

SB

262

Alaska State Legislature



Senate

Sponsor Statement SB 262

SENATOR
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Senate District 12

Since Statehood, Alaskans, whose sustenance and livelihood relies upon our wildlife resources, have lost over 100 million acres to consumptive uses in one form or another. This land mass is larger than the State of Wyoming. Additionally, Alaskan hunters have lost effective utilization of some of the most productive areas in the State through ever increasing restrictions on access. These restrictions are being adopted in lands which sportsmen themselves have helped set aside and whom exclusively pay for the maintenance, management and administration of these lands.

Because of increasing restrictions and the loss of available areas to hunt, Alaskans are currently taking less than 2% of the annual harvestable surplus of moose, caribou and sheep--compared to other states who routinely harvest 30-50% of their big game each year. Additionally, Alaskan hunters harvest of moose, caribou and sheep has declined over 30% between 1989 and 1993.

The Department of Fish and Game is funded 100% by sportsmen's dollars generated through license fees and self imposed taxes. This legislation recognizes that public trust and would allow for no net loss of land for Alaska's consumptive users. Additionally, it requires remediation of 5 acres for every acre lost in the future.

The legislation will also eliminate the spending of Fish and Game fund monies paid by consumptive users for any activity on lands where consumptive uses have been eliminated or restricted. By passing this legislation, the legislature will recognize the special public trust created by the use of license monies and will reverse the trend of restrictions on consumptive uses throughout Alaska.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

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SENATE BILL 262

"relating to management of game populations for maximum sustained yield for human harvest"

Rifle hunters suing the State of Alaska when an area is limited to bow hunting; fishermen suing when a river is posted for catch and release to enhance trophy specimens; streamside anglers suing to keep the banks of the Kenai River open no matter what the long-term cost to king salmon spawning habitat: This is the future contemplated by Senate Bill 262.

Senate Bill 262 is a fatally flawed attempt to coerce the Alaska Department of Fish and Game into managing resources that belong to all Alaskans for the benefit of the disgruntled few. The Alaska Environmental Lobby opposes SB 262.

Senate Bill 262 hangs a "SUE ME" sign around the necks of public officials

SB 262 exposes the public officials who manage Alaska's resources to lawsuits brought by the disgruntled few who feel they've been harmed by official actions. The bill exempts only members of the Board of Game, not members of the Board of Fisheries, employees of the Department of Fish and Game, or anyone else who administers public lands and resources.

Current law allows the public to bring suit against officials acting *ultra vires* (outside their scope of duty). SB 262 drastically expands the public's right to sue government officials. Public officials could be sued in the following cases, among others:

For managing fish and game for social reasons, such as administering trophy hunting areas by permit or implementing catch and release fishing;

For managing fish and game for economic reasons, for instance at the request of local communities interested in promoting tourism;

For managing fish and game for biological reasons other than "maximum sustained yield" in areas where human harvest has been found to be an "important" use of game;

For actions taken in the best interest of the State of Alaska, where these conflicted with the provisions of SB 262;

For actions mandated by the Board of Game but applied by other public officials. The Board of Game is protected from suit, but a resource manager could be sued for carrying out the directives of the Board of Game, even when that official has no power to alter Board of Game decisions.

Public servants should base their decisions on sound science and public input, not on fear of legal reprisal from those who dislike their actions. Do we really want public officials to face lawsuits when they manage public resources for the benefit of all Alaskans, instead of the angry few?

Angered by an official decision? Sue the government -- free!

The Assistant Attorney General representing the Board of Game, Kevin Saxby, testified that SB 262 would invite a legion of expensive lawsuits paid for by state government. People bringing such lawsuits could be considered public interest litigants, so they would not be responsible for the costs of litigation. State government would pay the public to sue its officials. Who wouldn't sue, if there were no costs associated with bringing action?

