

HB

348

Debra Higgins

From: Rowland, Mindy B (GOV) [mindy.rowland@alaska.gov]
Sent: Monday, February 25, 2008 11:35 AM
To: Debra Higgins
Subject: RE: CSSSHB348(RES).pdf



NOT PART OF FILE

Thank you Debbie.

The Dept. of Law fiscal note is still applicable. I've forwarded this to DF&G for review and I'll let you know if that fiscal note will be revised.

Thanks
Mindy

Mindy Rowland
Deputy Legislative Director
Office of Governor Sarah Palin
465-4021

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1B348SS-LAW-CIV-02-12-0
Bill Version: SSHB348
() Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
Title An Act relating to the adoption of regulations by the Board RDU CIVIL
of Game. Component NATURAL RESOURCES
Sponsor REPRESENTATIVE KELLER
Requester HOUSE RESOURCES Component Number 2212

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	37.2	0.0	37.2	37.2	37.2	37.2	37.2	37.2
Travel	0.3		0.3	0.3	0.3	0.3	0.3	0.3
Contractual	4.3		4.3	4.3	4.3	4.3	4.3	4.3
Supplies	0.8		0.8	0.8	0.8	0.8	0.8	0.8
Equipment	0.5		0.5	0.5	0.5	0.5	0.5	0.5
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()	0.0	0.0	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	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.3		0.3	0.3	0.3	0.3	0.3
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Robert Meiners, Administrative Services Manager
Division: Administrative Services Division
Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-54
Date/Time 2/12/08 3:40 PM
Date 2/12/2008

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

BILL NO. SSHB348

ANALYSIS CONTINUATION

SSHB 348 was written for the purpose of emphasizing, in statute, the allocative nature of many game regulation decisions, so that such decisions would not be subjected to the whims of political change through the initiative process. Unfortunately, the way the bill is worded, it could easily be interpreted as serving to limit the Board of Game's ability to exercise many of its most important powers to only those situations in which the regulations are being done "as a means to allocate the asset of game." Because of this danger, the Board would be forced to build a record for every regulation which illustrates how the Board is allocating game through that regulation. This would likely add several days to each major board meeting, with resulting costs, and to more legal arguments and challenges regarding whether, and how, the Board is allocating, also with resulting costs. It is difficult to predict the increased costs for the Department of Law, but it might be reasonable to guess, for now, that up to two more lawsuits per year might be the result requiring additional resources equivalent to 1/4 FTE of attorney time.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SSHB 348
 () Publish Date: _____

Identifier (file name): HB348SS-DFG-BSS-02-11-08 Dept. Affected: Fish and Game
 Title: Board of Game Regulations RDU: Administration and Support
 Component: F&G Boards & Advisory Committees
 Sponsor: Representative Keller
 Requester: House Resources Committee Component Number: 2825

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	*	0.0	*	*	*	*	*

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

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	*	0.0	*	*	*	*	*

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The Attorney General's office advises that the changes proposed under SSHB 348 will require additional meeting days by the Board of Game during regulatory meetings. The Board of Game meets twice each year to consider changes to regulations in regions of the state on a two-year cycle. The approximate cost per day for holding a board meeting is \$4,100, which includes costs for the meeting facility, per diem for the Executive Director and Boards Support staff, and honoraria and per diem for seven board members.

Without knowing how many extra days per meeting will be required, the fiscal impact is indeterminate.

Prepared by: Kristy Tibbles, Executive Director, Board of Game
 Division: Boards Support Section
 Approved by: Tom Lawson, Director
Division of Administrative Services, Department of Fish and Game

Phone 465-6098
 Date/Time 2/11/08 4:00 PM
 Date 2/11/2008

LEGAL SERVICES

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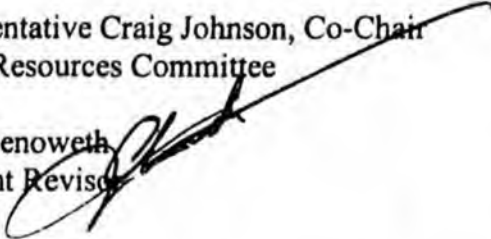
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 22, 2008

SUBJECT: Draft CSSSHB 348(RES) (Work Order No. 25-LS1328\V)

TO: Representative Craig Johnson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor 

The draft committee substitute is an attempt to try to be responsive to the material transmitted from your office. The material asked for substitution of new material, either in AS 16.05.255(j) or in another subsection (not clear as to which).

Regulations adopted by the Board of Game are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62.010 - 44.62.290).¹ The Act's rule making provisions define the term "regulation" to mean, in relevant part,

"every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted . . . to implement, interpret, or make specific the law enforced or administered by it

AS 44.62.640(a)(3).

The text transmitted by your office speaks to supplying a meaning for "the terms 'conservation,' 'development,' and 'utilization'" "in this section" (the context in which this direction was given referred to AS 16.05.255). In that section, those terms appear only in paragraphs (a)(3), (a)(7), and (a)(10). The draft of the committee substitute that accompanies this memo, therefore, addresses the standard that must be met in the board's adoption of regulations not as a new or additional duty or obligation of the Board of Game but, instead, as an amendment to existing subsection (d) setting out the content of the regulations that the board may adopt. It also prescribes the priority to be applied when the board acts to adopt regulations to implement those three terms ("must primarily concern whether, how, when, and where the public asset of game will be allocated or appropriated"), limited to specific reference to the three paragraphs in which those terms

¹ See AS 16.05.255(a), in which, under the lead-in language of the subsection, the Board of Game is directed to adopt regulations it considers advisable "in accordance with AS 44.62."

Representative Craig Johnson

February 22, 2008

Page 2

appear. Finally, "whether" substitutes for "if": "if" is appropriate for a condition, but "whether" is preferred to express a "possibility" as between alternatives, in this instance, the question being one of the possibility that the Board may or may not exercise discretion to allocate or appropriate "the public asset of game."

If this misses the mark, please advise.

JBC:lmb

08-043.lmb

Enclosure

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14

MEMO

To: House Resources Committee Members

Fm: Jim Pound

Cc:

Date: February 20, 2008

Re: Committee Substitute for SSHB 348

We have completed review with the Department of Law (Kevin Saxby) and have come up with a solution that accomplishes the goal of the original bill and is approved by the Department of fish and Game.

If you have any questions please feel free to call.

The information contained in this memo is CONFIDENTIAL and/or privileged. This memo is intended to be reviewed initially by only the individual named above. If the reader of this page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this memo or the information contained herein is prohibited. If you have received this memo in error, please immediately notify the sender by telephone and return this memo to the sender at the above address.

Thank you

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Just now Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

Preferred option:

AS 16.05.221 is amended by adding a new subsection to read.

(e) In this section, the terms “conservation” and “development” both require that the appropriate Board must regulate in a manner that primarily concerns if, how, when and where the public assets of fish or game will be allocated or appropriated.

This language is based on rulings in two Alaska Supreme Court cases. In the first, *Kenai Peninsula Fisherman's Cooperative Association, Inc. v. State*, 628 P.2d 897 (Alaska 1981), the Court held, with reference to a challenge to a Board of Fisheries regulation, that,

The terms “conserving” and “developing” both embody concepts of utilization of resources. “Conserving” implies controlled utilization of a resource to prevent its exploitation, destruction or neglect. “Developing” connotes management of a resource to make it available for use. If the Board is going to accomplish its designated purposes, it is necessarily going to make decisions concerning utilization of the resources it is charged with managing.

