

SB

262

SENATE COMMITTEE REI RT
First Committee of Referral

DATE: 2/2/96

FURTHER: Judiciary

Date of 5-Day Notice: 2-8-96
 (in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-12-96

The Resources Committee considered SB 262

Relating to management of fish and game areas.

and recommends:

- be replaced with CS SB 262 (RES)
- 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# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Wm. Keene</i>	<input checked="" type="checkbox"/>	<i>Tom Hoff</i>	<input checked="" type="checkbox"/>		
<i>Robert Taylor</i>	<input checked="" type="checkbox"/>				
<i>Paul Halford</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Loren D. Senne</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>Dept. Wildlife Conservation</i>	<i>2/4/96</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby is opposed to SB 262

SB 262 assumes "consumptive use of game is the highest and best use of game" and that game populations should be managed "solely..for maximum sustained yield by human harvest".

Legislative language of that sort is driven by competition to bag one's limit; not concern for the overall health of an ecosystem. Only a healthy ecosystem will be able to adequately sustain both game and non game populations for subsistence and recreational hunters; as well as for tourism and other nonconsumptive use.

SB 262 determines that if an area is closed to hunting or to a particular method of hunting...another area at least five times as large must be opened elsewhere. Potential conflicts from such a "one for five" swap effectively eliminate closure or a limit on methods from game managers' tool bags. That is more coercion than law.

SB 262 encourages individuals unhappy with a game management decision to "bring a civil action in a court of competent jurisdiction". It assures the potential plaintiff that if they prevail they are "entitled to recover the full, true, and actual costs of litigation, including 100% of actual attorney fees." The Bill further threatens: "A public official is not immune from suit".

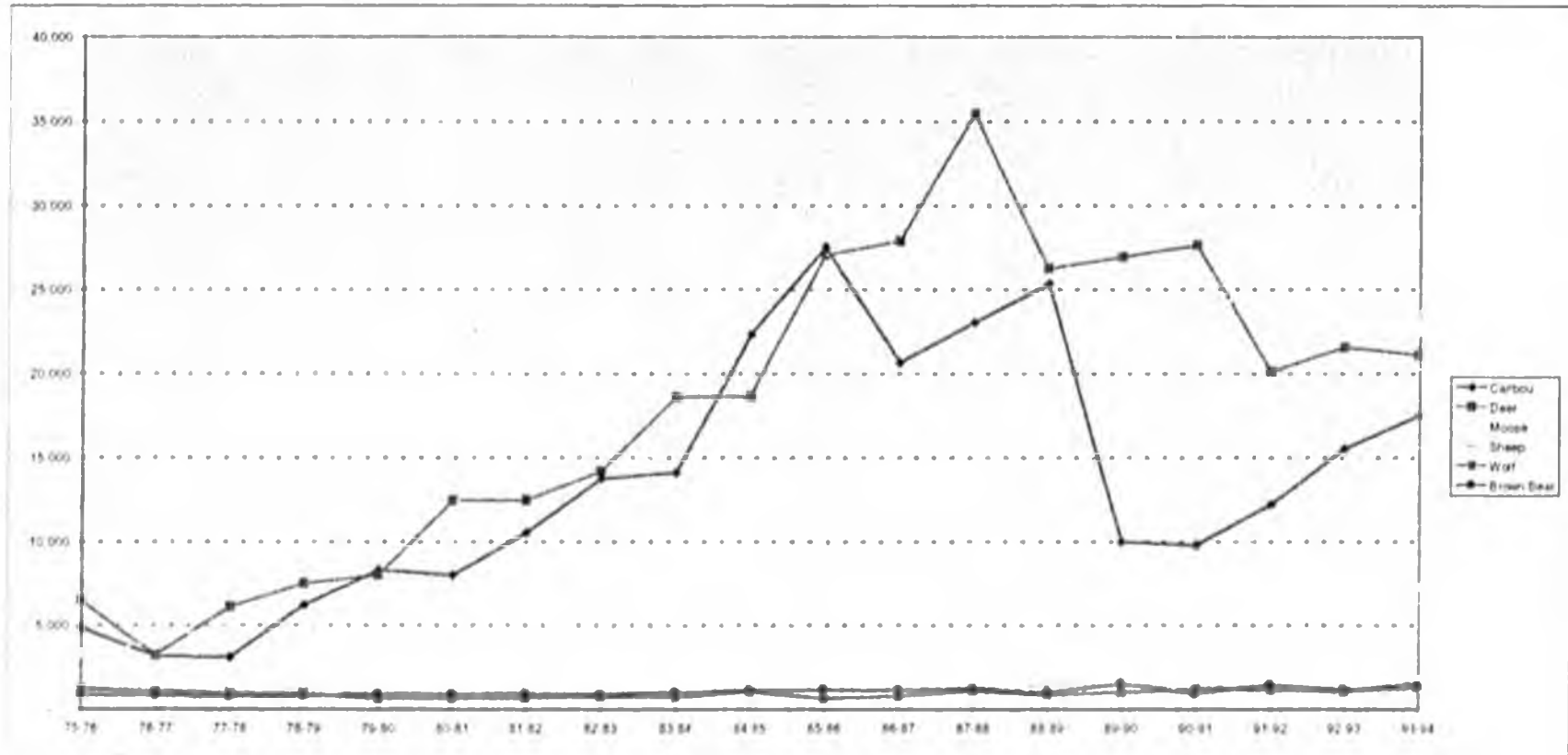
The subject matter of this bill-management of game populations-is a potentially divisive, emotional issue that begs for thoughtful, responsible leadership. In contrast, the tone and tenor of this legislation is angry and confrontational. Alaskans and Alaska's resources deserve better guidance than SB 262.