Senate Bill 262 is based on fiction, not fact

SB 262 requires the state to open one acre of land for every acre "closed" to hunting. The bill is predicated on the mistaken belief that huge areas of state land are closed to hunting. Over and over we've heard the refrain,

"Since statehood, Alaska's consumptive users have lost the right to do as they wish on millions and millions of acres." This refers to federal, not state land. Wayne Regelin, Director of the Division of Wildlife Conservation, has testified that "almost all state-owned lands are open to hunters." The "no net loss" provision would be nearly impossible for Alaska's resource managers to implement, because no large areas of state land are presently closed to hunting.

Because of the lack of available closed land and the fact that reasonable management procedures would be considered "closures," SB 262 would, in effect, prohibit the management of any area for trophy hunting, catch and release fishing, or tourism (one of the state's growing industries). These are reasonable goals of fish and game management, and they benefit many Alaskans, including hunters and fishermen.

Senate Bill 262 will have unknown effects on Alaska's fisheries

SB 262 refers to "fish" in the title, to "sport fish" "fishing" "fish" and the "consumptive use of fish" in Section 2, to "fishing" in Sections 3 and 5, to "fish" and "fishing" in Section 6. But the ramifications of the bill for sport and commercial fisheries haven't been adequately explored. The Assistant Attorney General representing the Board of Fisheries, Steven Daugherty, testified that SB 262 has "negative implications" for fisheries. Examples he gave included catch and release fishing and trophy fishing.

Still unanswered is this question: How does SB 262 apply to commercial set-netting which occur on public tidelands? Will this result in lawsuits limiting the ability of managers to enact permit systems or regulate set-net sites? **Nowhere does this bill exclude commercial fishing from its provisions.** If commercial fishing is not excluded from the provisions of this bill, how could the state of Alaska enforce fishing openings and closings or in any way protect Alaska's priceless commercial fish resource?

Notably, SB 262 provides immunity from lawsuit to the Board of Game, but not to the Board of Fisheries. Why not? How could we get qualified

people to serve on the Board, if they could be sued by anyone who disliked their decisions?

SB 262 creates a new "public trust" that harms the public

SB 262 creates a new public trust for "special fish and game management areas" where none existed before. In doing so, it extends the public trust doctrine far beyond its traditional interpretation. The bill states that this trust would be broken by restricting public access or by restricting activities and opportunities for fishing, hunting and trapping. The penalties for breaching this so-called trust are enforcement of the "no net loss" provision and the possibility of punitive litigation against public officials.

Who is calling for this trust to be created? Not the vast majority of hunters and fishermen, who like to participate in the healthy processes of a fully functioning ecosystem. Only the fringe, who take any restriction of method of harvest or access as a personal insult.

By calling for "unrestricted fishing, hunting, and trapping activities," SB 262 steals many tools from the wildlife manager's bag of options. Regulating or limiting hunting and fishing seasons, controlling the method of hunting allowed or the type of access used, or setting bag limits, could all be considered "closures" under SB 262, triggering the "no net loss" provision. These methods are used by wildlife managers where appropriate to protect the state's fish and game resources. Although it calls for management based on biology, SB 262 would rob managers of these scientific management options.

The new "trust" created by SB 262 would penalize the State of Alaska's fish and wildlife managers for doing their job: conserving these resources for present and future use. The penalties would be the "no net loss" provision of SB 262, and the potential for a multitude of lawsuits against public officials doing their jobs to protect Alaska's fish and game resources for the benefit of all users. The results for Alaska's fish and wildlife would be calamitous. All Alaskans who like to view or consume fish and wildlife would be harmed by the creation of this new trust.

5/2/96

HOUSE JUDICIARY COMMITTEE

DATE 5/2/96

ISSUE Table SB 262

	YES	NO
BUNDE	✓	
TOOHEY		✓
VEZEY		✓
B. DAVIS	✓	
FINKELSTEIN	✓	
GREEN		✓
PORTER		✓

Fair

TONY KNOWLES, GOVERNOR

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 29, 1996

Hon. Brian Porter
Chairman
House Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Re: House CS for CS for Senate
Bill 262 (Res)

Dear Rep. Porter:

Tom Meyer of your staff requested a memo confirming testimony I offered earlier today about House CS for CS for Senate Bill No. 262 (Res), and suggestions for language changes. What follows is a very preliminary assessment of some of the most obvious legal issues. Others will undoubtedly need analysis if the bill is passed.

