12179 HOUSE JUDICIARY

H - Y
G - Y
D - N
C - N
S - N
R - N

2-5 FAILS

Concept. Amend. # 1 Gruenberg

p. 3, line 28: Delete "and"

p. 3, line 29, following "sentence": Insert "and a court ~~has approved~~, following a hearing, has approved the ~~trans~~. interim transfer of the minor, "

FACTORS OF MOVING TO DOC.

- 16 y/o
- Petition filed
- CT approve interim transfer (new step)
- Dept. transfer

Before hearing on petition

Analysis of the changes in CS for HB 255 (Version L), from Version C of HB 255

Section 1: Version C enabled the Department of Health and Social Services to refer for dual sentencing a juvenile aged 12-15 who is alleged to have committed murder in the first or second degree or murder of an unborn child; manslaughter or manslaughter of an unborn child; or sexual assault in the first degree. Version L does not include expansion of dual sentencing to these youth.

Section 1 of Version L also adds arson in the second degree as one of the offenses that, when committed by a 16-17-year-old, would allow that juvenile to be eligible for dual sentencing.

Under both the C version and the L version, the use of dual sentencing is expanded so that a previous adjudication is not required when a 16-17-year-old commits a B felony against a person or misconduct involving weapons in the first or second degree.

Section 2: In the C version, this section sought to clarify, by adding a new subsection (l) to AS 47.12.120, the process under which an adult sentence that was pronounced would be imposed, suspended or dismissed; and to clarify that the court may place the minor on adult felony probation. The L version does not create any changes or attempt to clarify the existing process and does not add this new subsection.

Instead, the L version of this section makes changes to an existing subsection of statute, AS 47.12.120(j). This version of the bill states that when a juvenile who is dual sentenced receives their juvenile orders they also will be required to remain under the supervision of the department until they reach the 20th birthday. (Other juveniles are only required to remain under juvenile jurisdiction until their 19th birthday, and may be extended under juvenile jurisdiction to the 20th birthday only if they consent to the extension and it is specifically granted by a court.) Juveniles who are dual sentenced will remain under department jurisdiction until they reach the 20th birthday unless a court discharges them earlier.

Section 3: The C version added a new condition, violation of a condition of probation, to the list of factors in AS 47.12.160(d), which the department may petition a court to have the adult sentence previously pronounced imposed on a youth. The L version does not attempt to add probation violation to the list of activities that may prompt imposition of the adult sentence.

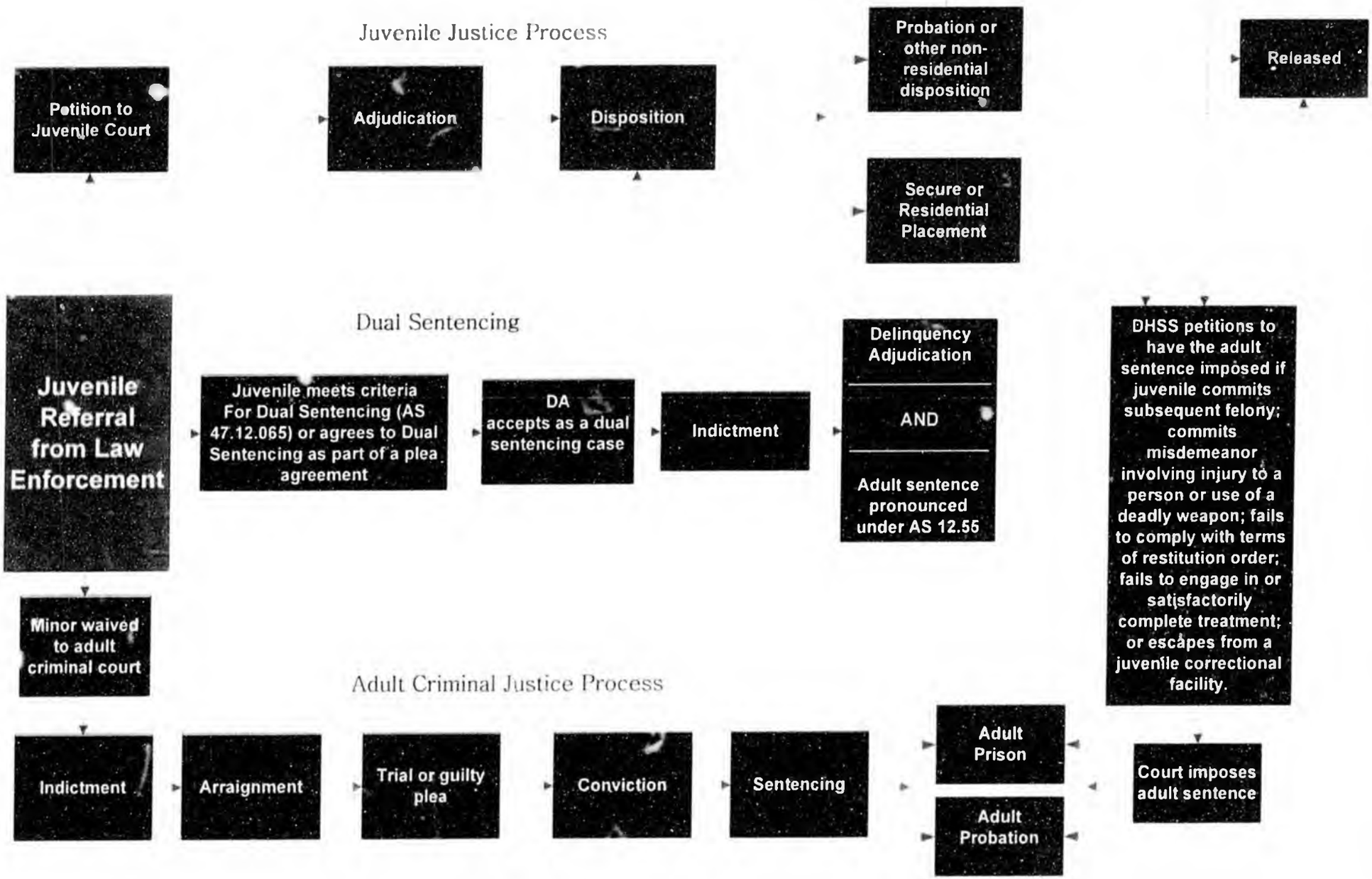
Instead, Section 3 of the L version amends a different subsection of statute, AS 47.12.160(a), to be consistent with the changes in Section 2 of the L version that allow the court to retain jurisdiction until the day the minor becomes 20 years of age. This section also now clarifies that the court may, at any time, modify or enlarge a judgment or order, or discharge the minor in the exercise of its power of protection over the minor and for the minor's best interest.