3/8/96



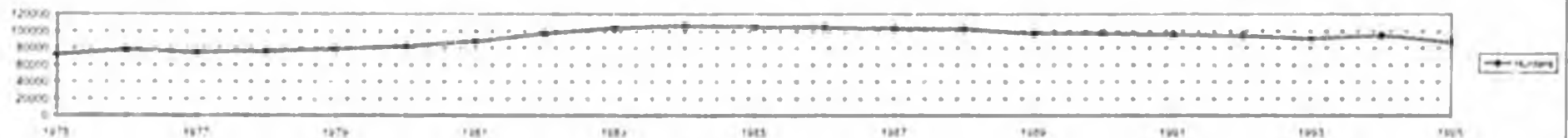
STATEWIDE BIG GAME SPORT HARVEST

	75-76	76-77	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94
Caribou	4,868	3,192	3,111	6,200	8,300	8,000	10,538	13,761	14,110	22,354	27,545	20,658	23,025	25,351	9,997	9,784	12,226	15,539	17,519
Deer	6,496	3,200	6,111	7,500	8,000	12,426	12,478	14,180	18,609	18,650	27,058	27,884	35,420	26,248	26,954	27,648	20,152	21,555	21,147
Moose	3,268	4,067	5,145	5,171	4,352	4,500	5,909	5,333	7,374	7,689	6,377	7,571	7,141	7,685	7,257	6,070	7,069	6,277	7,286
Sheep	1,071	1,112	1,126	1,260	954	849	1,081	1,022	1,033	1,042	1,097	1,264	1,314	1,436	1,454	1,406	1,464	1,145	1,101
Wolf	1,243	1,076	917	905	643	667	666	754	745	1,054	669	806	1,099	860	1,017	1,175	1,165	1,051	1,583
Brown Bear	827	832	774	819	883	882	887	823	974	1,118	1,155	1,105	1,212	904	1,497	950	1,429	1,175	1,322



LICENSED HUNTERS

	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Licensed Hunters	71,823	77,731	74,891	76,058	78,711	81,774	87,659	96,986	103,557	106,471	105,026	103,941	102,811	102,007	97,221	96,837	95,712	94,200	90,835	94,817	87,346
Population	384,100	409,800	418,000	411,600	413,700	419,800	434,300	464,300	499,100	524,000	543,900	550,700	541,300	535,000	538,900	553,124	549,383	587,328	597,868	636,278	615,900



FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 262

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: 2/8/96
 Date: 2-12-96

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Alaska State Legislature

SENATOR

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Senate

Senate District 0

Sponsor Statement SB 262

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 30-60% 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.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

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,

Senator Mike Miller
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

9-LS1431NG
Ute mohle
3/8/96

CS FOR SENATE BILL NO. 262(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE 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 yield
2 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; and
4 amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil Procedure."