Perhaps the primary issue is sec. 2's incorporation of the public trust doctrine for certain state lands. To my knowledge, this is the first time this doctrine will have been explicitly applied to uplands, as opposed to navigable waters and tidelands, in Alaska. Where a public trust exists, courts typically set fairly high standards for approving disposals of interests in the subject real property. In Alaska, public trust tidelands may not be conveyed unless the conveyance is in furtherance of public trust principles or is found to not substantially impair public uses of the tidelands. CWC Fisheries, Inc. v. Bunker, 755 P.2d 1115 (Alaska 1988). A great deal of jurisprudence from other jurisdictions also exists on the public trust doctrine, and we should expect most of this law to eventually be argued to be applicable to limit state discretion to, for example, hold timber sales, lease minerals, or otherwise develop the subject uplands. Eliminating the "public trust" language from sec. 2 would preserve the Department of Law's

ability to, as it has hitherto generally done successfully, argue that limiting public trust principles are applicable only to tidelands and navigable waters, not uplands.

The second issue identified is that the definitions set forth in sec.s 1, 2 and 8 present the same problems that were recently identified as some of the reasons for the Governor's veto of SB 77. In other words, the newly-defined sustained yield concepts in this bill greatly narrow what has, until now, been thought by Alaska's game managers to be appropriate sustained yield management. To the extent that these definitions are deemed to be implementing, and defining, the sustained yield mandate of art. VIII, sec. 4 of the Alaska constitution, they will serve to severely limit the options available to managers, and will probably require extensive re-working of most current game management schemes. Elimination of these definitions of "harvestable surplus", "highest levels of human harvest" and "maximum sustained yield" would alleviate these concerns.

Other issues are raised by the citizen suit provisions in sec.s 1 and 2. Both purport to authorize suits against unidentified state officials to enforce, or challenge, decisions that will probably be made in most cases by the Board of Game, while exempting members of the Board of Game from such suits. The result is authorization of suits against state officials, like the Commissioner of the Department of Fish and Game, who probably will usually have no authority to effect the desired changes. While the State should be able to have most such suits dismissed, these invitations to bring suits against these powerless officials will probably cause a great deal of litigation expense and effort. Elimination of these provisions is advisable, and would have no effect on the public's right to seek declaratory judgments and injunctions to enforce game management statutes.

Other issues also exist; for example, the Board of Game's duty to "guarantee access" in sec.s 4 and 6, when the Board of Game generally has little land use authority, is confusing. Also, the requirement in sec. 1 to replace lands where opportunity is restricted with equivalent acreage elsewhere in the State is likely to create many impasses in, and greatly complicate, what is an already extremely complex set of factors

Hon. Brian Porter
House Judiciary Committee

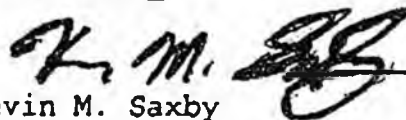
May 1, 1996
Page 3

for the Board of Game to consider when adopting its regulations. These, and other issues, will require more careful attention if the bill is passed.

Please let me know if I can be of any further assistance.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL



By: Kevin M. Saxby
Assistant Attorney General

cc: Pat Pourchot
Chrystal Smith
Bruce Botelho
Barbara Ritchie
Deborah Behr

Alaska State Legislature



House of Representatives House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

May 1, 1996

TO: House Judiciary Committee members

FROM: Tom Meyer

RE: May 2, 1996, calendar

The committee will be meeting tomorrow, Thursday, at 1:00 pm to hear SB 262. The bill passed from Resources this morning and is now version "R".

I've included the "O" version. This version received two amendments today in Resources. One is in hard copy from and is included. Another, from R. Ogan, deleted "emergency" and inserted "basis" on page 2, line 7.