Section 4: The C version amended the burdens of proof necessary for imposition of the adult sentence in a dual sentencing case. The L version does not change the existing burdens of proof.

Instead, Section 4 in the L version here amends AS 47.12.240(c) to state that when a minor subject to dual sentencing is at least 16, and the department has filed a petition with the court to impose the adult sentence, the department may transfer custody of the minor to the Dept. of Corrections, and the minor may remain under DOC custody pending resolution of the petition.

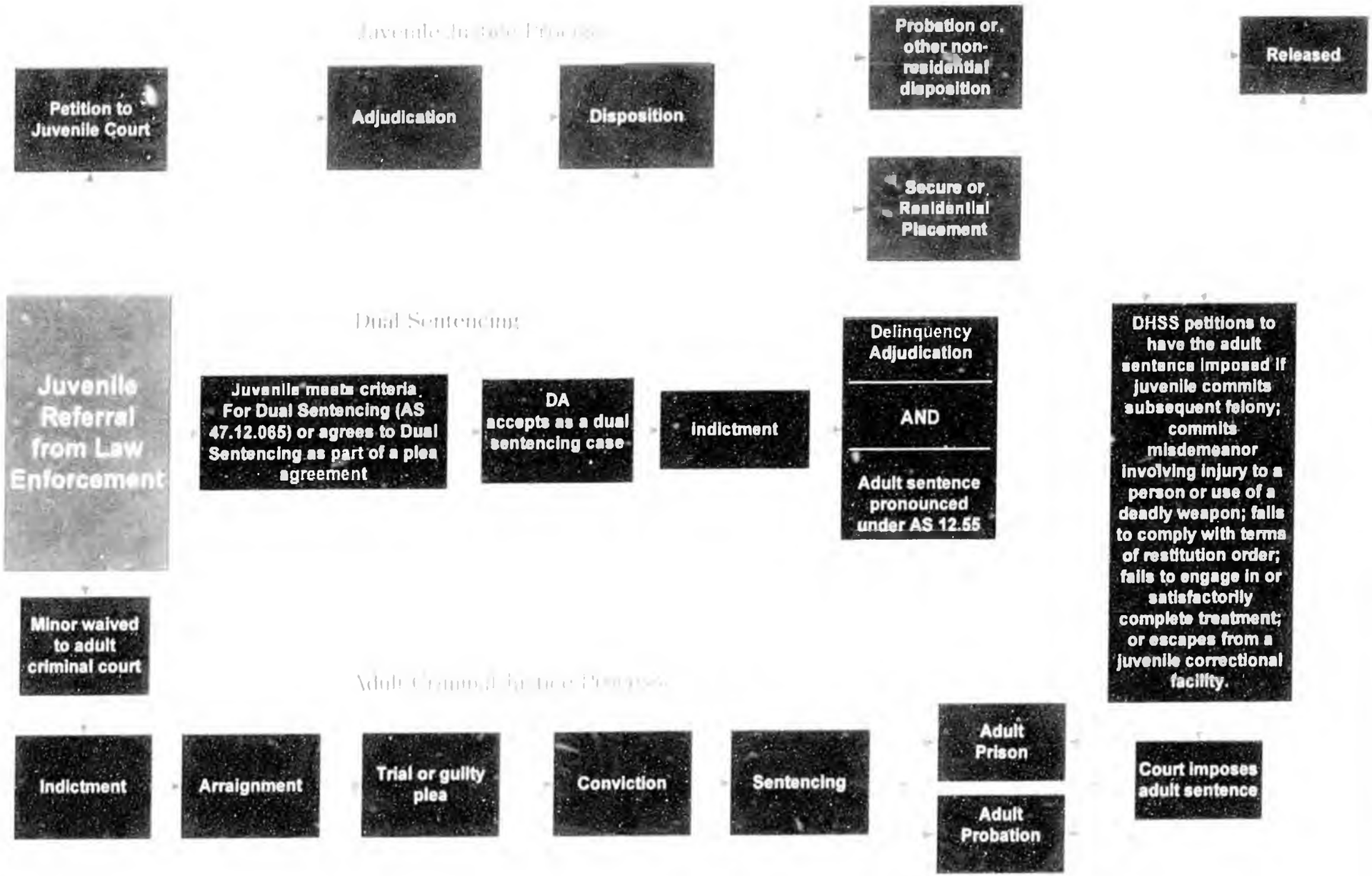
Juvenile Justice/Dual Sentencing Process

Prepared by DH&SS, Juvenile Justice - 02/22/2008



Juvenile Justice/Dual Sentencing Process

Prepared by DH&SS, Juvenile Justice 02/22/2008



25-LS0914\C.3
Luckhaupt
1/17/08

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 255

Page 2, line 15, following "order":

Insert "or orders"

Page 2, line 16, following the first occurrence of "section":

Insert "or any extension to that order or those orders"

Page 2, line 17:

Delete "or the department, suspend"

Insert "and with the agreement of the department, suspend or dismiss"

25-LS0914\C.4
Luckhaupt
1/17/08

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 255

Page 2, line 14:

Delete "a new subsection"

Insert "new subsections"

Page 2, following line 20:

Insert a new subsection to read:

"(m) When a sentence pronounced under (j)(2) of this section is not imposed under AS 47.12.160 or is suspended under (*l*) of this section, the minor is not considered to have been convicted of a crime, and the effects of the adjudication are as provided for others adjudicated under this chapter who were not subject to dual sentencing under AS 47.12.065."