In the second case, *Pullen v. Ulmer*, 923 P.2d 54, (Alaska 1996), with reference to a challenge to a citizens' initiative to alter the statutory framework for the Board of Fisheries, the Court held that,

We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant characterizing such salmon as assets of the state which may not be appropriated by initiative.

and that,

The initiative significantly reduces the legislature's and Board of Fisheries' control of and discretion over allocation decisions, particularly in the event of stock-specific or region-specific shortages of salmon between the competing needs of users.

Read together, the principles set forth in these two cases stand for the propositions that fish and game are public assets that are not subject to appropriation through the initiative process, that significant interference with the Board's allocative decisions constitutes a prohibited appropriation, and that virtually all conservation or development-related decisions are allocative in nature. The above language restates these propositions so that they are clearly set forth in the enabling statute for the Board of Fisheries and Board of Game.

CS FOR SS FOR HOUSE BILL NO. 348 (RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE-SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 02/17/08

Referred: Resources, Finance

Sponsors: REPRESENTATIVE KELLER, Johnson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption of regulations by the Board of Fisheries and the
2 Board of Game."

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

4 *Section 1. AS 16.05.221 is amended by adding a new subsection to read.

5 (e) In this section, the terms "conservation" and "development" both require that the
6 appropriate Board must regulate in a manner that primarily concerns if, how, when and
7 where the public assets of fish or game will be allocated or appropriated.

Less-preferred option:

AS 16.05.255(j) is amended by adding a new paragraph to read.

(e) In this section, the terms "conservation," "development" and "utilization" all require that the Board must regulate in a manner that primarily concerns if, how, when and where the public asset of game will be allocated or appropriated.

This option achieves the same result, based on the same caselaw, as the preferred option, but only as to the Board of Game. It is less-preferred because the stated legal principles apply equally to fish and game resources and, indeed, are derived from cases interpreting the Board of Fisheries' authority. There is no logical reason why the language should not be applied in both contexts, and if it is, some may question what differences in management or philosophy the Legislature intended by omitting it from the fisheries context.

AMENDMENT # _____

Committee Amendment for CSSH B 348

25-LS1328 Resources

Page 1, line 1 & 2

1 " An Act relating to the adoption of conservation and development regulations by the Board
2 of Fisheries and the Board of Game to address primary concerns relating to public assets."

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 13, 2008

SUBJECT: Initiatives and allocation of an asset - SSHB 348
(Work Order No. 25-LS1328(O))

TO: Representative David Guttenberg
Attn: Christian Gou-Leonhardt

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked the following: How does the court's view of an allocation of an asset factor into the prohibition of a citizens' initiative in relation to an appropriation?

The Alaska Supreme Court discussed this issue in relation to salmon in *Pullen v. Ulmer*, 923 P.2d 54 (Alaska 1996). In that case, the court disallowed a voter initiative proposed by the appellee, Fairness in Salmon Harvest, proposing "that subsistence, personal use, and sport fisheries would receive a preference to take a portion of the salmon harvest before the remaining harvestable salmon are allocated to other harvest users." *Id.* at 55. Specifically, the court stated: "We think it is clear that the proposed initiative calls for an actual allocation, in the event of a shortage of a given salmon species in a given geographical region, to sport, personal use, and subsistence fisheries." *Pullen* at 64. The court then plainly noted: "We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant *characterizing such salmon as assets of the state which may not be appropriated by initiative.*" *Pullen* at 61. (Emphasis added)

While this particular initiative considered in *Pullen* dealt specifically with salmon, the court's analysis could be viewed in a broader scope than just this one species of fish. The same argument disallowing this initiative could be successful for any species of fish or game that the court might describe as an asset of the state. In fact, the court made reference to an earlier decision regarding the transfer of state property to a community college system, where it ruled that this transfer violated the prohibition on appropriations in an initiative. Specifically, the court noted:

The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money.

McAlpine v. Univ. of Alaska, 762 P.2d 81 (Alaska 1988).

Representative David Guttenberg
February 13, 2008
Page 2

The court in *Pullen* focused on a legal interpretation of art. XI, sec. 7 of the Alaska state constitution. The court has said that it (i.e. the judiciary) has the obligation to expound on the meaning of a provision of the state constitution and, by extension, under the recognized separation of powers principle, that is not the function of the legislature. *Alaska Pub. Interest Research Group v. State*, 167 P.3d 27, 35 - 36 (Alaska 2007). In other words, independently of anything the legislature might consider doing by law to describe game management as involving an asset of the state, the court will make its own examination and reach its own conclusion. It may give no credence to language in statute added by the legislature -- the language may, in fact, not be used by the court as it applies the prohibitions of art. XI, sec. 7, to the meaning of "appropriations" in the text of that section.

Based on the court ruling in *Pullen*, the court would likely consider that an allocation of what it considers a state asset could not be allowed as an appropriation in a voter initiative.

If I may be of further assistance, please advise.

BJK:med
08-090.med

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MEMORANDUM

February 11, 2008

SUBJECT: SSHB 348 and predatory control (Work Order. No. 25-LS1328\O)

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: Brian J. Kane *BJK*
Legislative Counsel

As a follow up to my February 8, 2008, memorandum to your office, you have asked: Would SSHB 348 prohibit citizens' initiatives that restrict predator control programs by restricting greatly or prohibiting outright the same day airborne shooting of wolves?

I do not think that the additions to AS 16.05.255(a) by the bill will necessarily prohibit a citizens' initiative regarding predator control or the same day airborne shooting of wolves. As I stated in my February 8 memo to your office, the court will examine the provisions of the state constitution without being required to look at any statutory sections that might relate to those constitutional provisions. The court will look at the constitutional provision in question and make its own determination based on that provision alone. The court may look to the changes made to AS 16.05.255(a) by this bill if this bill is enacted into law, but it is not required to do so.

I cannot tell you definitely how the court would decide on this issue of predator control being allowed in a citizens' initiative. What I can tell you is that the court will study the actual provisions of the state constitution first and foremost, if not only these provisions.

If I may be of further assistance, please advise.

BJK:lmb
08-023.lmb

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MEMORANDUM

February 5, 2008

SUBJECT: Legal analysis of SSHB 348 (Work Order No. 25-LS1328\O)

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked the following: What does SSHB 348 do, and how would this bill change the legislature's constitutional mandate to manage fish and game resources?

SSHB 348 amends AS 16.05.255(a) by adding the phrase "as a means to allocate the asset of game" in paragraphs (2), (3), and (4). It also adds the word "asset" to paragraph (6) and substitutes the phrase "preferential use" in place of "utilization" in paragraph (10).

From my review, this bill does not affect the legislature's constitutional mandate to "provide for the utilization, development and conservation of all [state] natural resources," including fish and wildlife. Art 8, sec. 2 of state constitution. AS 16.05.255(a) gives the Board of Game authority to adopt regulations it considers advisable. Paragraphs (1) - (13) provide the guidelines the Board of Game should use in adopting regulations it considers advisable. It does not appear that adding the language the bill adds will affect the legislature's involvement in managing game.

The main effect of these changes could be that the Board of Game is limited in the reasons for which it can adopt regulations under AS 16.05.255(a)(2), (a)(3), or (a)(4). Under the added language, it is possible that "to allocate the asset of game" would be the only reason the board could have for adopting regulations to carry out the provisions of AS 16.05.255(a)(2), (a)(3), or (a)(4).

If I may be of further assistance, please advise.

BJK:ljw
08-057.ljw

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14

MEMO

To: Representative Craig Johnson

Fm: Jim Pound

Cc: Representative Carl Gatto

Date: February 6, 2008

Re: Request for Hearing SS HB 348

Please accept this memo and the attached packet as a request for the House Resources Committee to schedule, for hearing SS for House Bill 348 "An Act relating to the adoption of regulations by the Board of Game."