**DIVISION OF WILDLIFE CONSERVATION
CONCERNS WITH CSSB 282(RES)
4/9/96**

- Will prohibit the spending of Fish and Game or Federal Aid funds on fish or wildlife education programs, special area management or planning, endangered species and nongame management, marine mammal management, law enforcement, public information services, and habitat protection.
- Will shift more than \$1 million in expenses to the general fund to cover costs of current programs which would no longer be funded from Fish and Game and Federal Aid funds.
- Contains definitions of "high level of human harvest", "intensive management", and "maximum sustained yield" that are without a sound scientific basis and will result in poor management of fish and wildlife resources.
- Mandates exclusive management of wildlife, a "common use" resource belonging to all Alaskans, for a narrow, special interest group.
- Eliminates "methods and means" restrictions as a useful regulatory and management tool (used by all wildlife agencies in all states). The bill would allow a "methods and means" or access restriction to be imposed only when the same restriction is lifted from a nearby area that is 3 times larger in size. No such areas exist.
- Would prohibit any permanent closure of public land to hunting or trapping, including for purposes of public safety, even if endorsed by all area residents.
- Eliminates all access restrictions to "special management areas," including state sanctuaries, unless the restriction is imposed to protect habitat. This will open up McNeil River, Pack Creek, and Round (Walrus) Island to unlimited and uncontrolled visitation, because current restrictions are for protection of wildlife populations, not for habitat protection.
- Eliminates access restrictions to "controlled use areas" created by the board to meet public demand for high quality hunting areas and to avoid conflicts between various consumptive user groups (e.g., Koyukuk controlled use area, Upper Kuskokwim controlled use area, Holitna controlled use area).
- Hamstrings responsible wildlife management by making public officials liable to lawsuits for proper performance of their jobs.

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Alaska Environmental Lobby, Inc.

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The Alaska Environmental Lobby Says: Vote NO to SB 262

- SB 262 mandates the Board of Game to open new areas to consumptive use three times larger than lands closed to consumptive use by the department, Board of Game, or other state agency. Allowing openings three times as large to areas that have only a healthy game population is not a comprehensive view of managing Alaska's resources.
- SB 262 neglects social and economic interests by managing solely on a biological basis.
- This management scheme does not provide biologically sound management for Alaska's game. This bill attempts to manage Alaska's wildlife on land measurement and human consumption scales.
- SB 262 does not take into account the overall status of the ecosystem in which these mandatory consumptive uses are imposed. Only a healthy ecosystem can adequately sustain both consumptive and non consumptive uses of the land and its wildlife, and this fails to address that concern.
- Assuming that consumptive use of game is the best use is inconsistent with the response of the majority of Alaskan citizens. We must also realize the magnitude of revenue that could potentially be lost by supporting this assumption.
- SB 262's vindictive and threatening language encourages individuals to pursue civil action and holds liability over the heads of public officials and state agencies.

We urge the Senate to consider these negative forces driving the management of Alaska's wildlife populations down a dead end street. Alaskans and Alaska's resources deserve more thoughtful governing than SB 262.

4/10/96

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • ALASKA FRIENDS OF THE EARTH
 ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS' COUNCIL
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 KNIA GROUP, SIERRA CLUB • KODIAK AUDUBON SOCIETY • KENNEDY NATIONAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER

Senator Mike Milier
February 12, 1996
Page 2

the state must provide five times the amount of land for unrestricted sport fishing, hunting, or trapping activities to replace the land on which the trust was violated. A person may bring an action to compel compliance with the provisions of this section or to remedy a violation of this section. If the person prevails in the action, the person is entitled to recover the full costs of the litigation. Key terms in this section are defined.

Section 3 of the bill amends the purposes for which state game refuges are established.

Section 4 of the bill amends AS 16.20.075 to require the Board of Game to adopt regulations guaranteeing access to state game refuges and continued opportunities for sport fishing, hunting, and trapping on state game refuges.

Section 5 of the bill adds a new section to AS 16.20 relating the purposes for which state range areas are established.