HOUSE BILL 255
SECTIONAL ANALYSIS

Section 1 amends AS 47.12.065(a) by expanding the authority of the Department of Health and Social Services (department) or other entity selected by the department to refer minors alleged to have committed delinquent acts to the district attorney to pursue dual sentencing of the minor.

House Bill 255 (HB 255) would allow a minor 16 years of age and older alleged to have committed a class B felony against a person (for example, assault in the second degree) and misconduct involving weapons in the first or second degree to be referred to the district attorney for consideration of a request to impose a dual sentence. This provision would not apply if the minor is subject to automatic waiver to adult court under AS 47.12.030(a).

HB 255 would also allow a minor 12 years or older but under 16 years of age to be referred to the district attorney for consideration of dual sentencing if the minor is alleged to have committed first or second degree murder, murder of an unborn child, manslaughter, manslaughter of an unborn child, or sexual assault in the first degree.

Section 2 adds a provision to AS 47.12.120 addressing the procedure for suspension of the adult part of a dual sentence if the minor has successfully completed the delinquency order under the dual sentence. If a minor successfully completes the delinquency order, the minor or the department may request that the adult portion of the sentence be dismissed or suspended. As a condition of suspension, the court may place the minor on adult felony probation under the conditions provided in AS 12.55.

The bill also provides that when juvenile succeeds with the juvenile part of the disposition, and the adult part of the dual sentence is not imposed, the juvenile is not considered to have been convicted of a crime.

Section 3 adds to the circumstances under which the department or the district attorney may request the court to impose the adult portion of a dual sentence. It allows a petition to be filed for imposition of the adult portion of the dual sentence if the offender is still subject to the jurisdiction of the court and the offender violates a condition of probation.

Section 4 would change the procedure for imposition of the adult portion of a dual sentence. HB 255 provides that if the court finds by a preponderance of evidence that the minor has committed a felony or a misdemeanor against a person that involves injury to the victim or the use of a deadly weapon, the court must impose the adult sentence.

If the court finds by a preponderance of evidence that the minor has failed to comply with a restitution order, failed to complete a rehabilitation program, escaped from a correctional facility, or violated a condition of probation, the court must impose the adult sentence unless the minor proves by clear and convincing evidence that mitigating circumstances justify a stay in imposing the adult sentence. Current law requires the minor to meet the lower preponderance evidentiary standard to establish mitigating circumstances that justify a stay in the adult sentence.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB255CS-DOC-PM-03-03-08**
() Publish Date:

Identifier (file name): **HB255-DOC-SPP-01-21-08**
Dept. Affected: Corrections
Title: "An act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency ..."
RDU: Population Management
Component:
Sponsor: Representative Johnson
Requester: House Judiciary
Component Number:

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	0.0	•	•	•	•	•	•
Travel	0.0	•	•	•	•	•	•
Contractual	0.0	•	•	•	•	•	•
Supplies	0.0	•	•	•	•	•	•
Equipment	0.0	•	•	•	•	•	•
Land & Structures	0.0	•	•	•	•	•	•
Grants & Claims	0.0	•	•	•	•	•	•
Miscellaneous	0.0	•	•	•	•	•	•
TOTAL OPERATING	**0.0**	•	•	•	•	•	•
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time	0	•	•	•	•	•	•
Part-time	0	•	•	•	•	•	•
Temporary	0	•	•	•	•	•	•

ANALYSIS: *(Attach a separate page if necessary)*

At this time Department of Corrections is unable to estimate the number of individuals who would be committed to the custody of the department as a result of this legislation. The Department of Health and Social Services, Division of Juvenile Justice reports this legislation will increase juveniles referred for dual sentencing by 12 - 24 per year. Under dual sentencing if the minor unsuccessfully completes their sentence in the juvenile system they will be placed on adult felony probation under DOC supervision or may be transferred to the DOC's custody if the minor violates AS 41.12.160(d). These juveniles will initially enter the juvenile system. One additional Adult Probation Officer position with support costs will be necessary when these cases increase by 50. The estimated cost for each required position is $85,600.

The department will track and evaluate the change in caseloads due to passage of this legislation for future operating requests.

Prepared by: Sharleen Griffin, Director — Phone: (907) 465-3339
Division: Administrative Services — Date/Time: 3/3/08 7:00 AM
Approved by: Dwayne Peeples, Deputy Commissioner — Date: 3/3/2008
Department of Corrections

(Revised 10/05/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 255
() Publish Date:

ID(File name) HB255-DHSS-DJJ-12-21-07
Dept. Affected: Health & Social Services
Title DUAL SENTENCING
RDU Juvenile Justice
Component Probation Services
Sponsor JOHNSON
Requester HOUSE (JUD)
Component No. 2134

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information					
OPERATING EXPENDITURES	**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**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (0)							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other(Specify Type-do not abbreviate)							
Other(Specify Type-do not abbreviate)							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill broadens the criteria under which a juvenile may be "dual sentenced"--receiving both a juvenile order and an adult prison sentence. The bill lowers the age for which this option may be considered for offenders to age 12-15 for offenders who have committed murder, manslaughter, and rape; and does not require that offenders 16-17 have a previous adjudication for a felony offense, as is current law, for B felonies against a person. The bill also allows 16-17-year-olds who have committed Misconduct Involving Weapons in the First and Second degree to be considered eligible for dual sentencing, and clarifies that adult sentences may be suspended for juveniles who successfully complete juvenile orders.