SS HB 348 will place into game statutory language the words asset and allocation. This language will clearly state that we fully understand that our game are assets and that management decisions are based on that knowledge.

I urge your assistance by placing SS HB 348 on the House Resources Committee hearing schedule at your earliest convenience.

Attachments: Sponsor Statement, HB 348, AS 16.05.255, Congressman Miller Press Release, F&G Relationship between wildlife, Wildlife Conservation performance, Sample Bd of Game Report, Information on Moose and Caribou

ALASKA STATE LEGISLATURE

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Session:

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REPRESENTATIVE WES KELLER DISTRICT 14 Sponsor Statement

SS HB 348

"An Act relating to the adoption of regulations by the Board of Game."

For years Alaska has devoted time and money to the management of one of its most valuable renewable resources. Wild Game represent many things to many Alaskans. Be it commercial guiding, hunting, or simply viewing wildlife, Alaska is unique and every Alaskan enjoys the gift of the resource.

Every year, Alaskans and tourists carrying in state or out of state licenses look for the moose, caribou or bear. Every summer thousands of tourist marvel at herds of caribou or a lone moose or sow with her cubs.

Alaska's wildlife is an asset. Without them not as many people would visit the state, which translates into a loss of revenue. Without them guides would not earn a living and hunters would not put food on the table.

The problem we face is that we have not allowed our Boards of game to manage the resource and **allocate** it for what it actually is, an **asset**. SS for House Bill 348 will accomplish that by inserting those important words into statute. The language makes it clear to others that it is our asset and we will manage for abundance as promised in the Alaska Constitution.

We urge your support for the language in SS for HB 348 to make it clear we understand what our wildlife truly is and what they mean. It is language that is easy to understand whether you live in Alaska or somewhere else.

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

Sec. 16.05.255. Regulations of the Board of Game; management requirements.

(a) The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

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

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

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

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

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

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

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

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

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

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

(11) taking game to ensure public safety;

(12) regulating the activities of persons licensed to control nuisance wild birds and nuisance wild small mammals;

(13) promoting hunting and trapping and preserving the heritage of hunting and trapping in the state.

(b) *[Repealed, 12 ch 52 SLA 1986.]*

(c) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

(d) Regulations adopted under (a) of this section must provide that, consistent with the provisions of AS 16.05.258, the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents.

(e) The Board of Game shall adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals of the board in an area where the board has determined that

(1) consumptive use of the big game prey population is a preferred use;

(2) depletion of the big game prey population or reduction of the productivity of the big game prey population has occurred and may result in a significant reduction in the allowable human harvest of the population; and

(3) enhancement of abundance or productivity of the big game prey population is feasibly achievable utilizing recognized and prudent active management techniques.

(f) The Board of Game may not significantly reduce the taking of an identified big game prey population by adopting regulations relating to restrictions on harvest or access to the population, or to management of the population by customary adjustments in seasons, bag limits, open and closed areas, methods and means, or by other customary means authorized under (a) of this section, unless the board has adopted regulations, or has scheduled for adoption at the next regularly scheduled meeting of the board regulations, that provide for intensive management to increase the take of the population for human harvest consistent with (e) of this section. This subsection does not apply if the board

(1) determines that intensive management would be

(A) ineffective, based on scientific information;

(B) inappropriate due to land ownership patterns; or

(C) against the best interest of subsistence users; or

(2) declares that a biological emergency exists and takes immediate action to protect or maintain the big game prey population in conjunction with the scheduling for adoption of those regulations that are necessary to implement (e) of this section.

(g) The Board of Game shall establish population and harvest goals and seasons for intensive management of identified big game prey populations to achieve a high level of human harvest.

(h) *[Repealed, 2000 Ballot Measure No. 6.]*

(i) For the purpose of encouraging adults to take children hunting, the board shall establish annual hunting seasons in appropriate areas of the state for big game, other than bison and musk ox, that are open before schools start in the fall and before regular hunting seasons begin. Only a resident child accompanied by a resident adult or a child accompanied by the child's resident parent, resident stepparent, or resident legal guardian may take big game in an area where a season established under this subsection is in effect. The adult, parent, stepparent, or legal guardian who accompanies the child may only assist the child in taking big game. A big game animal taken under this subsection must be counted against the bag limits of both the child and the adult, parent, stepparent, or legal guardian who accompanies the child. In this subsection,

(1) "adult" means an individual who is 21 years of age or older;

(2) "child" means an individual who is not more than 17 years of age and not younger than eight years of age.

(j) In this section,

(1) "harvestable surplus" means the number of animals that is estimated to equal the number of offspring born in a game population during a year less the number of animals required for recruitment for population maintenance and enhancement, when necessary, and the number of animals in the population that die from all causes, other than predation or human harvest, during that year;

(2) "high level of human harvest" means the allocation of a sufficient portion of the harvestable surplus of a game population to achieve a high probability of success for human harvest of the game population based on biological capabilities of the population and considering hunter demand;

(3) "identified big game prey population" means a population of ungulates that is identified by the Board of Game and that is important for providing high levels of harvest for human consumptive use;

(4) "intensive management" means management of an identified big game prey population consistent with sustained yield through active management measures to enhance, extend, and develop the population to maintain high levels or provide for higher levels of human harvest, including control of predation and prescribed or planned use of fire and other habitat improvement techniques.

(5) "sustained yield" means the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis.

((3 ch 206 SLA 1975; am 5 ch 151 SLA 1978; am 10, 11 ch 132 SLA 1984; am 4, 5, 12 ch 52 SLA 1986; am 1 ch 6 SLA 1989; am 2 ch 13 SLA 1994; am 2 ch 54 SLA 1996; am 4 - 6 ch 76 SLA 1998; am 1 ch 20 SLA 2000; am 1 2000 Ballot Measure No. 6; am 1 ch 68 SLA 2001; am 1 ch 132 SLA 2003; am 4 ch 87 SLA 2005))



Press Release

Congressman George Miller (D-California, 7th District)
Committee on Education and Labor, Committee on Resources

New Bill Would Stop Illegal Airborne Hunting of Alaskan Wolves and other Wildlife

Tuesday, September 25, 2007



WASHINGTON – Legislation introduced today would protect wolves, bears, and other wildlife from the illegal and inhumane practice of airborne hunting. The new bill would close a loophole in federal law that Alaska officials have exploited to permit individual hunters to shoot and kill nearly 700 wolves from aircraft in the past four years.

"It's time to ground Alaska's illegal and inhumane air assault on wolves," said Congressman George Miller (D-CA), a leader in Congress on conservation and natural resource issues and author of the new bill. "The state of Alaska has been operating an airborne hunting program that not only ignores federal law but violates Alaskans' and other Americans' wishes. The PAW Act will help to protect our nation's wildlife from the unethical and unfair practice of airborne hunting."

The Protect America's Wildlife Act, or PAW Act, was introduced by Miller along with Rep. John Dingell (D-MI) the dean of the House and floor manager of the debate on the original Airborne Hunting Act, and Rep. Norm Dicks (D-WA) the chair of the Interior Appropriations Subcommittee.

At a press conference on Capitol Hill, Miller was joined by Atka, a 5-year old Arctic grey wolf, and two wildlife experts and advocates -- Joel Bennett, an Alaska resident and former member of the state's Board of Game, and Rodger Schlickaisen, President of Defenders of Wildlife, a national conservation and environmental advocacy organization.

In response to public outcry over airborne wolf hunting in Alaska, Congress passed the Airborne Hunting Act in 1972 to prohibit shooting or harassing animals from aircraft. However, for the last several years, officials in Alaska have licensed people to shoot hundreds of wolves from aircraft under the guise of wildlife management and predator control but in clear violation of the intent of the federal ban.