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

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

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

14 (b) If the department, the Board of Game, or other agency of the state, closes

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

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

13 (d) A person who brings an action to enforce this section and who prevails in
14 the action is entitled to recover the full, true, and actual costs of litigation, including
15 100 percent of actual attorney fees.

16 (e) In this section,

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

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

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

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

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

1 special management areas, critical habitat areas, and similar areas established by law.

2 (b) This public trust would be breached by

3 (1) restricting public access to state game refuges, range areas,
4 sanctuaries, special management areas, critical habitat areas, and similar areas
5 established by law;

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

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

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

15 (B) for management of nongame species.

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

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

24 (e) A person who brings an action to enforce this section and who prevails in
25 the action is entitled to recover the full, true, and actual costs of litigation, including
26 100 percent of actual attorney fees.

27 (f) In this section,

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

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

4 (3) "maximum sustained yield" means the achievement and
5 maintenance in perpetuity of the highest levels of human harvest on an annual basis
6 of game, other than mammalian predators, or of fish.

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

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

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

15 Sec. 16.20.075. REGULATIONS. The board shall, under AS 16.05, adopt
16 regulations

17 (1) governing the taking of game or: state game refuges it considers
18 advisable for conservation and protection purposes;

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

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

21 Sec. 16.20.295. PURPOSE. In addition to the purposes stated in AS 16.20.300
22 - 16.20.360, state range areas are created to guarantee access to and continued public
23 fishing, hunting, and trapping activities and opportunities in these areas, consistent with
24 maximum sustained yield.

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

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

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

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

4 (1) conservation and protection purposes governing the taking of fish
5 and game in state fish and game critical habitat areas;

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

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

10 ARTICLE 6. GENERAL PROVISIONS.

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

13 * Sec. 9. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by sec.
14 2 of this Act, have the effect of amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil
15 Procedure, by providing that a person who prevails in an action under AS 16.05.005(c) or
16 16.05.145(d) is entitled to recover the full, true, and actual costs of bringing and prosecuting
17 the action, including 100 percent of actual attorney fees incurred to bring and prosecute the
18 action.

19 * Sec. 10. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by
20 sec. 2 of this Act, take effect only if sec. 9 of this Act receives the two-thirds majority vote
21 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.



Alaska State Legislature

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State Capitol
Juneau AK 99801

MEMO

TO: George Utermohle
Legal Services
via fax: X2029 this page only

FROM: Annette Kreitzer, Aide to MK
Senate Resources Committee
PHONE: X4907

DATE: March 11, 1996

RE: Senate CS for SB 262(RES)

Please prepare a FINAL Senate Resources CS for SB 262 with the following changes.

1. Page 1, Lines 9-12:

The Committee wants to exclude board of game members from this section. This was a verbal amendment with no instruction as to drafting style.

2. Page 3, Line 1:

Following "established by law," Insert:
except when such restrictions are necessary solely for the purpose of protecting habitat from direct damage due to the method of access.

Please deliver the FINAL to Senator Loren Leman's office, Room 115 of the Capital. No other changes were adopted by the committee. Call if you have questions.



Alaska State Legislature

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MEMO

TO: George Utermohle
Legal Counsel
via FAX: 2029 this page only

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: March 7, 1996

RE: CS for SB 262 (RES): **ADDENDUM!**

PLEASE INCLUDE THE FOLLOWING CHANGES IN ADDITION TO THE
CHANGES IN THE PREVIOUS MEMO:

Page 2, Line 19:
following "harvest of", insert: greater than

Page 3, Line 30:
following "harvest of", insert: greater than

Page 3, Line 27:
following "born in a", insert: game

THANKS!



Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: George Utermohle
Legal Counsel

FROM: Annette E. Kreitzer, Aide to
Senate Resources Committee

DATE: March 7, 1996

RE: CS for SB 262 (RES)

Using the following language, please craft another CS for SB 262 (RES). The citations are to the LS1431N² version you drafted February 29, 1996. This bill will be before the Resources Committee tomorrow at 3:30 p.m..

Page 1, Lines 8-9:

After "basis" insert After "basis." insert the following language: In areas where human harvest has been found to be an important use, those game populations shall be managed for maximum sustained yield by human harvest.

