

**SB**

**257**

**SENATE COMMITTEE REF RT**  
**First Committee of Referral**

DATE: 2/2/96

FURTHER: Judiciary

Date of 5-Day Notice: 2-15-96  
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-19-96

The Resources Committee considered SB 257

Relating to the taking of game or fish for public safety purposes.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR<sup>o</sup> \_\_\_\_\_

SIGNING DC PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>					
<i>[Signature]</i>		<i>Recommend regulations address "local authority" when no other dept. auth. present. i.e. VPSO, w. (b)(5) provided.</i>			
<i>[Signature]</i>					
<i>[Signature]</i>					
<b>CHAIR</b> <i>Loren J. Lerman</i>	<input checked="" type="checkbox"/>				

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
DFG	2/1/96	<input checked="" type="checkbox"/>	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

**CITY OF HAINES****TRANSMITTAL PAGE**

P.O. Box 1049  
Haines, AK 99827

Phone: 907 766 2231  
FAX: 907 766 3179

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**TO:** TOM PANAMAROFF  
Senator Zharoff's Office  
FAX 907 463 3043

**FROM:** Tom Healy, City Administrator *TH*

**RE:** Bear Problems

**DATE:** 10/5/95

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Number of pages VIA FAX: 10

**REMARKS:**

As I mentioned, attached is documentation of the City's attempts to resolve jurisdictional issues involving problem bears.

The dilemma we were in was that the troopers said that bears inside the City were the City's problem, but the City was reluctant to handle problem bears because of possible criticism or investigation by the troopers. We resolved this by having the troopers agree to assist as they were able on animal calls in the City and by stressing in policy the need to communicate with the troopers if an animal problem occurred in the City.

If you have any questions about this, our police chief Charlie Fannon (907 766 2121) can respond.

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## CITY OF HAINES, ALASKA

P.O. BOX 1049

HAINES, ALASKA 99827

(907) 766-2231 • TOURISM (907) 766-2234 • FAX (907) 766-3179

# COPY

June 8, 1993

Commissioner Richard Burton  
State of Alaska  
Department of Public Safety  
P.O. Box 111200  
Juneau, AK 99811-1200

Re: Bear Problems

Dear Commissioner Burton:

A problem has come up this year that I understand may be partly due to directives from your office. State of Alaska, Department of Public Safety and Fish and Wildlife personnel tell us that brown and black bears inside our city limits are a local public safety issue and the responsibility of the municipality's police department. They refuse to respond to calls inside the City.

As the Mayor of the City of Haines, I feel that if a bear is within the Haines City limits and is around the public, then it becomes a danger to the public. I am therefore notifying you that I am ordering the Haines City Police to destroy any bear that they find inside the City limits and in close proximity to people.

I feel that it is really the Fish and Wildlife officer's job to handle bear problems, whether they exist inside or outside a municipality's boundaries. Fish and Wildlife and/or Fish and Game are quick to assist in cities such as Juneau or Anchorage, but in Haines they will not even respond.

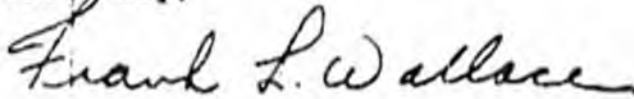
We recently had a police officer destroy a brown bear which was endangering the public. That officer is now being charged with improperly killing the bear.

If you want us to handle bear problems as public safety situations, then allow us to do so without the threat of being charged for violating Fish and Wildlife statutes. We cannot wait until a bear problem is so out of hand that human lives are threatened.

June 8, 1993  
Commissioner Burton  
Re: Bear Problems  
Page 2

Like you, when we hire a police officer, we expect that officer to use common sense and good judgement, with his first concern being public safety. The State of Alaska must assist and work with us, not tie our hands and endanger our citizens. Someone must protect the citizens of the City. If your department will not, we must be allowed to take on that responsibility.