In 1996 and again in 2000, Alaskans approved two popular ballot measures that banned airborne hunting in the state, but the state legislature largely overturned each of those measures.

Hunting wildlife from an aircraft violates wildlife management principles and the hunting rules of fair chase, as does the related practice of chasing animals in an aircraft until they are exhausted and then executing them on the ground, known as 'land and shoot.'

The PAW Act makes it clear that states can only conduct activities prohibited by the Airborne Hunting Act to respond to legitimate biological and other emergencies, not just to authorize otherwise-illegal hunting practices. The bill does not alter existing exceptions for the use of aircraft for animal control where land, livestock, water, pets, crops, or human health and safety are at risk.

The bill is numbered H.R. 3663, and has been referred to the Committee on Natural Resources

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ADF&G - Division of
Wildlife Conservation



Overview of Relationships Between Bears, Wolves, and Moose in Alaska

Relationships between large predators and their prey in Alaska are complex, and no one model fits all situations. It is possible to generalize about some situations, particularly in Interior Alaska. This information on the biology of moose, bears, and wolves, represents highlights from 25 years of research and management programs conducted by universities and state, provincial and federal governments in Alaska and Canada. In 1997, the National Academy of Sciences published a summary and review of predator/prey interactions in Alaska (National Research Council, 1997). More research has been conducted since that review. The published references listed below can be found in most university or large municipal libraries.

In the boreal forest of northern Canada and Interior Alaska, where bears (either black bears, grizzly bears, or both) and wolves are lightly harvested and are major predators on moose, moose densities typically remain well below levels that their habitat can support. Under these circumstances, moose density fluctuates between about 0.1 and 1.0 moose/mi² over large areas; most commonly densities are 0.4 to 0.6 moose/mi². Biologists refer to this situation as the Low Density Dynamic Equilibrium or LDDE because moose density fluctuates yet remains low. This occurs primarily because, together, bears and wolves are efficient predators on moose calves, and kill most of the calves born each year. The highest densities reached in these systems (about 1 moose/mi²) tend to occur in very large burns where habitat is excellent and moose apparently are more successful at avoiding predators.

Although the LDDE prevails in much of remote interior Alaska, differences occur between areas. In most areas, bears are the major predator on moose calves. An exception occurs in Game Management Unit 20A where wolf control has been shown to be effective at maintaining high numbers of moose and high long-term harvests of moose. In Unit 20A, initial reductions in wolves increased moose population density, wolves also quickly increased after wolf control because, ultimately, the number of wolves in an area depends mostly on the number of prey animals in the area. Number of moose harvested also remained high after wolves increased. An abundance of trappers in Unit 20A has kept wolves from increasing to the point where they could cause declines in the moose population. A similar situation likely occurs in portions of Units 20B and 20D South.

Grizzly bears have been shown to be particularly effective predators of moose calves from birth to about 2 months of age and often kill adult moose in the spring. In this regard, one grizzly bear is

equivalent to many black bears. Not all bears are equal, however, and some bears seem to become specialists at killing both adult and calf moose.

Black bears have been found to be the most important predator of moose calves in some areas of Alaska where grizzly bears are uncommon. In these areas, black bears killed about 40% of all moose calves that were born. Most predation was by adult males.

Biologists expect that significant reductions in bear numbers (either black or grizzly or both) will also lead to higher numbers of moose for harvest. For example, in areas of Canada and the northern states where moose coexist only with wolves, moose are often found at high densities that fluctuate with weather and habitat (e.g. Isle Royale).

Numbers of grizzly bears have probably increased in Interior Alaska since the 1950s. We base this on incidental observations by older hunters, local residents, cabin owners, and Native elders, who all indicate that grizzly bear numbers have increased. This is corroborated to some degree by modern studies. For example, grizzly bears were recently found to be significant predators of moose calves on the Yukon Flats and are commonly seen by local residents, whereas 20-30 years ago, observations of grizzly bears were rare.

In the Anchorage and Fairbanks areas, where wolves and bears are not common, moose are abundant.

Grizzly bear populations appear to be much more resilient to harvest than previously believed. During the last 10 years, the Alaska Board of Game has made a deliberate effort to reduce numbers of grizzly bears in a few important hunting areas (e.g. Game Management Unit 13-the Nelchina Basin) by increasing the bag limit and extending hunting seasons. So far, these new regulations have had no noticeable affect on grizzly bear populations even though hunters have taken an increased number of bears.

Wolves have been found to be very adaptable and they recover from low numbers within a few years. Despite relatively heavy hunting and trapping over the last century in Alaska, wolves occur on nearly all of their traditional habitat throughout mainland Alaska. Historically, wolf numbers were greatly depressed. Specifically, wolves were rare in Interior Alaska between about 1910 and 1925, and during the 1950s. During 1910-1925 wolves may have succumbed to diseases brought in by sled dogs or to widespread poisoning. During the 1950s, federal predator control agents reduced wolves by poisoning and aerial shooting. Wolves have been abundant and have occurred in all of their historic ranges in Alaska since state management began in about 1960 (except for the Anchorage and Fairbanks areas, and the western Seward Peninsula).

Wolves are social animals that live in large family groups. Usually, only a single female per pack successfully raises pups, but depending upon the relationship of adult males and females in a wolf pack, multiple litters may occur in a single pack in a single year. Most pups born into a pack stay in the pack for at least one year, but virtually all have dispersed away from their natal pack by the age of 3. Large packs of 20 or more wolves may occur in areas where food is abundant and pup survival is high. Wolf populations in North America commonly sustain annual harvests or natural mortality rates of 20-40% without experiencing a year-to-year decline in numbers. High reproductive rates, high mortality rates and long distance dispersal behavior results in extensive gene flow within wolf populations and between wolf packs.

In Alaska and other areas, if wolves are not hunted or trapped, most mortality is from intraspecific aggression (fighting with other wolves). In trapped wolf populations, natural mortality rates are often lower than in untrapped populations.

In coastal areas of Alaska, where fox rabies is endemic, wolves are periodically reduced to low levels by rabies.

Practical Aspects of managing moose in areas where the LDDE exists

Usually, without predator control, hunters can take about 5% of a low-density moose population each year – almost all of the harvest must be bulls or the population will decline.

LDDE does not present a biological problem – moose are not likely to become threatened, endangered or extinct due to predation.

The fact that the LDDE prevails in large areas does not usually present a management problem either. Interior Alaska is sparsely populated and access to moose populations is often poor. This means that hunting pressure is relatively light in many areas anyway.

The LDDE can cause a management problem around villages, or in areas that have become important hunting areas for Alaskans near the road system. In these areas, people need or want to harvest more moose than the system can support. In Alaska, moose are valuable to people as a source of food and income (i.e. guiding and transporting hunters), particularly in rural areas. This is why people often express the desire for predator control.

In some areas, where there is a demand to increase moose harvests, it might be possible to harvest more moose by reducing bear predation. Although this idea is reasonable, it is a relatively new idea, has not been adequately tested in Alaska, and programs of this nature need to be viewed as experiments.

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Performance

Wildlife Conservation

Results Summary | Details | Questions/Comments

Mission

- The mission of the Division of Wildlife Conservation is to conserve and enhance Alaska's wildlife and habitats and provide for a wide range of public uses and benefits.