Page 2, Line 5:

DELETE [five]
Insert three

Page 2, Line 19:

DELETE [high level]
Insert highest levels

Page 2, Line 22:

DELETE [a high level]
Insert the highest levels

Page 3, Line 15:

DELETE [five]
Insert three

Page 3, Line 30:

DELETE [high level]
Insert highest levels

Page 4, Lines 2-3:

DELETE [a high level]
Insert the highest levels

After "game" insert , and on line 3 following "predators" insert , (to make the punctuation correctly consistent with page 2, line 23)

Those are all of the changes. Please call me at x4907 if you have questions.

9-LS1431F
Utermohle
2/29/96

CS FOR SENATE BILL NO. 262(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE 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 yield
2 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; and
4 amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil Procedure."

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

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

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

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

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

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

11 (d) A person who brings an action to enforce this section and who prevails in
12 the action is entitled to recover the full, true, and actual costs of litigation, including
13 100 percent of actual attorney fees.

14 (e) In this section,

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

19 (2) "high level of human harvest" means the harvest of one-third or
20 more of the harvestable surplus of a game population by humans;

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

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

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

31 (b) This public trust would be breached by

1 (1) restricting public access to state game refuges, range areas,
2 sanctuaries, special management areas, critical habitat areas, and similar areas
3 established by law;

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 to ³five times the acreage of land on
16 which the public trust was breached in order to provide a location in the same
17 geographic area 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 for an injunction to compel compliance with
20 this section or to compel remedial action to correct a violation of this section. A
21 public official is not immune from suit under this section.

22 (e) A person who brings an action to enforce this section and who prevails in
23 the action is entitled to recover the full, true, and actual costs of litigation, including
24 100 percent of actual attorney fees.

25 (f) In this section,

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

30 (2) "high level of human harvest" means the harvest of one-third or
31 more of the harvestable surplus of a fish stock or game population by humans;

1 (3) "maximum sustained yield" means the achievement and
2 maintenance in perpetuity of a high level of human harvest on an annual basis of game,
3 other than mammalian predators or of fish.

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) conservation and protection purposes governing the taking of fish
2 and game in state fish and game critical habitat areas;

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

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

7 ARTICLE 6. GENERAL PROVISIONS.

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

10 * Sec. 9. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by sec.
11 2 of this Act, have the effect of amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil
12 Procedure, by providing that a person who prevails in an action under AS 16.05.005(c) or
13 16.05.145(d) is entitled to recover the full, true, and actual costs of bringing and prosecuting
14 the action, including 100 percent of actual attorney fees incurred to bring and prosecute the
15 action.

16 * Sec. 10. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by
17 sec. 2 of this Act, take effect only if sec. 9 of this Act receives the two-thirds majority vote
18 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby is opposed to SB 262

SB 262 assumes "consumptive use of game is the highest and best use of game" and that game populations should be managed "solely for maximum sustained yield by human harvest".

Legislative language of that sort is driven by competition to bag one's limit; not concern for the overall health of an ecosystem. Only a healthy ecosystem will be able to adequately sustain both game and non game populations for subsistence and recreational hunters; as well as for tourism and other nonconsumptive use.

SB 262 determines that if an area is closed to hunting or to a particular method of hunting...another area at least five times as large must be opened elsewhere. Potential conflicts from such a "one for five" swap effectively eliminate closure or a limit on methods from game managers' tool bags. That is more coercion than law.

SB 262 encourages individuals unhappy with a game management decision to "bring a civil action in a court of competent jurisdiction". It assures the potential plaintiff that if they prevail they are "entitled to recover the full, true, and actual costs of litigation, including 100% of actual attorney fees." The Bill further threatens: "A public official is not immune from suit".

The subject matter of this bill-management of game populations-is a potentially divisive, emotional issue that begs for thoughtful, responsible leadership. In contrast, the tone and tenor of this legislation is angry and confrontational. Alaskans and Alaska's resources deserve better guidance than SB 262.