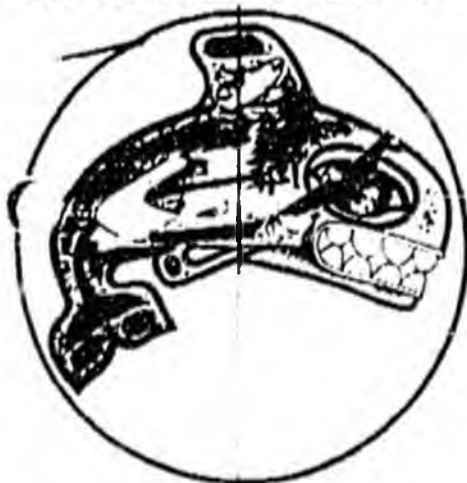
Sincerely,



Frank L. Wallace  
Mayor  
CITY OF HAINES

FLW/SVJ

cc: Governor Mickel  
Senator Zharoff  
Representative Mackie  
Fish & Game  
Haines City Police



# HAINES POLICE DEPARTMENT CITY OF HAINES, ALASKA

P.O. BOX 1049  
HAINES, ALASKA 99827  
(907) 766-2121

June 18, 1993

Lewis Monedraz  
Assistant District Attorney  
First Judicial District  
Box 110300  
Juneau, AK 99811

Dear Lewis,

RE: INFORMATIONAL - BEAR SHOOTING - 93-1148

( On June 06, 1993, Sgt Sam Smith shot a bear which he felt was a danger to the community of Haines.

Back in July of 1992, we were notified by Trooper Don Otis that we would not be getting a replacement Fish & Wildlife Officer. Fish & Wildlife Officer Carpenter had transferred out of Haines and the State of Alaska decided not to fill the Fish & Wildlife vacancy.

Since that time the Haines Police Department has been verbally told by Trooper Otis that moose and bear calls inside the city limits are a public safety issue and therefore the responsibility of the Haines City Police.

During March and April of 1993 I had several discussions with Trooper Otis in the presence of other members of the Haines Police Department. The nature of these discussions was that I insisted that on wildlife calls inside the city I had the right to expect a Trooper to respond and take care of the problem. Trooper Otis flatly stated that he would not respond, because wildlife calls inside the city were our responsibility. One statement was, "you can call me, but I will not respond."

( On May 26, 1993, there was a moose/vehicle accident on Haines Hwy next to Spruce Grove Trailer Park. This is inside the City limits. The moose had a disabling injury. Trooper Otis was called and a request was made for Trooper Atkinson's phone number so that he could be notified to come and make a

THE FOLLOWING PAGES MAY  
NOT FILM LEGIBLY BECAUSE OF  
THE POOR QUALITY OF THE ORIGINAL

Lewis Mendez  
INFORMATIONAL BEAR SHOOTING 93 1148  
Page 03

decision about shooting the moose or leaving it crippled. Trooper Otis advised Dispatcher Smith that we did not need Atkinson's phone number, he further advised us to shoot the moose and give the meat to the Rainbow Glacier Camp. I have since learned from Trooper Atkinson that if the moose was able to make it off the roadway then, "nature should be allowed to take its course." In this case we obeyed the Trooper and killed the moose. This was a judgement call. I do not think it was wrong, however it is obvious that it would of been handled differently by Trooper Atkinson.

The Haines Police Department had been told by the local Trooper that it is our responsibility to handle wildlife calls inside the City. On June 06, 1993, at around 2:30 a.m. Sgt Sam Smith made a judgement call about a Brown Bear which had refused to leave the area, had demonstrated his lack of fear of people, was presenting danger to the residents (especially children) of the area and it had also shown its willingness to destroy private property. Sgt. Smith decided to destroy this bear because it was a definite threat to the people who lived in that area.

Sgt. Smith's actions clearly indicate his concern for the public's safety. The first couple of times the bear showed itself, Sgt. Smith called the on-duty officers. With the arrival of the patrol vehicle the bear would go into the forest which borders Smith's yard. When the patrol vehicle would leave then the bear would return. Finally Sgt. Smith had the on-duty officer give him some shotgun slugs. When the bear returned after the fourth or fifth time Sgt. Smith notified the police dispatcher that he was going to have to kill the bear and would be firing a shot. Sgt. Smith then shot the bear.

I would much rather that a State Trooper had come and made the judgement call, then the State of Alaska could be responsible for the liability problem which would arise from not killing the bear, if that were the decision. This bear had been hanging around the area for about two weeks.

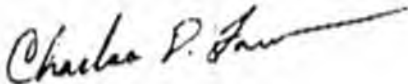
When there were too many bears hanging around Angoon a few years ago, the State Fish and Wildlife Trooper gave the city five permits to get rid of some of those bears. If I would of known it was possible to acquire such a permit, I would of applied for it. When we did ask for help from the State, we were told that it was not their problem, but that it was a public safety matter and we would have to handle it ourselves.