Prepared by: Stephen F. McComb
Phone: 907 261-4335
Division: Juvenile Justice
Date/Time: 11/30/2007
Approved by: Karleen Jackson, Commissioner
Date: 12/21/2007
Agency: Department of Health and Social Services

ANALYSIS CONTINUATION

The Division of Juvenile Justice anticipates that fewer than a dozen juveniles a year would be assessed as appropriate for dual sentencing. While an average of 55 juveniles a year that do not currently meet the eligibility criteria for dual sentencing would potentially be eligible under this bill (because they meet the new offense and age criteria), only a portion of these youth will be assessed as posing serious enough risks to public safety to merit receiving a dual sentence. The number of youth that are actually dual sentenced will likely be further reduced because District Attorneys may be unwilling to process the case through a dual sentence, or a grand jury will be unwilling to indict the youth through the adult system. Moreover, most youth who are dual sentenced would be expected to complete their juvenile orders successfully and not proceed on to an adult sentence. Because the Division of Juvenile Justice will still manage these youth to the best of its ability whether or not they receive a dual sentence, this bill will not have a fiscal impact on the division.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 255
() Publish Date:

Identifier (file name): HB255-DOA-OPA-1-18-08
Dept. Affected: Administration
Title: "An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules..."
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Representative Johnson
Requester: Governor
Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill will expand the number of children eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a child eligible for punishment through dual sentencing and by lowering the age to twelve (12) for consideration for punishment through dual sentencing. It will also increase the number of children eligible for imposition of the adult sentence by including probation violations as a basis for imposing the adult sentence. Probation violations may include failure to comply with curfew or failure to timely report to a probation officer. The bill will also increase the burden on a child to prove to the court by clear and convincing evidence that the adult sentence should not be imposed and that he should not be placed in an adult prison. This bill will likely result in additional litigation costs to the agency; however, at this time, it is not possible to predict what those will be. Consequently, the agency submits an indeterminate fiscal note.

Prepared by: Joshua P. Fink, Director
Phone: 907-269-3501
Division: Office of Public Advocacy
Date/Time: 1/18/08 12:00 AM
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration
Date: 1/18/2008

(Revised 11/19/2007 OMB)

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 255a
() Publish Date:

Identifier (file name): HB255-DOA-PDA-1-18-08
Title "An Act relating to dual sentencing of certain juvenile..."
Sponsor Rep. Johnson
Requester (H) Judiciary

Dept. Affected: Administration
RDU Legal and Advocacy Services
Component Public Defender Agency
Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATIN EXPENDITURES	**FY 2009**	**FY 2009**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**
Personal Services	*	0.0	*	*	*	*	*
Travel	*	0.0	*	*	*	*	*
Contractual	*	0.0	*	*	*	*	*
Supplies	*	0.0	*	*	*	*	*
Equipment	*	0.0	*	*	*	*	*
Land & Structures	*	0.0	*	*	*	*	*
Grants & Claims	*	0.0	*	*	*	*	*
Miscellaneous	*	0.0	*	*	*	*	*
TOTAL OPERATING	*	**0.0**	*	*	*	*	*
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2008) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

This bill will expand the number of children eligible for dual sentencing (being given both a juvenile sentence and a stayed adult sentence) by increasing the types of offenses that make a child eligible for punishment through dual sentencing and by lowering the age to twelve (12) for consideration for punishment through dual sentencing. It will also increase the number of children eligible for imposition of the adult sentence by including all probation violations as a basis for imposing the adult sentence. The bill will also increase the burden on a child to prove to the court by clear and convincing evidence that the adult sentence should not be imposed and that he should not be placed in an adult prison. This bill will likely result in additional litigation costs to the agency, however, at this time, it is not possible to predict what those will be. Consequently, the agency submits an indeterminate fiscal note.

Prepared by Quinlan Steiner, Director — Phone 907-334-4414
Division Public Defender Agency — Date/Time 1/18/08 3:30 p.m.
Approved by Kevin Brooks, Deputy Commissioner — Date 1/18/2008
Department of Administration

(Revised 11/19/2007 OMB)

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: **HB255-LAW-CRIM-01-21-08**
Bill Version: **HB255**
() Publish Date:

Identifier (file name):
Title: An Act relating to dual sentencing of cetain juvenile offenders
Sponsor: REP JOHNSON
Requester: JUDICIARY

Dept. Affected: LAW
RDU: Criminal
Component: 2nd Judicial District
Component Number: 2199

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information					
OPERATING EXPENDITURES	**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**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

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**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost: 0 0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

HB 255 would expand eligibility for dual sentencing of minors who commit crimes that are not subject to automatic waiver to the adult system The department does not expect a significant fiscal impact from this bill

Prepared by: Betty Martin, Director — Phone: (907) 465-3673
Division: Administrative Services Division — Date/Time: 1/21/08 7:30 AM
Approved by: Talis Colberg, Attorney General — Date: 1/21/08 7:30 AM
Department of Law

(Revised 11/19/2007 OMB)

Rule 24.1 Imposition of Adult Portion of Dual Sentence.

(a) **Petition to Impose Adult Portion of Dual Sentence.** The district attorney may petition the court for imposition of the adult portion of a dual sentence pronounced under AS 47.12.120(j)(2). The petition must be supported by an affidavit stating the particulars of the alleged violations.

(b) **Detention Pending Hearing.** If the juvenile has been arrested, the provisions of Delinquency Rule 12 apply to continued detention or placement pending a hearing on the petition.

(c) **Hearing.** The provisions of Delinquency Rule 24(c) apply to hearings on the petition to impose the adult portion of a dual sentence.

(d) **Sentence.** If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed a subsequent felony offense that is a crime against a person or the crime of arson, the adult sentence previously pronounced under AS 47.12.120(j)(2) shall be imposed and custody transferred to the Department of Corrections. If the district attorney demonstrates by a preponderance of the evidence that the juvenile has committed any of the other circumstances set out in AS 47.12.160(d)(1) -- (5), the adult sentence shall be imposed and custody transferred to the Department of Corrections, unless the juvenile proves by a preponderance of the evidence that mitigating circumstances exist that justify a continuance of the stay of the adult sentence and the juvenile is amenable to further treatment in the juvenile system. The court shall make written findings to support its order.

(SCO 1349 effective December 1, 1998)

Cross References

CROSS REFERENCE: AS 47.12.065; AS 47.12.120(j)(2); AS 47.12.160(d) and (e).

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STATE OF MINNESOTA
IN COURT OF APPEALS
A05-67

In the Matter of the Welfare of: J.L.P., Child.