Desired Results

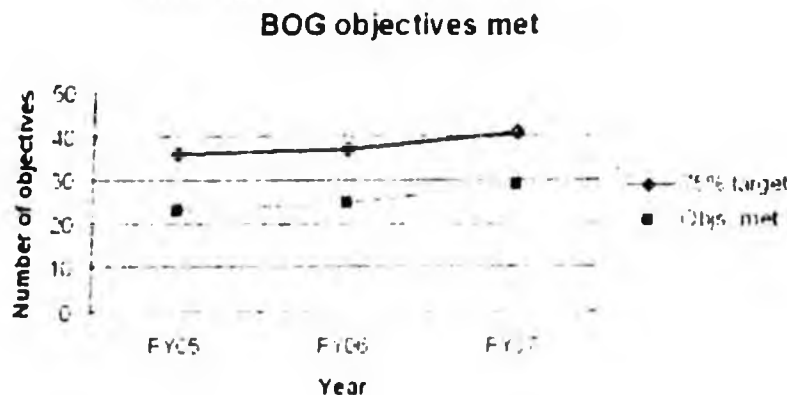
- A. Healthy and sustainable wildlife populations in Alaska that provide a diversity of opportunities for public use and enjoyment.

Performance Measure Detail

A: Result - Healthy and sustainable wildlife populations in Alaska that provide a diversity of opportunities for public use and enjoyment.

Target #1: Achieve population targets for at least 75% of big game populations for which the Board of Game (BOG) has set targets (i.e., objectives).

Measure #1: Percentage of BOG population targets attained.

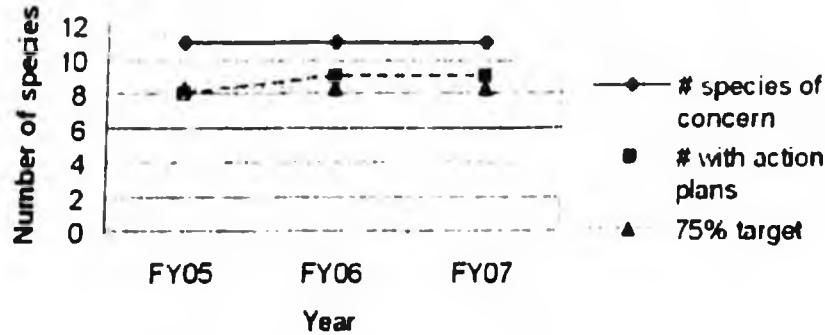


Analysis of results and challenges: The Board of Game (BOG) has set population objectives for selected wildlife populations that it has determined are important for providing high levels of harvest for human consumption and. To meet BOG management objectives, sufficient animals must exist in a game management unit in order to meet the highest levels of hunter demand. For FY07, 29 of the population objectives set for deer, caribou and moose were met, out of a total of 54 objectives set by the BOG. Four more game management units (GMU) met management objectives in FY07 than in FY06. The division's target is 75% of the number of GMU objectives. Some big game surveys were not conducted due to poor weather conditions or a lack of funding. Some of the population objectives may not be possible to meet given the habitat capacity that can be achieved in some areas. Population objectives for those areas should be reviewed by the BOG and possibly revised.

Target #2: Develop and implement recovery strategies for 75% of those "species of concern" under primary division management.

Measure #2: Percentage of species for which recovery strategies are being implemented.

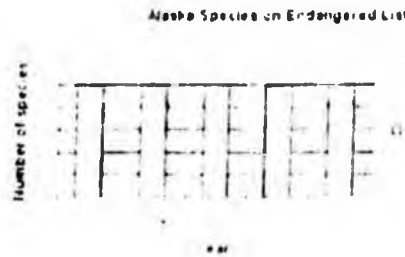
Species of Concern with Conservation Plans



Analysis of results and challenges: There are 11 wildlife species of special concern under primary or shared division management. Conservation action plans are in place for 10 (91%) of these species, including blackpoll warbler, Townsend's warbler, olive-sided flycatcher, Steller's eider, spectacled eider, northern goshawk, Arctic peregrine falcon, American peregrine falcon, Aleutian Canada goose and Kenai brown bear. In 1999 the Pacific Flyway Council adopted a management plan for Aleutian Canada goose (updated in 2006) to resume "normal" management after delisting. A plan has not been prepared for the Gray-cheeked thrush. In the state Comprehensive Wildlife Conservation Strategy (CWCS), completed during FY06, both species are on the nominee list for species of special concern. The State of Alaska Species of Special Concern list was last revised in 1998, therefore, when the list is formally revised Aleutian Canada goose can be removed. Revision of that list is expected to occur within the next year.

Target #3: No increase in the number of species under state management designated as threatened or endangered in Alaska from the 2003 level.

Measure #3: Number of new threatened or endangered species designations



Analysis of results and challenges: The state endangered species list includes the Eskimo curlew, short-tail oystercatcher, humpback whale, right whale, and blue whale. There has been no change in the state endangered species list since 1993 and no new species were added to federal lists in FY07.

**Findings for the Alaska Board of Game
2006-165-BOG**

**Unit 12 and 20E Intensive Management Supplemental Findings
May 14, 2006**

The Board of Game finds as follows, based on information provided by department staff and residents and users of moose in Units 12 and 20E. These findings are supplemental to the findings set forth in 5AAC 92.108, in the Units 12 and 20E predation control implementation plan in 5 AAC 92.125 and in Board of Game Findings 2006-164-BOG.

1. The Fortymile Caribou Herd population size, currently estimated to be 40,000-42,000 caribou, is less than the population objective of 50,000-100,000 caribou. The population objective has not been achieved for at least the last 30 years.
2. The Fortymile Caribou Herd harvestable surplus, as described in 5 AAC 92.106(3)(A), currently estimated at 840-880 bulls, is less than the harvest objective of 1,000-15,000 caribou. The harvest objective has not been achieved for at least the last 30 years.
3. The moose population size in Unit 12 north of the Alaska Highway and Unit 20E, currently estimated to be 4,300-5,200 moose, is less than the population objective of 8,744-11,116 moose (derived from the combined Units 12 and 20E objectives based on proportionate area). The population objective has not been achieved for at least the last 20 years.
4. The harvestable surplus of moose in Unit 12 north of the Alaska Highway and Unit 20E, as described in 5 AAC 92.106(3)(A), currently estimated at 135-201 bulls, is less than the harvest objective of 547-1,084 moose (derived from the combined Units 12 and 20E objectives based on proportionate area). The harvest objective has not been achieved for at least the last 20 years.
5. The Fortymile Caribou Herd and the moose population in Unit 12 north of the Alaska Highway and Unit 20E are, thus, depleted and reduced in productivity, which has already resulted in a significant reduction in the allowable human harvest of the population.
6. Enhancement of abundance or productivity of both moose and caribou in this area is feasibly achievable utilizing the recognized and prudent active management technique of predator control.
7. The Board has repeatedly, since 1976, been required to significantly reduce the taking of Fortymile caribou by restricting harvest, seasons and bag limits as compared to the level and timing of hunting opportunity that was previously allowed when the population was not depleted and reduced in productivity.

8. The Board has, since 2000, been required to limit the taking of moose in Unit 12 north of the Alaska Highway and Unit 20E by restricting harvest, seasons and bag limits as compared to the level and timing of hunting opportunity that was allowed when the population was not depleted and reduced in productivity.

9. The population and harvest objectives for both moose and caribou in this area have not been achieved, at least in part, because wolf and brown bear predation have been important causes of mortality in the populations, to the extent that the populations are unlikely to recover, and objectives are unlikely to be achieved, in the foreseeable future unless predator control is conducted.


10. Reducing predation can reasonably be expected to aid in achievement of the caribou and moose population and harvest objectives.

11. A person who has been airborne may on the same day take a brown bear with the use of bait or scent lure as authorized under a permit provided by the Department, providing the permittee is at least 300 feet from the airplane at the time of taking.