Section 6 of the bill amends AS 16.20.500 to amend the purposes for which fish and game critical habitat areas are established.

Section 7 of the bill amends AS 16.20.510 to require the Board of Fisheries and Board of Game to adopt regulations guaranteeing access to fish and game critical habitat areas and continued opportunities for sport fishing, hunting, and trapping on critical habitat areas.

Section 8 of the bill amends AS 16.20 by adding a new section containing a definition of "maximum sustained yield" for purposes of AS 16.20.

Section 9 of the bill states that certain provisions added by secs. 1 and 2 of the bill have the effect of amending certain rules of civil procedure adopted by the Alaska Supreme Court by allowing a person to recover the full, true, and actual costs of bringing and prosecuting an action authorized under those sections of the bill.

Section 10 of the bill provides that the provisions (amending court rules) described in sec. 9 of the bill do not take effect if they are not approved by two-thirds majority vote of each house as required by the Constitution of the State of Alaska.

If I may be of further assistance, please advise.

GU:klb:glc
96-094.klb

FISCAL NOTE

No. 1
 Bill Version: CS SB 26.26(c5)
 (S) Publish Date: 3-12-96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: Management of Fish/Game Population & Area BRU: Wildlife Conservation
 Component: Wildlife Conservation
 Sponsor: Senator Miller
 Requester: Senate Resources COMPONENT SERIAL NO. 473

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1024)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,025.7	1,025.7	1,025.7	1,025.7	1,025.7	1,025.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (1024 Fish & Game Fund)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)	(1,025.7)
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary)

Assumptions: (1) The legislation will become effective at the beginning of FY97. (2) To maintain department services and programs at existing levels, General Funds will be provided to offset Fish & Game Fund and Federal Aid spending reductions for programs such as, nongame, wildlife education, watchable wildlife, endangered species, marine mammals, and the McNeil River, Stan Price and Walrus Islands State Game Sanctuaries.

Sec. 2 of the bill restricts utilization of federal aid and license/tag revenue in areas where game populations are subject to preferences among consumptive uses that are not valid under the state constitution or state law. Virtually all big game populations trespass on federal lands that are "subject" to subsistence preferences not valid under state law. Accordingly, a strict interpretation of this bill would preclude expending nearly all Fish & Game Fund and Federal Aid revenues on wildlife management programs. To maintain existing programs and services using that interpretation would require annual General Fund appropriations of approximately \$15,000.0.

Prepared by: Diana Ground, Administrative Officer
 Division: Wildlife Conservation
 Approved by Commissioner: [Signature]
 Agency: Alaska Department of Fish and Game

Phone: 465-6194
 Date: 2/9/96
 Date: 2-12-96

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MEMORANDUM

February 10, 1996

SUBJECT: Sectional Summary of SB 262; An Act relating to management of game populations for maximum sustained yield for human harvest and providing for the replacement of areas closed to consumptive uses of game and relating to management of fish and game areas.

TO: Senator Mike Miller

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 262; An Act relating to management of game populations for maximum sustained yield for human harvest and providing for the replacement of areas closed to consumptive uses of game and relating to management of fish and game areas.

As a preliminary matter, note that a sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill amends AS 16.05 by adding a new section (AS 16.05.005), relating to management of game. On most land in the state, game populations are to be managed solely on a biological basis for maximum sustained yield for human harvest. Consumptive use of game is the highest and best use of game. If the Department of Fish and Game, the Board of Game, or another state agency closes an area of the state for consumptive use of game for sport or subsistence use or closes an area of the state to taking of game for consumptive use by a method, manner, or means that was permitted in the area before the closure, the Board of Game shall open new areas where the consumptive uses that were prohibited can occur, unless the closure was due to a biological emergency. A person may bring an action to compel compliance with the provisions of this section or to remedy a violation of this section. If the person prevails in the action, the person is entitled to recover the full costs of the litigation. Key terms in this section are defined.