Filed January 31, 2006
Affirmed
Peterson, Judge

Anoka County District Court
File No. J5-[illegible]0-55340/K5-03-8948

Felix J. Sahlin, Lakes & Plains Building, Suite 200, 842 Raymond Avenue, St. Paul, MN 55114 (for appellant J.L.P.)

Mike Hatch, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert M.A. Johnson, Anoka County Attorney, Kristin C. Larson, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Seventh Floor, Anoka, MN 55303 (for respondent State of Minnesota)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.

SYLLABUS

1. The imposition of a juvenile disposition and an adult sentence under Minn. Stat. § 260B.130, subd. 4 (a) (2004), is a single sentence that does not violate the constitutional prohibition against double jeopardy.

2. An equal-protection challenge to the length of a sentence imposed under Minn. Stat. § 260B.130, subd. 4(a), is reviewed under a rational-basis test.

OPINION

PETERSON, Judge

Appellant was charged with three felony offenses, and the prosecutor designated that the case should be an extended jurisdiction juvenile (EJJ) prosecution. Appellant pleaded guilty to two felony charges, and the district court sentenced appellant to a juvenile disposition and two stayed adult sentences subject to the terms of appellant's juvenile disposition. Appellant violated a disposition condition, and the district court revoked appellant's EJJ status, continued the stay of the adult sentences, placed appellant on probation for ten years, and as a condition of probation, ordered appellant to serve 180 days in jail. Appellant violated his probation, and the district court revoked the stay and executed the adult sentences. On appeal from the sentence, appellant argues that the imposition and execution of both a juvenile disposition and an adult criminal sentence, as required by Minn. Stat. § 260B.130, subd. 4 (2004), constitutes double punishment for the same offense and, therefore, violates the Double

Jeopardy and Equal Protection clauses of the state and federal constitutions. We affirm.

FACTS

A delinquency petition was filed in Goodhue County alleging that appellant J.L.P. committed one count each of criminal vehicular operation resulting in death, criminal vehicular operation resulting in great bodily harm, and criminal vehicular operation resulting in substantial bodily harm. Because appellant was 17 years old at the time of the offenses and because criminal vehicular operation resulting in death is a felony offense for which commitment to prison is presumed under the Minnesota Sentencing Guidelines, the prosecutor designated that the case should be an EJJ prosecution. Appellant pleaded guilty to criminal vehicular operation resulting in death and criminal vehicular operation resulting in great bodily harm. The plea agreement provided that a juvenile disposition would be imposed, along with two stayed adult felony sentences. By order filed July 5, 2001, the district court accepted the plea and adjudicated appellant an EJJ delinquent.

Venue was transferred to Anoka County for disposition. The juvenile disposition granted custody of appellant to Anoka County Juvenile Corrections, under conditions prescribed by the court, until appellant's 21st birthday and placed appellant in the Juvenile Center. The district court also imposed two stayed adult felony sentences of 48 and 18 months to run consecutively.

At a hearing on August 20, 2003, appellant admitted violating a disposition condition by entering a liquor store and trying to buy alcohol using false identification. Based on findings that appellant willfully violated probation and was no longer amenable to treatment in the juvenile system, the district court revoked appellant's EJJ status. The district court continued the stay of execution of the adult sentences and placed appellant on probation for ten years. As a probation condition, appellant was required to serve 180 days in the Anoka County adult correctional facility, with work-release privileges.

A March 8, 2004 Anoka County corrections department report alleged that appellant had violated probation; the violations included failing to complete chemical-dependency treatment. An addendum filed October 7, 2004 alleged additional violations, including that appellant had used alcohol and failed to remain law abiding. Appellant appeared before the district court and admitted the violations, but the hearing was continued to give appellant an opportunity to challenge the constitutionality of the EJJ prosecution statute, Minn. Stat. § 260B.130 (2004). The district court rejected appellant's constitutional challenge and executed the adult sentences. The district court gave appellant credit for a total of 360 days served in juvenile and adult detention facilities.

This appeal followed. By special term order, this court denied the state's motion to dismiss the appeal as untimely. *In re Welfare of J.L.P.*, 701 N.W.2d 282, 285 (Minn. App. 2005).

ISSUES

1. Do the dual-sentencing provisions of Minn. Stat. § 260B.130 violate state and federal constitutional prohibitions against double jeopardy?

2. Does Minn. Stat. § 260B.130 violate the equal-protection clauses of the state and federal constitutions?

ANALYSIS

1. Whether a district court correctly applied the law of double jeopardy is a question of law, which this court reviews de novo. *Freeman v. Residence Located at 1215 East 21st St.*, 552 N.W.2d 275, 276 (Minn. App.

1996), *review denied* (Minn. Oct. 15, 1996).

A person may not be put twice in jeopardy for the same offense. U.S. Const. amend. V; Minn. Const. art. I, § 7. "The double jeopardy clauses of both constitutions protect criminal defendants from three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *State v. Calmes*, 632 N.W.2d 641, 649 (Minn. 2001) (footnote and quotation omitted). The prohibition against double jeopardy applies to delinquency proceedings that are based on violations of criminal statutes. *In re Welfare of E.R.D.*, 551 N.W.2d 238, 240 (Minn. App. 1996). When a defendant pleads guilty, jeopardy attaches, at the latest, when sentencing occurs. *State v. Shellito*, 456 N.W.2d 470, 472 (Minn. App. 1990), *review denied* (Minn. Aug. 23, 1990).

Minn. Stat. § 260B.130, subd. 4(a) (2004), states:

> If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:
>
> (1) impose one or more juvenile dispositions under section 260B.198; and
>
> (2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

Citing *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975), appellant argues that imposing a juvenile disposition and an adult criminal sentence as required under Minn. Stat. § 260B.130, subd. 4(a), violates the prohibition against double jeopardy. In *Breed*, following an adjudicatory hearing at which the juvenile court heard witness testimony, the juvenile court sustained the petition alleging respondent delinquent based on its findings that respondent violated a criminal statute and was subject to the juvenile court's jurisdiction. *Breed*, 421 U.S. at 521-22, 95 S. Ct. at 1781-82. At the dispositional stage of the proceeding, the juvenile court found respondent unamenable to treatment as a juvenile and ordered that he be prosecuted as an adult. *Id.* at 523-24, 95 S. Ct. at 1782-83. Respondent was then tried as an adult and convicted of robbery. *Id.* at 525, 95 S. Ct. at 1783. Respondent filed a petition for a writ of habeas corpus alleging that his transfer to adult court and his subsequent trial placed him in double jeopardy. *Id.* at 525-26, 95 S. Ct. at 1783-84.

