaloon Flats
Critical Habitat Bill


Dear Representative Hanley:

Please support HB 58, the Chickaloon Flats Critical Habitat bill. This area, which is on Turnagain Arm, is on the northeast side of the Kenai Peninsula. The area is especially valuable to ducks, geese and shorebirds that use the area to rest and feed when on migration. There is also local breeding populations of ducks, geese and shorebirds. The local birds tend to be more numerous at Pincer Creek and the Chickaloon River.

This bill will also protect the salmon runs that ascend the Chickaloon River. This is important to commercial, sport and personal use fishermen.

The Chickaloon Flats will remain open for oil and gas production and exploration. Further it will remain open for mineral entry and other traditional uses such as hunting, fishing and camping. We would appreciate your support on this bill.

Sincerely,


C. H. Rosenthal
Chairman-Alaska Chapter
Waterfowl U.S.A.

"Dedicated to increasing our waterfowl resource."