I think that if the State tells us to take care of a problem, then the State forfeits the responsibility for that problem. I also maintain that it is unprofessional and discriminatory for State representatives of law enforcement to step in and re-define the problem for the purpose of making a case. It is improper to define the issue as a public safety problem and then to re-define the problem as a Fish and Wildlife problem once the public safety problem is solved. It is also improper to say that a brown bear is a public safety problem just to have a State Agency a few dollars of overtime pay, forcing a municipal agency to deal with the issue.

Lewis Menendez  
INFORMATIONAL - BEAR SHOOTING - 93-1148  
Page 03

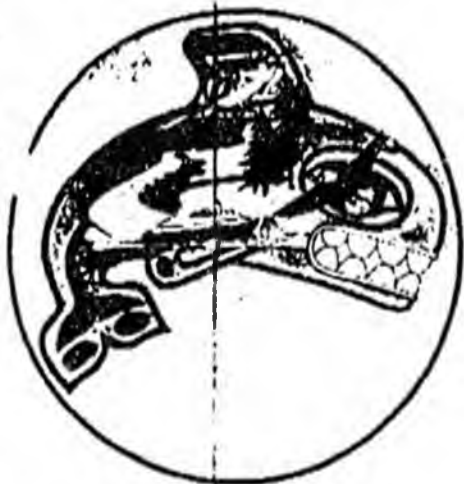
Since this incident has come to the attention of authorities outside of our community, I feel that it is finally being addressed properly. On June 15, 1991 I had a meeting with Lt. Lown, Sgt. Russel and Trooper Atkinson. Out of that meeting came a verbal agreement that we would be receiving assistance in the future on wildlife calls within the Haines city limits. We will work it out on a case-by-case basis and the city will make copies of our response cards so that Trooper Atkinson will be aware of what is transpiring.

Sincerely,



Charles D. Fannon  
Chief of Police

cc: Commissioner of Public Safety  
Lt. Lown



**HAINES POLICE DEPARTMENT  
CITY OF HAINES, ALASKA**

P.O. BOX 1049  
HAINES, ALASKA 99827  
(907) 766-2121

May 10, 1994

Dear Sir:

Attached is the Haines City Police Bear Policy. A lot of input has went into preparing this policy, however I am confident that as time goes by, revisions will be needed.

In the event that you see a needed change or addition, please feel free to contact me with your suggestions. I do not want this policy to become so complicated that it becomes useless and confusing. My hope is that future changes will make this policy more clear, concise and easily understood.

Sincerely,

Charlie Fannon  
Chief of Pblco

cc: Mayor Combs  
City Administrator  
Visitor's Center  
Distriqt Attorney  
Alaska Fish & Wildlife  
Alaska State Troopers

Effective Date:		Number:	
May 1, 1994		1.07.04	
Subject:			
BEAR POLICY			
Reference:		Special Instruction:	
5 AAC 92.410		None	
Distribution:	Reevaluation Date:	Number of Pages:	
All Personnel	May 1, each year or as needed	3	

### I. PURPOSE

The purpose of this policy is to provide the Haines Police Department personnel guidelines for the proper handling of bear problems and incidents which may arise in the course of their duties.

### II. DISCUSSION

It is the policy of the Haines Police Department to maximize public and officer safety through the use of some common sense guidelines. It is also recognized that no policy could hope to cover every situation which would involve a wild bear. It is hoped that a policy such as this would lend consistency to our response as individuals and as a department.

### III. PROCEDURES

- A. Initial call - notify Fish & Wildlife and/or State Troopers.
  1. The on duty officer will respond and handle the problem.
  2. The dispatcher should gather as much information from the reporting party as possible. This should include answering questions such as who, what, when, where and why.
  3. Priorities at the scene are to protect the public, protect yourself and protect against property damage.
  4. It may entail protecting the bear from harassing dogs (dogs by state law are not allowed to harass wildlife).
  5. Be prepared with a shotgun with slugs. Do not shoot a bear with your pistol unless forced to do so because of imminent danger.
  