Vote: 6-0-1

May 14, 2006

Anchorage, Alaska


Mike Fleagle, Chairman
Alaska Board of Game

Moose

The moose (*Alces alces*) is the world's largest member of the deer family. The Alaska race (*Alces alces gigas*) is the largest of all the moose. Moose are generally associated with northern forests in North America, Europe, and Russia. In Europe they are called "elk." In Alaska, they occur in suitable habitat from the Stikine River in the Panhandle to the Colville River on the Arctic Slope. They are most abundant in recently burned areas that contain willow and birch shrubs, on timberline plateaus, and along the major rivers of Southcentral and Interior Alaska.

General description: Moose are long-legged and heavy bodied with a drooping nose, a "bell" or dewlap under the chin, and a small tail. Their color ranges from golden brown to almost black, depending upon the season and the age of the animal. The hair of newborn calves is generally red-brown fading to a lighter rust color within a few weeks. Newborn calves weigh 28 to 35 pounds (13-16 kg) and within five months grow to over 300 pounds (136 kg). Males in prime

condition weigh from 1,200 to 1,600 pounds (542-725 kg). Adult females weigh 800 to 1,300 pounds (364-591 kg). Only the bulls have antlers. The largest moose antlers in North America come from Alaska, the Yukon Territory, and the Northwest Territories of Canada. Trophy class bulls are found throughout Alaska, but the largest come from the western portion of the state. Moose occasionally produce trophy-size antlers when they are 6 or 7 years old, with the largest antlers grown at approximately 10 to 12 years of age. In the wild, moose rarely live more than 16 years.

Life history: Cow moose generally breed at 28 months, though some may breed as young as 16 months. Calves are born any time from mid-May to early June after a gestation period of about 230 days. Cows give birth to twins 15 to 75 percent of the time, and triplets may occur once in every 1,000 births. The incidence of twinning is directly related to range conditions. A cow moose defends her newborn calf vigorously.

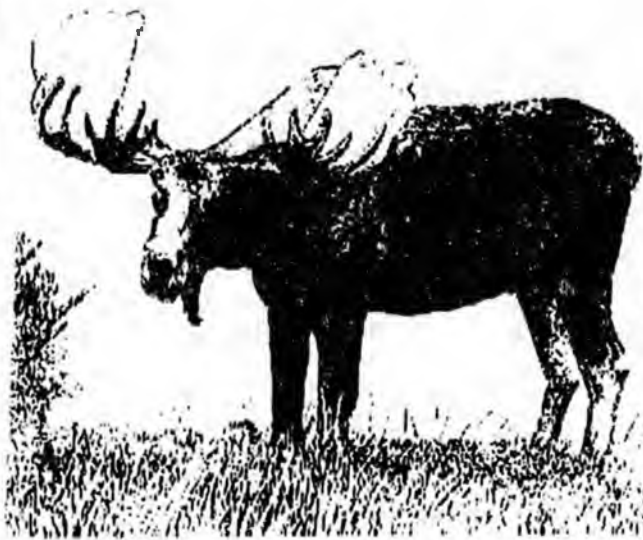
Calves begin taking solid food a few days after birth. They are weaned in the fall at the time the mother is breeding again. The maternal bond is generally maintained until calves are 12 months old at which time the mother aggressively chases her offspring from the immediate area just before she gives birth.

Moose breed in the fall with the peak of the "rut" activities coming in late September and early October. Adult males joust during the rut by bringing their antlers together and pushing. Serious battles are rare. Bulls may receive a few punctures or other damage and occasionally die from their wounds. The winner usually mates with the female.

By late October, adult males have exhausted their summer accumulation of fat and their desire for female company. Once again they begin feeding. Antlers are shed as early as November, but mostly in December and January.

Food habits: During fall and winter, moose consume large quantities of willow, birch, and aspen twigs. In some areas, moose actually establish a "hedge" or browse line 6 to 8 feet above the ground by clipping most of the terminal shoots of favored food species. Spring is the time of grazing as well as browsing. Moose eat a variety of foods, particularly sedges, equisetum (horsetail) pond weeds, and grasses. During summer, moose feed on vegetation in shallow ponds, forbs, and the leaves of birch, willow, and aspen.

Movements: Most moose make seasonal movements for calving, rutting, and wintering areas. They travel anywhere from only a few miles to as many as 60 miles during these transitions.



© Ashley Dean

Population dynamics: Moose have a high reproductive potential and can quickly fill a range to capacity if not limited by predation, hunting, and severe weather. Deep crusted snow can lead to malnutrition and subsequent death of hundreds of moose and decrease the survival of the succeeding year's calves.

Moose are killed by wolves and black and brown bears. Black bears take moose calves in May and June. Brown bears kill calves and adults the entire time the bears are out of their winter dens. Wolves kill moose throughout the year. Predation limits the growth of many moose populations in Alaska.

Hunting: More people hunt moose than any other of Alaska's big game species.

Economic and future status: Because moose range over so much of Alaska, they have played an important role in the development of the state. At one time professional hunters supplied moose meat to mining camps. Historically, moose were an important source of food, clothing, and implements to Athapaskan Indians dwelling along the major rivers. Today, Alaskans and nonresidents annually harvest approximately 6,000 to 8,000 moose—some 3.5 million pounds of meat. Moose are an important part of the Alaskan landscape, and tourists photograph those animals that feed along the highway.

Man's developments in Alaska include many alterations upon the face of the land. These activities create conflicts between man and moose as moose eat crops, stand on airfields, eat young trees, wander the city streets, and collide with cars and trains.

Man's removal of mature timber through logging and careless use of fire has, in general, benefited moose as new stands of young timber have created vast areas of high-quality moose food. The future for moose is reasonably bright because man is learning how to manipulate habitat with wildfire and is becoming more skilled at managing factors that limit moose populations, such as predation and hunting.

Text: Robert A Rausch & Bill Gasaway

Illustration: Ashley A. Dean

Revised by Charles C. Schwartz and reprinted 1994

Caribou

Caribou (*Rangifer tarandus*) live in the arctic tundra, mountain tundra, and northern forests of North America, Russia, and Scandinavia. The world population is about 5 million. Caribou in Alaska are distributed in 32 herds (or populations). A herd uses a calving area that is separate from the calving areas of other herds, but different herds may mix together on winter ranges.

In Europe, caribou are called reindeer, but in Alaska and Canada only the domestic forms are called reindeer. All caribou and reindeer throughout the world are considered to be the same species, but there are 7 subspecies: barren-ground (*Rangifer tarandus granti*), Svalbard (*R. t. platyrhynchus*), European (*R. t. tarandus*), Finnish forest reindeer (*R. t. fennicus*), Greenland (*R. t. groenlandicus*), woodland (*R. t. caribou*) and Peary (*R. t. pearyi*). Alaska has only the barren-ground subspecies, but in Canada the barren-ground, woodland, and Peary subspecies are found.

General description: Caribou have large, concave hoofs that spread widely to support the animal in snow and soft tundra. The feet also function as paddles when caribou swim. Caribou are the only member of the deer family (Cervidae) in which both sexes grow antlers. Antlers of adult bulls are large and massive; those of adult cows are much shorter and are usually more slender and irregular. In late fall, caribou are clove-brown with a white neck, rump, and feet and often have a white flank stripe. The hair of newborn calves is generally reddish-brown. Newborn calves weigh an average of 13 pounds (6 kg) and grow very quickly. They may double their weight in 10-15 days. Weights of adult bulls average 350-400 pounds (159-182 kg). However, weights of 700 pounds (318 kg) have been recorded. Mature females average 175-225 pounds (80-120 kg). Caribou in northern and southwestern Alaska are generally smaller than caribou in the Interior and in southern parts of the state.