Section 2 of the bill amends AS 16.05 by adding a new section (AS 16.05.145), creating a public trust for fish and game management areas. The public trust is violated by restricting public access to fish and game management areas, restricting sport fishing, hunting, or trapping in fish and game management areas, or using license fees paid by sportsmen or certain federal funds in certain areas or for certain purposes. If the public trust is violated,

HOUSE CS FOR CS FOR SENATE BILL NO. 262(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS MILLER, Sharp, Pearce, Halford, Green, Frank, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of game populations for maximum sustained
2 yield for human harvest and providing for the replacement of areas closed to
3 consumptive uses of game; relating to management of fish and game areas."

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

5 * Section 1. AS 16.05 is amended by adding a new section to read:

6 Sec. 16.05.005. MANAGEMENT OF GAME. (a) Notwithstanding any other
7 law to the contrary, game populations shall be managed solely on a biological basis.
8 In areas where human harvest has been found to be an important use of game, game
9 populations in those areas shall be managed for maximum sustained yield by human
10 harvest. Consumptive use of game is the highest and best use of game. This section
11 does not apply on land designated as a park or a state game sanctuary where
12 consumptive use of game is prohibited.

13 (b) If the department, the Board of Game, or other agency of the state, closes
14 an area to the taking of a game species for consumptive use for subsistence or sport

1 uses, or closes an area to the taking of a game species for consumptive use by a
2 method, manner, or means that was permitted in the area before the closure, the Board
3 of Game at its next regularly scheduled meeting after the closure shall open a new area
4 or areas where the consumptive uses that were prohibited can occur and where healthy
5 populations of the affected game species are present. The new area or areas opened
6 by the board shall be at least equal in size to the area that was closed. This subsection
7 does not apply to a temporary closure based upon a biological emergency.

8 (c) A person may bring a civil action in a court of competent jurisdiction
9 against a state agency or public official, other than a member of the Board of Game,
10 for an injunction to compel compliance with this section or to compel remedial action
11 to correct a violation of this section. A public official, other than a member of the
12 Board of Game, is not immune from suit under this section.

13 (d) In this section,

14 (1) "harvestable surplus" means the estimated number of animals that
15 is equal to the number of offspring born in a game population during a year less the
16 number of animals in the population that die during the year from all causes other than
17 predation or human harvest;

18 (2) "highest levels of human harvest" means the harvest of greater than
19 one-third or more of the harvestable surplus of a game population by humans;

20 (3) "maximum sustained yield" means the achievement and
21 maintenance in perpetuity of the highest levels of human harvest on an annual basis
22 of game, other than mammalian predators.

23 * Sec. 2. AS 16.05 is amended by adding a new section to read:

24 Sec. 16.05.145. PUBLIC TRUST FOR SPECIAL FISH AND GAME
25 MANAGEMENT AREAS. (a) The state has created a public trust by the use of
26 revenue generated from taxes, license fees, and other fees paid by sportsmen, by the
27 acceptance and use of funds received from federal aid in sport fish and wildlife
28 restoration programs, and by the establishment of state game refuges, range areas,
29 special management areas, critical habitat areas, and similar areas established by law.

30 (b) This public trust would be breached by

31 (1) restricting public access to state game refuges, range areas,

1 sanctuaries, special management areas, critical habitat areas, and similar areas
2 established by law, except when the restriction on access is necessary solely for the
3 purpose of protecting habitat from damage due to the method of access;

4 (2) restricting fishing, hunting, and trapping activities and opportunities
5 on state game refuges, range areas, special management areas, critical habitat areas,
6 and similar areas established by law in a manner that is inconsistent with maximum
7 sustained yield of fish and game; or

8 (3) utilization of the revenue generated from taxes, license fees, and
9 other fees paid by sportsmen or funds received from federal aid in sport fish and
10 wildlife restoration programs

11 (A) in an area where consumptive use of fish and game is not
12 permitted; or

13 (B) for management of nongame species.

14 (c) If the state breaches this public trust, the state shall either acquire an area
15 of land or designate an area of state land equal in size to the area of land on which the
16 public trust was breached in order to provide a location in the same geographic area
17 where unrestricted fishing, hunting, or trapping activities can occur.