- B. Identify the Bear
  1. Is this a bear which we have had other problems with.
  2. Does the reporting party or any other witnesses know this bear from prior sightings.
  3. Is it a brown bear or black bear.
  4. Does it have cubs.
  5. Is it injured or possibly sick.

## 107.04 BEAR POLICY (continued)

- C. Assess the Danger
1. Has the bear hurt anyone - let the dispatcher know.
  2. Don't place yourself in danger unless there is a threat to life.
  3. Has the bear destroyed any property - notify dispatch.
  4. Are there children in the area - notify dispatch.
  5. If you have to shoot - what additional danger to the public might this create. Remember, if you put a bullet into flight, you are responsible for that action.
  6. Do you need back-up.
- D. Take appropriate action
1. If this bear is not a known "problem bear" you should consider attempting to scare it away with a seal bomb, vehicle siren, or a cracker shell.
  2. If it is messing with a dumpster or trash can, consider cap-stunning the trash container.
  3. If it appears to be leaving the area - let it go.
  4. If it is a bear which Fish and Wildlife has determined should be destroyed - get back-up to assist you if there is time. Make sure you notify dispatch that you are going to destroy the bear. Dispatch will then be aware that you need back-up and that the threat level to you will be increased.
  5. Do not take a questionable shot. If you cannot get a good shot - wait. If it is truly a bear which needs to be destroyed then other opportunities will arise.
  6. Consider public safety first, personal safety second, protection of property third and protection of the bear last.
  7. Notify the Chief of Police about the department destroying a bear.
- E. Follow-up
1. Whatever the outcome of any incident - keep Fish & Wildlife informed. Put a copy of the SR Card or the report in the State Troopers box.
  2. Find out what draws bears to a certain area. If it is improperly stored trash, consider issuing a citation.
  3. Do you feel you need more training with a shotgun. Notify the Chief of Police.
  4. It is the responsibility of each officer to know Alaska Statutes. Review SAAC 92.410 so that you will be more in tune with State of Alaska Law regarding the legal destruction of a bear which is a threat to life and/or property.
  5. Fill out any paperwork required by or stemming from your handling of a bear incident.
  6. Understand that there will almost always be some type of public backlash when a bear is destroyed. It is in the best interest of the police department and the officer to be able to fully justify the destruction of a bear.
  7. Finally, remember that any bear shooting will be investigated by the State of Alaska Fish and Wildlife Department. Our case will not be closed in a positive manner until their case is closed. All police department personnel will cooperate in assisting other state agencies as is our duty.

## 107.04 BEAR POLICY (continued)

## F. Conclusion

1. Due to the problems in the past that have arisen when a bear has had to be destroyed, an agreement was made between the State and City. The State Fish and Wildlife Officer would respond to assist in dispatching problem bears, helping skin out a dead bear or try to determine what has drawn a bear into the area. It may not always be possible to get this assistance due to the nature of the Fish and Wildlife Officers job. If he is out of town or away at training then it is unreasonable to expect his assistance. This is why we need to be familiar with 5 AAC 92.410.
2. Any questions or suggestions which may arise in the use of this policy should be directed to the Chief of Police so that he can consider any revisions which may be necessary.

## STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332Jan 16  
February 15, 1996The Honorable Fred Zharoff  
Alaska State Senate  
State Capitol, Room 121  
Juneau, AK 99801-1182

Dear Senator Zharoff:

At the fall Board of Game meeting, you asked the board to consider how wildlife/human interactions, and particularly bear/human conflicts, could be better resolved in those communities and areas of the state where department personnel are unavailable. As a first step in addressing this problem, I have invited Commissioner Otte of Public Safety to discuss ways of authorizing Village Public Safety Officers and other enforcement personnel to handle wildlife problems within their jurisdictions.

As was discussed at the board meeting, the department and board may lack statutory authority to issue permits (or otherwise delegate authority) on matters related to public safety. At the fall 1994 board meeting, the board adopted a regulation authorizing the department to issue "permits to control nuisance wildlife." The purpose of the regulation was to clarify the department's authority to issue permits for such purposes as controlling nuisance beavers and taking migratory birds at airports to safeguard arriving and departing aircraft. The board also adopted a regulation that would require commercial wildlife exhibitors to carry liability insurance. The Department of Law questioned the authority of the board to regulate solely on the basis of public safety, and recommended that those regulations be deferred and reconsidered.