Life history: Calving occurs in mid-late May in Interior Alaska and in early June in northern and southwestern Alaska. If females are in very good condition they can breed when they are 16 months old, but in most herds they do not breed until they are 28 months old. Most adult cows are pregnant every year and give birth to one calf — twins are very rare. Wolves, grizzly bears, and golden eagles kill large numbers of newborn calves. After calving, caribou collect in large "postcalving aggregations" to avoid predators and escape mosquitoes and warble flies. These large groups of caribou stay together in the high mountains and along seacoasts where wind and cool temperatures protect them from summer heat and insects. After insect numbers decline in August, caribou scatter out and feed heavily on willow leaves and mushrooms to regain body weight.

The shedding of velvet (the fur covering on antlers) in late August and early September by large bulls marks the approach of the rutting (breeding) season and the start of fall migration. Mature bulls frequently have more than three inches of fat on the back and rump, which is used to provide energy needed during the rut. The necks of adult bull caribou swell enormously in September due to the natural production of steroid hormones like testosterone. Fighting begins in early September and becomes more frequent as the rut approaches at the end of the month. Most fights between bulls are brief bouts, but violent fights occur, and many bulls are seriously injured or killed during the rut. Many injured or exhausted bulls are killed by wolves and bears after the rut. Unlike many other members of the deer family, bull caribou do not control a harem of cows. Instead, they control a space around themselves, and prevent other bulls from breeding females within their space. The largest bulls shed their antlers in late October, but small bulls and non-pregnant cows do not shed their antlers until April. Pregnant females usually retain their antlers until calves are born in late May or early June.



Food habits: Like most herd animals, the caribou must keep moving to find adequate food. Large herds often migrate long distances (up to 400 miles/640 km) between summer and winter ranges. Smaller herds may not migrate at all. In summer (May-September), caribou eat the leaves of willows, sedges, flowering tundra plants, and mushrooms. They switch to lichens (reindeer moss), dried sedges (grasslike plants), and small shrubs (like blueberry) in September.

Movements: In Alaska, caribou prefer treeless tundra and mountains during all seasons, but many herds winter in the boreal forest (taiga). Calving areas are usually located in mountains or on open, coastal tundra. Caribou tend to calve in the same general areas year after year, but migration routes used for many years may suddenly be abandoned in favor of movements to new areas with more food. Changing movements can create problems for the Native people in Alaska and Canada who depend upon caribou for food.

Caribou movements are probably triggered by changing weather conditions, such as the onset of cold weather or snowstorms. Once they decide to migrate, caribou can travel up to 50 miles a day. Caribou apparently have a built in compass, like migratory birds, and can travel through areas that are unfamiliar to them to reach their calving grounds.

Hunting: Alaskan hunters shoot about 22,000 caribou each year for food. A few thousand other hunters, primarily from the lower 48 states, Europe, and Mexico, travel to Alaska to experience caribou hunting each fall. These hunters contribute significantly to the economy of the state, particularly in rural areas. Meat from caribou taken by these nonresident hunters is also required to be used for food. Alaska's great caribou herds have also become increasingly treasured as a natural wonder of state, national, and international importance.

Population dynamics: There are approximately 950,000 wild caribou in Alaska (including some herds that are shared by Alaska and Canada's Yukon Territory). Caribou are somewhat cyclic in number, but the timing of declines and increases, and the size to which herds grow is not very predictable. Although overhunting caused some herds to remain low in the past, today, varying weather patterns (climate), overpopulation, predation by wolves and grizzly bears, and disease outbreaks determine whether most herds increase or decrease.

In the 1970s people were concerned about the effect of the trans-Alaska oil pipeline, expanding oil development, and increased disturbance from use of aircraft and snowmobiles on caribou. Although there was some displacement of caribou calving in the Prudhoe Bay oilfield, in general, caribou have not been adversely affected by human activities in Alaska. Pipelines and most other developments are built to allow for caribou movements, and caribou have shown us that they can adapt to the presence of people and machines. As human activities expand in Alaska, the great challenge for caribou management is for man to consider the needs of our caribou herds and ensure that they remain a visible, healthy part of our landscape.

Text: Patrick Valkenburg
Illustration: ADF&G Staff
Revised and reprinted 1999

ALASKA STATE LEGISLATURE

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REPRESENTATIVE WES KELLER DISTRICT 14 Sponsor Statement

HB 348

"An Act relating to the adoption of regulations by the Board of Fisheries and the Board of Game."

For years Alaska has devoted time and money to the management of one of its most valuable renewable resources. Fish and Game represent many things to many Alaskans. Be it commercial fishing or guiding, hunting or sport fishing, or simply viewing wildlife, Alaska is unique and every Alaskan enjoys the gift of the resource.

Every year, Alaskans and tourists take to the inlets, the rivers and the channels in search of a king salmon or halibut. Every year hunters carrying in state or out of state licenses look for the moose, caribou or bear. Every summer thousands of tourist marvel at herds of caribou or a lone moose or sow with her cubs.

Alaska's wildlife and fish makeup an asset. Without them not as many people would visit the state, which translates into a loss of revenue. Without them hunters and fishers would not earn a living or put food on the table.

The problem we face is that we have not allowed our Boards of game and fish to manage the resource and **allocate** it for what it actually is an **asset**. House Bill 348 will accomplish that by inserting those important words into statute. The language makes it clear to others that it is our asset and we will manage for abundance as promised in the Alaska Constitution.

We urge your support for the language in HB 348 to make it clear we understand what our fish and wildlife truly are and what they mean. It is language that is easy to understand whether you live in Alaska or somewhere else.

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

Debra Higgins

From: Rowland, Mindy B (GOV) [mindy.rowland@alaska.gov]
Sent: Monday, February 25, 2008 11:35 AM
To: Debra Higgins
Subject: RE: CSSSHB348(RES).pdf



NOT PART OF FILE

Thank you Debbie.

The Dept. of Law fiscal note is still applicable. I've forwarded this to DF&G for review and I'll let you know if that fiscal note will be revised.

Thanks
Mindy

Mindy Rowland
Deputy Legislative Director
Office of Governor Sarah Palin
465-4021

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1B348SS-LAW-CIV-02-12-01
 Bill Version: SSHB348
 () Publish Date: _____

Identifier (file name): _____ Dept. Affected: LAW
 Title An Act relating to the adoption of regulations by the Board RDU CIVIL
of Game. Component NATURAL RESOURCES
 Sponsor REPRESENTATIVE KELLER
 Requester HOUSE RESOURCES Component Number 2212

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	37.2	0.0	37.2	37.2	37.2	37.2	37.2	37.2
Travel	0.3		0.3	0.3	0.3	0.3	0.3	0.3
Contractual	4.3		4.3	4.3	4.3	4.3	4.3	4.3
Supplies	0.8		0.8	0.8	0.8	0.8	0.8	0.8
Equipment	0.5		0.5	0.5	0.5	0.5	0.5	0.5
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()	0.0	0.0	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	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	43.0	0.0	43.0	43.0	43.0	43.0	43.0	43.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0.3		0.3	0.3	0.3	0.3	0.3
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Robert Meiners, Administrative Services Manager
 Division: Administrative Services Division
 Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
 Date/Time 2/12/08 3:40 PM
 Date 2/12/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. SSHB348

ANALYSIS CONTINUATION

SSHB 348 was written for the purpose of emphasizing, in statute, the allocative nature of many game regulation decisions, so that such decisions would not be subjected to the whims of political change through the initiative process. Unfortunately, the way the bill is worded, it could easily be interpreted as serving to limit the Board of Game's ability to exercise many of its most important powers to only those situations in which the regulations are being done "as a means to allocate the asset of game." Because of this danger, the Board would be forced to build a record for every regulation which illustrates how the Board is allocating game through that regulation. This would likely add several days to each major board meeting, with resulting costs, and to more legal arguments and challenges regarding whether, and how, the Board is allocating, also with resulting costs. It is difficult to predict the increased costs for the Department of Law, but it might be reasonable to guess, for now, that up to two more lawsuits per year might be the result requiring additional resources equivalent to 1/4 FTE of attorney time.