18 (d) A person may bring a civil action in a court of competent jurisdiction
19 against a state agency or a public official, ~~who is a member of the Board of Game,~~
20 for an injunction to compel compliance with this section or to compel remedial action
21 to correct a violation of this section. A public official, ~~who is a member of the~~
22 **Board of Game**, is not immune from suit under this section.

23 (e) In this section,

24 (1) "harvestable surplus" means the estimated number of animals that
25 is equal to the number of offspring born in a game population during a year less the
26 number of animals in the population that die during the year from all causes other than
27 predation or human harvest;

28 (2) "highest levels of human harvest" means the harvest greater than
29 one-third or more of the harvestable surplus of a fish stock or game population by
30 humans;

31 (3) "maximum sustained yield" means the achievement and

1 maintenance in perpetuity of the highest levels of human harvest on an annual basis
2 of game, other than mammalian predators, or of fish.

3 * Sec. 3. AS 16.20.020 is amended to read:

4 Sec. 16.20.020. PURPOSE. The purpose of AS 16.20.010 - 16.20.080 is to
5 conserve, maintain, and develop habitat and game populations [PROTECT AND
6 PRESERVE THE NATURAL HABITAT AND GAME POPULATION] in certain
7 designated areas of the state and to guarantee access to and continued public
8 fishing, hunting, and trapping activities and opportunities in these areas,
9 consistent with maximum sustained yield.

10 * Sec. 4. AS 16.20.075 is amended to read:

11 Sec. 16.20.075. REGULATIONS. The board shall, under AS 16.05, adopt
12 regulations

13 (1) governing the taking of game on state game refuges it considers
14 advisable for conservation and protection purposes;

15 (2) guaranteeing access to and for continued consumptive uses.

16 * Sec. 5. AS 16.20 is amended by adding a new section to article 4 to read:

17 Sec. 16.20.295. PURPOSE. In addition to the purposes stated in AS 16.20.300
18 - 16.20.360, state range areas are created to guarantee access to and continued public
19 fishing, hunting, and trapping activities and opportunities in these areas, consistent with
20 maximum sustained yield.

21 * Sec. 6. AS 16.20.500 is amended to read:

22 Sec. 16.20.500. PURPOSE. The purpose of AS 16.20.500 - 16.20.690 is to
23 protect and preserve habitat areas especially crucial to the perpetuation of fish and
24 wildlife, and to restrict all other uses not compatible with that primary purpose and
25 to guarantee access to and continued public fishing, hunting, and trapping
26 activities and opportunities in critical habitat areas, consistent with maximum
27 sustained yield.

28 * Sec. 7. AS 16.20.510 is amended to read:

29 Sec. 16.20.510. REGULATIONS. The Board of Fisheries and the Board of
30 Game, where appropriate, shall adopt regulations they consider advisable for

31 (1) conservation and protection purposes governing the taking of fish

1 and game in state fish and game critical habitat areas;

2 (2) guaranteeing access to and continued public fishing, hunting,
3 and trapping activities and opportunities in fish and game critical habitat areas.
4 consistent with maximum sustained yield.

5 * Sec. 8. AS 16.20 is amended by adding a new section to read:

6 ARTICLE 6. GENERAL PROVISIONS.

7 Sec. 16.20.990. DEFINITION. In this chapter, "maximum sustained yield" has
8 the meaning given in AS 16.05.145.

HOUSE CS FOR CS FOR SENATE BILL NO. 262(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS MILLER, Sharp, Pearce, Halford, Green, Frank, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of game populations for maximum sustained
 2 yield for human harvest and providing for the replacement of areas closed to
 3 consumptive uses of game; relating to management of fish and game areas."