The authority for other public safety regulations has also been questioned. Those regulations include the requirement for persons under 16 to have hunter safety training before hunting without an adult on the Mendenhall State Game Refuge, the taking of wildlife in defense of life or property, and provisions for taking nuisance beavers under a permit. The department also issues "depredation" permits to airports around the state. The need to take birds and other game at airports to ensure public safety was underscored by the tragic loss of an AWACS plane at Elmendorf AFB last fall.

I agree with the board that statutory clarification is preferable to inventing a rationale on which to base public safety regulations that deal with wildlife. Not only would a statutory amendment support our existing public safety/property damage regulations, but it could provide the basis for empowering VPSOs to help resolve human/wildlife conflicts in remote communities.

The Honorable Fred Zharoff

2

February 15, 1996

At the fall board meeting you offered to help with this matter. A comprehensive statutory solution would be to amend three statutes, as follows. Amend AS 16.05.255(a) (Regulations of the Board of Game) by inserting: "The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 for . . . (3) establishing the means and methods employed in the pursuit, capture, and transport of game, including regulations, consistent with public safety and welfare, and resource conservation and development goals . . ." and by adding: "(1) taking game to ensure public safety or to control or prevent damage to property." Amend AS 16.05.050(6) (Powers and duties of the commissioner) by inserting: "(6) to take, capture, propagate, transport, buy, sell, or exchange fish or game or eggs for propagating, scientific, [OR] stocking, or public safety purposes." We have discussed this wording with the Department of Law and believe these amendments would provide concrete authority for existing regulations and activities. The department and the board would support this or some similar clarification of statutory authority. If we can provide any assistance in this matter, please let me know.

Sincerely,

Frank Rue  
Commissioner

cc: Pat Pourchot, Legislative Director, Governor's Office  
Wayne Reglin, Director of Wildlife Conservation  
Kevin Saxby, Assistant Attorney General

bcc: Geron Bruce

FR/PK/pk

WC

JAN 26 1996

TO: Colonel Glenn Goarrey, Director  
Alaska State Troopers

DATE: January 24, 1996  
CONSERVATION DIVISION

Colonel John Glass, Director  
Fish and Wildlife Protection

FILENAME:

TELEPHONE NO: 465-4322

FROM: Ronald L. *[Signature]*  
Commissioner  
Department of Public Safety

SUBJECT: Bear/Human Con-  
flicts

Attached for your review is a request from Commissioner Frank Rue asking for our assistance in developing an acceptable protocol for bear/human conflicts in rural areas. He has identified Ken Taylor as his designee on this issue.

After you have reviewed the request from the Department of Fish and Game, please contact Mr. Taylor at 465-4192 and provide him with whatever resources, personnel, and assistance he may need in developing a workable policy for the state.

Attachment

cc: Frank Rue, Commissioner  
Department of Fish and Game

Post-It™ brand fax transmittal memo 7671 # of pages 5

To: Annette Kretzger	From: Wayne Kuehlin
Co.	Co. ADF + G
Dept.	Phone #
Fax #	Fax #

# STATE OF ALASKA


DEPARTMENT OF FISH AND GAME  
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 25328  
JUNEAU, AK 99802-5528  
PHONE: (907) 465-4100  
FAX: (907) 465-2332

## MEMORANDUM

TO: Ronald L. Otte  
Commissioner  
Department of Public Safety

FROM: Frank Rue   
Commissioner

DATE: January 12, 1996

SUBJECT: Bear/Human Conflicts

At the October Board of Game meeting, Senator Zharoff asked the board and the department to help Alaskans living in small communities deal with problem brown bears. We do not want to wait until a comprehensive wildlife/human interaction plan is developed and implemented before addressing the immediate problems faced by many rural residents. When an animal places people in imminent danger, the regulation governing the taking of game in defense of life or property (5 AAC 92.410) would be in effect. I agree with the Senator, however, that citizens should not have to fear walking around their communities or going to the local landfill because of a nuisance or "problem" bear. The department is looking at ways to remove perceived threats before they become real.

One solution for villages that lack a department biologist or protection officer would be to enlist and train Village Public Safety Officers and other law enforcement officials in how to deal with problem bears. Specific authority could be delegated to VPSOs to destroy bears that pose real threats to the public. That authority would remove the concern of some residents about prosecution under 5 AAC 92.410. More importantly, it would encourage villagers to seek the VPSO for resolution of a problem rather than to take matters into their own hands. The outcome should be a more secure community environment, a reduction in the number of bears killed, and improved reporting of bears taken.