The Supreme Court concluded:

> We cannot agree with petitioner that the trial of respondent in Superior Court on an information charging the same offense as that for which he had been tried in Juvenile Court violated none of the policies of the Double Jeopardy Clause. For, even accepting petitioner's premise that respondent never faced the risk of more than one punishment, we have pointed out that the Double Jeopardy Clause . . . is written in terms of potential or risk of trial and conviction, not punishment. . . . The policy of avoiding multiple trials has been regarded as so important that exceptions to the principle have been only grudgingly allowed. . . .
>
> Respondent was subjected to the burden of two trials for the same offense; he was twice put to the task of marshaling his resources against those of the State, twice subjected to the heavy personal strain which such an experience represents. We turn, therefore, to inquire whether either traditional principles or the juvenile court's assumed ability to function in a unique manner supports an exception to the constitutional policy of finality to which respondent would otherwise be entitled.

Id. at 532-33, 95 S. Ct. at 1787-88 (quotations and citations omitted). The Court then rejected the argument "that giving respondent the constitutional protection against multiple trials in this context will diminish flexibility and informality to the extent that those qualities relate uniquely to the goals of the juvenile-court system" and agreed that granting constitutional protection to respondent would require, in most cases, that a transfer decision be made

before an adjudicatory hearing and concluded that this would not impose an undue burden on the juvenile-court system. *Id.* at 535-39, 95 S. Ct. at 1789-90. The Court held "that the prosecution of respondent in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause[.]" *Id.* at 541, 95 S. Ct. at 1791.

Appellant argues that it follows from *Breed* "that once a youth has been adjudicated a delinquent, imposing an adult sentence (or transferring to adult court) violates the double jeopardy clause." Appellant contends that he is being subjected to multiple punishments because he was given a single juvenile disposition for both offenses that he admitted committing, and he was also given consecutive adult sentences for the same two offenses. But appellant's argument ignores the fact that the concern in *Breed* was multiple trials. Here, the state designated appellant's case as an EJJ prosecution when the delinquency petition was filed, which meets the requirement that a transfer decision be made before an adjudicatory hearing; and there was a single adjudication of delinquency upon the district court's acceptance of appellant's guilty plea.

The issue in this case is whether imposing a juvenile disposition and adult sentences at the same time, as required under Minn. Stat. § 260B.130, subd. 4(a), constitutes multiple punishments. We conclude that it does not. We agree with the district court's description of the juvenile disposition and the adult sentences as "all part of one integrated statutory framework," which is consistent with the supreme court's explanation of the EJJ prosecution statute in *State v. Garcia*, 683 N.W.2d 294 (Minn. 2004). In *Garcia*, the supreme court explained:

> The EJJ designation was conceived to provide a more graduated juvenile justice system based on age and offense with a new transitional component between the juvenile and adult systems. The intent of the EJJ designation is to give juveniles one last chance at success in the juvenile system, with the threat of adult sanctions as an incentive not to reoffend. An initial juvenile disposition reinforced by the possibility of adult sanctions gives juveniles a certainty of punishment combined with an opportunity to be successful in the juvenile system. Thus, unlike certified juveniles, EJJs are given one last chance at rehabilitation in the juvenile system before being subjected to adult sanctions.

Id. at 300 (citations and quotations omitted).

The juvenile disposition and the adult sentence imposed under Minn. Stat. § 260B.130, subd. 4(a), following delinquency adjudication in an EJJ prosecution are not separate, independently imposed punishments. They are a single punishment that has multiple components, with the juvenile disposition being essentially a probation condition of the stayed adult sentence. The actual consequences that a juvenile experiences may increase as a result of the juvenile's failure to comply with the juvenile disposition, but any additional consequences are set forth as a component of the single EJJ disposition. Because the juvenile disposition and the adult sentence are components of a single EJJ disposition, they do not violate the multiple-punishment prong of the prohibition against double jeopardy.

2. Appellant argues that the EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a), violates his right to equal protection because it is a longer sentence than would have been imposed if he had been an adult or a juvenile certified as an adult. Statutes are presumed constitutional and may only be declared unconstitutional when "the challenger bears the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990). The "power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *Id.* (quotation omitted).

> The Equal Protection Clause of the Fourteenth Amendment provides, in relevant part, "No state shall . . . deny to any person within its jurisdiction equal protection of the laws." U.S. Const. amend. XIV, § 1. Article I, Section 2. of the Minnesota Constitution provides, "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Both clauses have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive. This court reviews an equal protection challenge to a statute under a rational basis standard unless the challenge involves a suspect classification or a fundamental right.

Garcia, 683 N.W.2d at 298 (quotation omitted).

Appellant argues that the deprivation of his liberty involves a fundamental right, and, therefore, a strict-scrutiny standard applies to his equal-protection challenge. But in addressing an equal-protection challenge to the EJJ prosecution statute's disparate treatment of juveniles who are designated as EJJs by different means, this court applied a rational-basis standard because the fundamental right to liberty is not affected when a stayed adult sentence is imposed concurrently with a juvenile disposition that requires commitment to a juvenile facility. *In re Welfare of T.C.J.*, 689 N.W.2d 787, 795 (Minn. App. 2004), *review denied* (Minn. Jan. 26, 2005).

As in *T.C.J.*, which also involved an EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a), appellant is challenging the length of his sentence rather than the deprivation of his liberty. Appellant does not argue that he has the right to be free from any commitment to a juvenile or correctional facility. He argues that his sentence violates his right to equal protection because it is a longer sentence than would have been imposed if he had been an adult or a juvenile certified as an adult. Because appellant's challenge goes to the length of his sentence, the rational-basis test applies to determine the constitutionality of the sentence.