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

5 * Section 1. AS 16.05 is amended by adding a new section to read:

6 Sec. 16.05.005. MANAGEMENT OF GAME. (a) Notwithstanding any other
 7 law to the contrary, game populations shall be managed solely on a biological basis.
 8 In areas where human harvest has been found to be an important use of game, game
 9 populations in those areas shall be managed for maximum sustained yield by human
 10 harvest. Consumptive use of game is the highest and best use of game. This section
 11 does not apply on land designated as a park or a state game sanctuary where
 12 consumptive use of game is prohibited.

13 (b) If the department, the Board of Game, or other agency of the state, closes
 14 an area to the taking of a game species for consumptive use for subsistence or sport

1 uses, or closes an area to the taking of a game species for consumptive use by a
2 method, manner, or means that was permitted in the area before the closure, the Board
3 of Game at its next regularly scheduled meeting after the closure shall open a new area
4 or areas where the consumptive uses that were prohibited can occur and where healthy
5 populations of the affected game species are present. The new area or areas opened
6 by the board shall be at least equal in size to the area that was closed. This subsection
7 does not apply to a temporary closure based upon a biological basis.

8 (c) A person may bring a civil action in a court of competent jurisdiction
9 against a state agency or a public official, other than a member of the Board of Game,
10 for an injunction to compel compliance with this section or to compel remedial action
11 to correct a violation of this section. A public official, other than a member of the
12 Board of Game, is not immune from suit under this section.

13 (d) In this section,

14 (1) "harvestable surplus" means the estimated number of animals that
15 is equal to the number of offspring born in a game population during a year less the
16 number of animals in the population that die during the year from all causes other than
17 predation or human harvest;

18 (2) "highest levels of human harvest" means the harvest of greater than
19 one-third or more of the harvestable surplus of a game population by humans;

20 (3) "maximum sustained yield" means the achievement and
21 maintenance in perpetuity of the highest levels of human harvest on an annual basis
22 of game, other than mammalian predators.

23 * Sec. 2. AS 16.05 is amended by adding a new section to read:

24 Sec. 16.05.145. PUBLIC TRUST FOR SPECIAL FISH AND GAME
25 MANAGEMENT AREAS. (a) The state has created a public trust by the use of
26 revenue generated from taxes, license fees, and other fees paid by sportsmen, by the
27 acceptance and use of funds received from federal aid in sport fish and wildlife
28 restoration programs, and by the establishment of state game refuges, range areas,
29 special management areas, critical habitat areas, and similar areas established by law.

30 (b) This public trust would be breached by

31 (1) restricting public access to state game refuges, range areas,

1 sanctuaries, special management areas, critical habitat areas, and similar areas
2 established by law, except when the restriction on access is necessary solely for the
3 purpose of protecting habitat from damage due to the method of access;

4 (2) restricting fishing, hunting, and trapping activities and opportunities
5 on state game refuges, range areas, special management areas, critical habitat areas,
6 and similar areas established by law in a manner that is inconsistent with maximum
7 sustained yield of fish and game except for controlled use areas; or

8 (3) utilization of the revenue generated from taxes, license fees, and
9 other fees paid by sportsmen or funds received from federal aid in sport fish and
10 wildlife restoration programs

11 (A) in an area where consumptive use of fish and game is not
12 permitted; or

13 (B) for management of nongame species.

14 (c) If the state breaches this public trust, the state shall either acquire an area
15 of land or designate an area of state land equal in size to the area of land on which the
16 public trust was breached in order to provide a location in the same geographic area
17 where unrestricted fishing, hunting, or trapping activities can occur.

18 (d) A person may bring a civil action in a court of competent jurisdiction
19 against a state agency or a public official, other than a member of the Board of Game,
20 for an injunction to compel compliance with this section or to compel remedial action
21 to correct a violation of this section. A public official, other than a member of the
22 Board of Game, is not immune from suit under this section.

23 (e) In this section,

24 (1) "harvestable surplus" means the estimated number of animals that
25 is equal to the number of offspring born in a game population during a year less the
26 number of animals in the population that die during the year from all causes other than
27 predation or human harvest;

28 (2) "highest levels of human harvest" means the harvest of greater than
29 one-third or more of the harvestable surplus of a fish stock or game population by
30 humans;

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