Permits could be issued to VPSOs either by department permit or cooperative agreement. A special permit issued by this department to you could authorize the delegation of authority to any named DPS employee (or position) to take game to safeguard public life and property. Alternatively, you or your delegate could issue permits directly, through a cooperative agreement developed between our departments.

Ken Taylor, Deputy Director of Wildlife Conservation, will be coordinating this effort for the department. I have asked him to work with you and your staff on this problem and develop an agreeable solution. Please let me know your feelings about this matter and who we should contact in your department. Thank you.

cc: Ken Taylor  
Wayne Regelin

**DEPARTMENT OF FISH AND GAME  
POSITION PAPER**

**Bill No:** SB 257

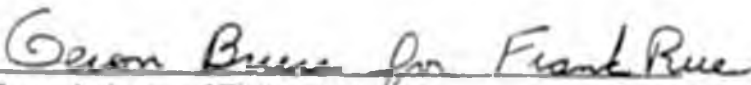
**Sponsor:** Senator Zharoff

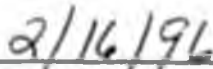
**Bill Title:** Taking Fish or Game for Public Safety

**Department Position:** Support

**Background/Legislative Intent:** The department of law has questioned the board of game's authority to adopt regulations on the basis of public safety. This bill would provide clear statutory authority for existing regulations that deal with public safety issues.

**Analysis of Bill/Program Effects:** During the past year, the department of law has asked the board of game to withdraw adopted regulations dealing with public safety issues and has questioned the statutory authority for public safety regulations currently in effect. These regulations include 5 AAC 92.400 (emergency taking of game for food), 5 AAC 92.410 (taking game in defense of life or property), 5 AAC 92.510 (restrictions on taking game without completing a hunter safety course, e.g., unaccompanied minors under 16 in the Mendenhall State Game Refuge), 5 AAC 92.041 (permit to take beavers to control damage to property), 5 AAC 92.052 (some discretionary permit hunt conditions). Also questioned is authority for department personnel and other enforcement officers to legally take or destroy game in urban areas or villages when those animals pose a threat to the public welfare. Recent regulatory proposals adopted by the board, but deferred at the request of the department of law, would have (1) required commercial wildlife exhibitors to carry public liability insurance, and (2) authorized the department to issue "permits to control nuisance wildlife." That regulation would have codified the department's practice of issuing permits that authorize the taking of migratory birds at airports to safeguard arriving and departing aircraft.

  
Commissioner of Fish and Game

  
Date



## Senator Fred F. Zharoff

*Alaska State Legislature*

In Kodiak: P.O. Box 405, Kodiak, Alaska 99615 (907) 486-5259 (Fax also)

In Juneau: State Capitol, Room 121, Juneau, Alaska 99801-1182

Phone: (907) 465-3473 • Fax: (907) 463-3043

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State Senate District C

Kodiak Island & Rural Southeast Alaska

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### Sponsor Statement

SB 257

"An Act relating to the taking of game or fish for public safety purposes"

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I have introduced SB 257 to clarify the powers of the Department of Fish and Game and the Alaska Board of Game with regard to matters of public safety. The need for this legislation arose from meetings with ADF&G and the Board of Game regarding chronic bear/human conflicts in communities throughout my district.

Section 1 provides the commissioner of fish and game with the power to authorize the taking of fish and game for public safety purposes. This provides a mechanism for the department to work with remote communities on dealing with true "problem" wildlife that are causing unacceptable threats to public safety. With this authority, the department can work with the Village Public Safety Officer program and others to establish procedures for resolving serious conflicts.

Section 2 provides clarity to the Board of Game with regard to their powers to adopt regulations regarding public safety and welfare. The Department of Law has informed the board that they currently lack clear authority in this area, and asked them to defer the adoption of further regulations until the statutes are amended. Many current regulations are also in question with this interpretation by the Department of Law. These regulations range from authorizing the taking of wildlife in defense of life and property to the requirement of hunter safety training for juveniles prior to hunting in certain game refuges.

The passage of SB 257 will provide necessary tools to the Department of Fish and Game and the Board of Game to aid in public safety and welfare.