Appellant does not argue that no rational basis exists for sentencing EJJs differently than adults or juveniles certified as adults. Accordingly, appellant has failed to meet his burden of showing beyond a reasonable doubt that Minn. Stat. § 260B.130, subd. 4(a), is unconstitutional.

DECISION

Because an EJJ disposition imposed under Minn. Stat. § 260B.130, subd. 4(a) (2004), that includes a juvenile disposition and an adult sentence is a single punishment, imposing a juvenile disposition and an adult sentence under Minn. Stat. § 260B.130, subd. 4(a), does not violate state or federal constitutional prohibitions against double jeopardy. Appellant has not shown that Minn. Stat. § 260B.130, subd. 4(a), violates the Equal Protection Clause of the federal or state constitutions.

Affirmed.

Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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Jeanne Ostnes

From: Christina Lowther [grands@voaak.org]
Sent: Wednesday, October 24, 2007 12:10 PM
To: Rep. Craig Johnson
Subject: Expanding HB 255

I was unable to attend the Assembly's public hearing on the budget last night. However, this e-mail is to inform you that I support the expansion of using dual sentencing in juvenile cases.

Sincerely,
Christina Lowther

Grandfamilies Network Coordinator
Volunteers of America Alaska
1675 C St., Ste. 201
Anchorage, AK 99501
Toll-free Statewide 1-888-522-9866
Within Anchorage 522-9866
Fax 279-0148
grands@voaak.org

National Overview of Judicial Waiver

	Judicial Waiver								
	Discretionary	Presumptive	Mandatory	Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
Total States	45	15	15	15	29	25	34	15	17
Alabama	x				x		x		
Alaska	x	x			x			x	
Arizona	x			x	x	x	x		
Arkansas	x			x		x		x	x
California	x	x		x	x	x	x		x
Colorado	x	x		x		x		x	x
Connecticut			x			x		x	
Delaware	x		x		x	x	x		
District of Columbia	x	x		x			x		
Florida	x			x	x		x		x
Georgia	x		x	x	x	x			
Hawaii	x						x		
Idaho	x				x		x		x
Illinois	x	x	x		x	x	x	x	x
Indiana	x		x		x		x		
Iowa	x				x	x	x		x
Kansas	x	x					x	x	
Kentucky	x		x			x			x
Louisiana	x		x	x	x				
Maine	x	x					x		
Maryland	x				x	x	x		
Massachusetts					x			x	x
Michigan	x			x			x	x	x
Minnesota	x	x			x		x	x	
Mississippi	x				x	x	x		
Missouri	x						x		x
Montana				x	x	x		x	
Nebraska				x		x			x
Nevada	x	x			x	x	x		

National Overview of Judicial Waiver

	Judicial Waiver								
	Discretionary	Presumptive	Mandatory	Direct File	Statutory Exclusion	Reverse Waiver	Once/ Always	Juvenile Blended	Criminal Blended
New Hampshire	x	x					x		
New Jersey	x	x	x						
New Mexico					x			x	x
New York					x	x			
North Carolina	x		x				x		
North Dakota	x	x	x				x		
Ohio	x		x				x	x	
Oklahoma	x			x	x	x	x		x
Oregon	x				x	x	x		
Pennsylvania	x	x			x	x	x		
Rhode Island	x	x	x				x	x	
South Carolina	x		x		x				
South Dakota	x				x	x	x		
Tennessee	x					x	x		
Texas	x						x	x	
Utah	x	x			x		x		
Vermont	x			x	x	x		x	
Virginia	x		x	x		x	x		x
Washington	x				x		x		
West Virginia	x		x						x
Wisconsin	x				x	x	x		x
Wyoming	x			x		x			

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Citation: Griffin, Patrick. 2006. "National Overviews." *State Juvenile Justice Profiles*. Pittsburgh, PA: National Center for Juvenile Justice. Online. Available: http://www.ncjj.org/stateprofiles/.

Municipality of Anchorage

Anti-Gang and Youth Violence Policy Team

Law Enforcement Sub-Committee

Legislation

Participants June to December 2007

Bachman, Adrienne (LAW-CRIM DIV)
Bernitz, John A (DOA-PDA);
Butler, Rex (Defense Attorney)
Carpeneti, R Anne D (LAW-CRIM DIV);
Goehring Harvey.L. (USDOJ);
Greeson, Marti (Alaska Monitoring Services)
Hastie, Brian (FBI)
Henjum, Barbara L (HSS-JUV);
Heun, Rob (APD)
Kopp, Chuck (Kenai PD)
Levitt, Rachel E (DOA-OPA)
Little, Suzanne (Weed & Seed Program, Mt. View)
McComb, Stephen F (HSS-JUV DIV DIR)
Newman, Anthony (HSS-JUV);
Reed, Michael J (DOC-ADULT PROBATION)
Schroder, Bryan (US Attorney's Office)
Svobodny, Richard (LAW-CRIM DIV)
Tom Begich, (Community Plan Facilitator)
Wing, Deborah (Alaska Native Justice Center)
Wood, Leonard R (HSS-JUV PROBATION);

Legislation - This group leads an ongoing priority to review pending and existing crime legislation, and to develop new legislation for consideration by the Policy Team. Staff: Catherine Curtis at 343-7130, or email CurtisCR@muni.org.

Law Enforcement: Legislation

Statement by the Legislation Sub-Group:
Fulfilling the Criminal Justice System's goals of protecting public safety and providing fair and equal access to justice requires a balanced system with adequate resources for each participating agency. The adequacy of agency resources and the fiscal impact of legislation should be reviewed independently and comprehensively to ensure that a balance is promoted and maintained as communities work to improve our Criminal Justice System. A balanced system also requires that criminal legislation be reviewed through a lens of competency, accountability, and public safety.

Goal: To evaluate existing statutes, legislative proposals, and new initiatives to ensure appropriate statutory authority exists to effectively address youth violence.