3/8/96

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • ALASKA FRIENDS OF THE EARTH
ANCHORAGE ALUTIQUON SOCIETY • ARCTIC ALUTIQUON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS COUNCIL
DENALI GROUP, SIERRA CLUB • JUNEAU ALUTIQUON SOCIETY • JUNEAU GROUP, SIERRA CLUB
KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA ALUTIQUON SOCIETY • KNIK CANOES AND KAYAKERS
KNIK GROUP, SIERRA CLUB • KODIAK ALUTIQUON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER
O'NEILL WILLIAMSON CONSERVATION ALLIANCE • SITKA CONSERVATION SOCIETY • WESTERN ALASKA CONSERVATION COUNCIL • TOMMINS CONSERVATION SOCIETY



Alaska State Legislature

SENATOR

MIKE MILLER

Mailing Address:

11911 Cushman, Suite 101

Fairbanks, Alaska 99701

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Fax: (907) 488-4271



Senate

Sponsor Statement

SB 262

Write to: Justice

State Capitol

Juneau, Alaska

99801-1182

Ph: (907) 465-4976

Fax: (907) 465-3883

Senate District Q

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 30-60% 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.

Feb. 27, 1996 - p. 1/2

TO: Senator Mike Miller,
members of the Senate Resources Committee, and other concerned
legislators.

FROM: Frederick C. Dean, 810 Ballaine Rd., Fairbanks, AK 99709
Tel. 907-479-6607 (voice only).

SUBJECT: Senate Bill No. 262 "An Act relating to management of game ..."

SB 262 should not be passed!

I see many potential problems with this bill and will try to summarize the most serious ones below. My comments are made from a background that includes over 40 years of work in Alaska as a wildlife biologist. I am definitely interested in seeing most populations of game animals in Alaska be available for hunting. I feel that management is appropriate in many situations, including habitat manipulation and under some conditions manipulation of predator populations. I am not by any means a strict preservationist or an anti-hunter. I hope you will accept my comments as constructive criticism.

In general, this bill appears to legislate what I am sure that most wildlife professionals are interested in achieving, but does so in connection with very specific standards that will certainly be inappropriate or unachievable in some circumstances. The result, under this bill would be to either jeopardize the management program or to place the managers under unwarranted liability.

RE: Sect. 1(a) - Consumptive use may be the highest and best use of wildlife in many areas; it is definitely not true everywhere, and legislation can not change reality. Rigidly defining consumptive use as the highest and best use of game, even with the exclusion of parks and sanctuaries, is going to make the decision framework for wildlife management in the future almost impossible. There are bound to be places in this state in future years (outside of parks and sanctuaries) where consumptive use of wildlife is not the highest and best use. The immediate environs of cities and towns and zones along highways are examples that come to mind immediately. These zones are almost certainly (a) going to be developed to the point where hunting will be dangerous to the public, and (b) going to have intense use by tourists and non-hunting Alaskans who want to see wildlife that is supposed to characterize this state. Wildlife viewers bring and will continue to bring a great deal of money into the Alaskan economy; these people will not be as interested if the only places to see wildlife are in a few, widely separated parks and sanctuaries.

RE: Sect. 1(b) - The mandatory requirement that new areas be opened to compensate for closures, and in particular the size requirement, could lead to the impossible and/or the ridiculous. There simply may not be suitable areas available for opening (In the most extreme example all suitable lands might

already be open) and yet there may be a need to close a particular area to hunting. The requirement that the Board of Game compensate for the actions of state agencies not involved in wildlife management would necessitate 5X expansion of hunting lands in reaction to the establishment of much of the infrastructure development in the state. Much as we might like to be able to do so, we have not achieved zero-growth of our human population in Alaska, and it seems like an unlikely event. Given that and the fact that the total land area in the state that is capable of supporting huntable populations of game animals is finite, thus the mandate to expand the total area open to hunting attempts to create something out of nothing. If the intent of SB 262 is to prohibit any new closures, then the bill's purpose and action should be so stated, simply and clearly. That would at least let people see the issue in a straightforward manner.

RE: Sect. 2(a) - I believe that I would argue that the public trust created by the Constitution of Alaska, i.e. that of protecting and insuring the sustainability of wildlife resources, is paramount to that inherent in the collection of funds. I fully agree that the public at large has a great stake in all of our wildlife resources and should help in funding wildlife conservation and management, whether for consumptive or "non-consumptive" purposes. Funding derived from hunting and fishing fees and taxes has led much of the conservation movement across the U.S. and in Alaska, but each of these two major user groups has benefitted from expenditures on the "opposite side of the ledger." We are dealing with closely linked ecological systems and habitats that serve many populations in temporally complex patterns. Insistence on funding emphasis is one thing; exclusionary restrictions become self-defeating.