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SSHB 348
 () Publish Date: _____

Identifier (file name) HB348SS-DFG-BSS-02-11-08 Dept. Affected Fish and Game
 Title Board of Game Regulations RDU Administration and Support
 Component F&G Boards & Advisory Committees
 Sponsor Representative Keller
 Requester House Resources Committee Component Number 2825

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING		0.0					

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL		0.0					

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The Attorney General's office advises that the changes proposed under SSHB 348 will require additional meeting days by the Board of Game during regulatory meetings. The Board of Game meets twice each year to consider changes to regulations in regions of the state on a two-year cycle. The approximate cost per day for holding a board meeting is \$4,100, which includes costs for the meeting facility, per diem for the Executive Director and Boards Support staff, and honoraria and per diem for seven board members.

Without knowing how many extra days per meeting will be required, the fiscal impact is indeterminate.

Prepared by: Kristy Tibbles, Executive Director, Board of Game
 Division: Boards Support Section
 Approved by: Tom Lawson, Director
Division of Administrative Services, Department of Fish and Game

Phone 465-6098
 Date/Time 2/11/08 4:00 PM
 Date 2/11/2008

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

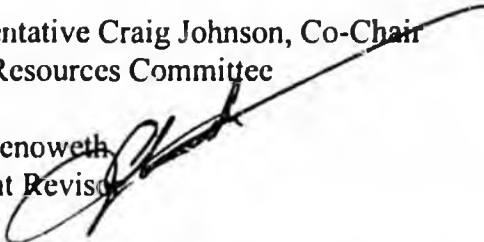
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 F'h St., Rm. 329

MEMORANDUM

February 22, 2008

SUBJECT: Draft CSSSHB 348(RES) (Work Order No. 25-LS1328\V)

TO: Representative Craig Johnson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor 

The draft committee substitute is an attempt to try to be responsive to the material transmitted from your office. The material asked for substitution of new material, either in AS 16.05.255(j) or in another subsection (not clear as to which).

Regulations adopted by the Board of Game are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62.010 - 44.62.290).¹ The Act's rule making provisions define the term "regulation" to mean, in relevant part,

"every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted . . . to implement, interpret, or make specific the law enforced or administered by it

AS 44.62.640(a)(3).

The text transmitted by your office speaks to supplying a meaning for "the terms 'conservation,' 'development,' and 'utilization'" "in this section" (the context in which this direction was given referred to AS 16.05.255). In that section, those terms appear only in paragraphs (a)(3), (a)(7), and (a)(10). The draft of the committee substitute that accompanies this memo, therefore, addresses the standard that must be met in the board's adoption of regulations not as a new or additional duty or obligation of the Board of Game but, instead, as an amendment to existing subsection (d) setting out the content of the regulations that the board may adopt. It also prescribes the priority to be applied when the board acts to adopt regulations to implement those three terms ("must primarily concern whether, how, when, and where the public asset of game will be allocated or appropriated"), limited to specific reference to the three paragraphs in which those terms

¹ See AS 16.05.255(a), in which, under the lead-in language of the subsection, the Board of Game is directed to adopt regulations it considers advisable "in accordance with AS 44.62."

Representative Craig Johnson

February 22, 2008

Page 2

appear. Finally, "whether" substitutes for "if": "if" is appropriate for a condition, but "whether" is preferred to express a "possibility" as between alternatives, in this instance, the question being one of the possibility that the Board may or may not exercise discretion to allocate or appropriate "the public asset of game."

If this misses the mark, please advise.

JBC:lmb

08-043.lmb

Enclosure

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-1842
Fax: (907) 373-4729*



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-2186
Fax: (907) 465-3818

REPRESENTATIVE WES KELLER DISTRICT 14

MEMO

To: Representative Craig Johnson

Fm: Jim Pound

Cc: Representative Carl Gatto

Date: January 31, 2008

Re: Request for Hearing HB 348 (pending referral)

Please accept this memo and the attached packet as a request pending referral for the House Resources Committee to schedule, for hearing House Bill 348 "An Act relating to the adoption of regulations by the Board of Fisheries and the Board of Game."

HB 348 will place into fish and game statutory language the words asset and allocation. This language will clearly state that we fully understand that our fish and game are assets and that management decisions are based on that knowledge.

I urge your assistance by placing HB 348 on the House Resources Committee hearing schedule at your earliest convenience.

Attachments: Sponsor Statement, HB 348, AS 16.05.251, Congressman Miller Press Release, F&G Relationship between wildlife, Wildlife Conservation performance, Sample Bd of Game Report, Information on Moose and Caribou

E-Mail: Representative_Wes_Keller@legis.state.ak.us
Call Juneau Toll free: (800) 468-2186
Website: www.akrepublicans.org/keller/

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
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Session:

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Juneau, Alaska 99801-1182
Phone: (907) 465-2186
Fax: (907) 465-3818

REPRESENTATIVE WES KELLER DISTRICT 14 Sponsor Statement

HB 348

"An Act relating to the adoption of regulations by the Board of Fisheries and the Board of Game."

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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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 25, 2008

SUBJECT: Game as an asset and CSSSHB 348(FIN)
(Work Order No. 25-LS1328\X)

TO: Representative Max Gruenberg

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked the following: Can the legislature determine whether game is or is not an asset for purposes of art. XI, sec. 7 or art. VIII, sec. 2, sec. 3, or sec. 4? Or can the legislature determine whether game is or is not an asset in view of *Pullen v. Ulmer*, 932 P.2d 54 (Alaska 1996)?

I will answer these questions as accurately as I can in the short length of time I have to respond. The short answer is that the legislature cannot "determine" whether game is an asset for purposes of the state constitution.

The legislature can make reference to game as an asset, as is proposed in CSSSHB 348(FIN). However, the court would not be obligated to follow this statutory language when it is interpreting the meaning of a constitutional provision. Hence, I do not believe that the legislature would actually be "determining" anything in relation to the state constitution. The state constitution stands on its own, and issues that arise from constitutional provisions will only require the court to look to the constitutional provision involved. The court may look to a statute for guidance, or for the view of the legislature on the issue, but the actual constitutional provision will likely rule the day.

The court in *Pullen* focused on a legal interpretation of art. XI, sec. 7 of the Alaska state constitution. The court has said that it (i.e. the judiciary) has the obligation to expound on the meaning of a provision of the state constitution and, by extension, under the recognized separation of powers principle, that is not the function of the legislature. *Alaska Pub. Interest Research Group v. State*, 167 P.3d 27, 35 - 36 (Alaska 2007). In other words, independently of anything the legislature might consider doing by law to describe game management as involving an asset of the state, the court will make its own examination and reach its own conclusion. It may give no credence to the subsection added by this bill -- the language may, in fact, not be used by the court as it applies the prohibitions of art. XI, sec. 7.

distributed by Gruenberg

Representative Max Gruenberg

March 25, 2008

Page 2

It would seem that this bill attempts to expand and codify part of the ruling found in *Pullen*. In that case, the court stated: "We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant characterizing such salmon as assets of the state which may not be appropriated by initiative." *Pullen* at 61. This bill attempts to expand that qualification as salmon as an asset of the state to the area of game, in relation to the Board of Game's regulatory authority.

If I may be of further assistance, please advise.

BJK:med

08-218.med