RE: Sect. 2(b)(1) - There are many times and situations in which wildlife managers should be able to restrict public access to state game refuges, range areas, sanctuaries, etc. The restrictions may be necessary, particularly during the breeding season but also during periods of heavy stress, to achieve maximum production of young and/or maximum survival. Such restrictions are very common on waterfowl production areas; areas of concentrated calving and wintering by big game should also be free of human disturbance if the highest possible yields are to be reached. Do not remove management options from the already very small bag.

RE: Sect. 2(b)(3)(C) - As noted above, it is almost impossible to separate completely the effects of expenditures in wildlife conservation and management in a manner that excludes benefits to non-game that might result from projects aimed at game, and vice versa. This clause in combination with the others would make game managers liable to totally unwarranted law suits.



Alaska State Legislature

FEB 15 1996

Please enter into the record my testimony to the SENATE RESOURCE
committee name
committee on SB 230 - 262, dated Feb 1996
bill/subject

Why was more time NOT allotted for Public Comment? Why was FAIRBANKS the only site from which Public Comment was taken?

MR. WAYNE REGELIN. FAILED TO MENTION NUMEROUS AREAS CLOSED TO HUNTING, FOR ALL OR SPECIFIC SPECIES, EXAMPLES:

- 1) SHEEP MT. CLOSED AREA
- 2) COOPER LANDING CLOSED AREA
- 3) DOUGLAS CREEK ^{Little} ~~at~~ KAMISHNIK RIVER
- 4) RESURRECTION CREEK CLOSED AREA
- 5) PORTAGE GLACIER CLOSED AREA
- 6) SEWARD CLOSED AREA
- 7) PAXSON CLOSED AREA
- 8) KETCHIKAN ROAD SYSTEM - CLOSED
- 9) HYDER SALMON RIVER - ^{Closed}

FURTHER MORE, NO FEDERAL, STATE PUBLIC LANDS ARE CLOSED TO WILDLIFE VIEWING

Signed: ROD ARNO

Testifier: ALASKA OUTDOOR COUNCIL

Representing (Optional): P.O. BOX 2790 PALMER

Address: 376 - 2913

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the RESOURCE COMM.
committee name
committee on SB 262, dated Feb 12, 1996.
bill/subject

MR CHAIRMAN.

I have been to several tele-conferences and it seems the state employees use up a lot of the time i.e. MR. Reslin. They should participate last as they are already in Jurean. We the public are not being paid at these tele-conferences some have to take time off work. So basically the public is getting cut off. Please address this in tele-confer in the future if possible. Thank you
I support SB 262

Signed: Kenneth Ruard
Testifier

self
Representing (Optional)

Box 871842 Wasilla Alaska 99687
Address

907 376 2140
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
 committee name
 committee on SB 262, dated 2-12-96
 bill/subject

We support this Bill

If this bill would require predator control to manage game for people consumption - That alone would cause wide spread popular support.

As long as sporting goods stores and user fees are paying for most of game management this bill would correct the expenditure of funds toward ~~consumptive~~ fee paying consumptive uses. May even be a step toward accommodating the people who pay the bill.

Please support this bill in committee

Signed: Maclure, L. Woods
 Testifier

Matanuska Valley Sportsmen
 Representing (Optional)

P.O. Box 827, Palmer AK 99645
 Address

945-3027
 Phone No.



Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: George Utermohle
Legal Counsel
via fax: this page only x2029

FROM: Annette Kreitzer, Aide to
Senate Resources Committee *[Signature]*

DATE: February 29, 1996

RE: Resources CS for SB 262

Please prepare a Resources Committee Substitute for SB 262, Management Of Fish/Game Population & Areas, incorporating the following changes:

- Page 3, Lines 12-15:
Line 12: insert "or" following permitted
Lines 13-15: Delete and reletter following subsection (C);
- Page 4, Lines 20-22:
Delete all material and insert:
(2) guaranteeing access to and for continued consumptive uses.
- Remove the word "sport" from the following locations:
Page 3: Lines 4, and 20
Page 4: Lines 12, 20 and 26
Page 5: Lines 1, and 9

Please call me (X4907) if you have questions. This bill will be brought before the committee at the next Resources hearing.