Objective 1: Review and develop legislative proposals for recommendation for passage

Step 1: Identify 3-5 moving pieces of legislation for review and recommendation (budgets, bail statute, ankle monitoring for gang-related violent young adults 18-24, dual/blended sentencing)

Step 2: Identify new initiatives necessary (ex: bail matrix, public service attorney bar due reimbursement, etc.)

a. Scope of problems
b. Proposed solution
c. How it addresses principles

Step 3: Develop recommendations on current and new legislation and budgets

Future objectives could include reviewing existing statutes to ensure they are effective.

[redacted] HOUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: May 4, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/10/08

The JUDICIARY Committee considered: **HB 255**

HOUSE BILL NO. 255 **DUAL SENTENCING**

"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB255 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
COR			✓	
ADM			✓	
ADM			✓	
HSS				✓
LAW				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Gruenberg				✓
[signature]	Coghill				
[signature]	Johnston	✓		X	
[signature]	SAMUELS			X	
[signature]	Holmes				X
Chair: [signature]	RAMRAS	X			
Chair:					

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

Central Microfilm Services
Department of Education & Early Development
State of Alaska

Rev. 6/98

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[redacted] HOUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: May 4, 2007 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/10/08

The JUDICIARY Committee considered: **HB 255**

HOUSE BILL NO. 255 **DUAL SENTENCING**

"An Act relating to dual sentencing of certain juvenile offenders; amending Rule 24.1, Alaska Delinquency Rules; and providing for an effective date."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB255 (JUD)
***For Senate Bills with new title:* [ ] *Technical Title* [ ] *New Title: HCR*______** [ ] **Same Title** [✓] **New Title**

[ ] attach amendments
[ ] add new referral to ____________Committee
[ ] Letter of Intent__________Committee

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***NEW* FISCAL NOTES** *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
COR			✓	
ADM			✓	
ADM			✓	
HSS				✓
LAW				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
[signature]	Gruenberg				✓
[signature]	Coghill			X	
[signature]	Dahlstrom	X		X	
[signature]	SAMUELS			X	
[signature]	Holmes				X
Chair: [signature]	RAMRAS	X			
Chair:					

HB

256

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

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Rep. Ralph Samuels
Room 204
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Rep. Mike Doogan
Room 112
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 21, 2008

To: Representative John Coghill
Chair House Rules

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB 256

Attached are the following documents, which represent the referral file for HB256:

- Governor's Transmittal Letter
- CSHB 256(JUD) 25-GH1076\E
- CSHB 256(RES) 25-GH1076\C with attached legal memo
- HB256 25-GH1076\A
- Draft Transmittal Letter, inclusive of sectional summary
- Answers to Commonly Asked Questions
- DFG Fiscal Note – 0
- Applicable Statutes
- Back-up
- Support/Opposition
- Bill History

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 10, 2007

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to active game management. In general, the bill simplifies and clarifies the state's current intensive management law for big game and the state's "same day airborne hunting" law. This bill harmonizes these two currently inconsistent laws, and makes both laws more workable and consistent with other important game management laws, such as the state's subsistence law.

This legislation will provide direction to state regulators and biologists in accordance with the state's constitutional requirements to manage game under the maximum use, maximum benefit, common use, and sustained yield principles. Currently, in almost all cases, the Board of Game (board) must adopt a predatory control program before they can reduce hunting of an identifiable wildlife population, unless the board makes findings or there is an emergency action (both of which are complex and easily challenged.) The bill eliminates that unworkable process.

The bill clarifies statutory language requiring the board to identify moose, caribou, and deer populations that are important for high levels of harvest by humans, so that these important game herds will be managed for both abundant numbers and abundant harvest opportunities. This should assist courts and the public in understanding the goals and requirements of active management programs.

In addition, the bill defines the new term "active management", which is used in place of "intensive management." It also would eliminate several current definitions that have proven to be problematic for both the board and courts.

This legislation eliminates the complex and problematic process the board now has to go through to authorize game management programs involving airborne or same day airborne shooting. It also makes it clear that Department of Fish and Game employees are allowed to shoot animals for public safety, scientific, or other legitimate governmental purposes on the same day that the employees have been airborne.

In summary, the bill takes two laws that were written to achieve almost exactly opposite purposes and rewrites them so that the state's game managers, courts, and public will have better tools to work together. The important principle of limiting use of airborne and same day airborne shooting of large predators is retained, while the process for conducting game management programs critical to meeting several of the state's constitutional mandates is made simpler, more workable, and legally defensible.

I urge your prompt and favorable consideration of the measure.

Sincerely,

Sarah Palin
Governor

Enclosure

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 February 11, 20

SUBJECT: Effective date of CSHB 256(RES)
(Work Order No. 25-GH1076\C)

TO: Representative Craig Johnson
Co-Chair of the House Resources Committee

FROM: Jack Chenoweth
Assistant Revisor

This was introduced into the first session as a bill with a "July 1, 2007" effective date, and the House Resources Committee, in its recent deliberations, did not see fit to delete or modify that date. Please consider asking the next committee of referral to consider an effective date change for the measure or preparing an amendment to make a change when the measure is debated on the floor.

JBC:ljw
08-078.ljw

Enclosure

DRAFT TRANSMITTAL LETTER

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to active game management and to the airborne or same day airborne taking of certain game animals. In general, the bill would simplify and clarify the state's current intensive management law for big game and the state's "same day airborne hunting" law, harmonize these two currently inconsistent laws with each other, and make both laws more workable and consistent with other important game management laws, such as the state's subsistence law.

The intensive management law is clarified and simplified as follows. First, the Board of Game (board) must identify moose, caribou, and deer populations that are important for high levels of human harvest. This requirement is similar to the existing requirements in the state's intensive management law, at AS 16.05.255(e) - (g), but focuses on moose, caribou, and deer -- the primary ungulate species in the state that are managed for high levels of human harvest for food. The language stating this requirement, in sec. 3 of the bill, would be clearer and less subject to misinterpretation than the language in the existing statute.

Next, under sec. 3 of the bill, the board would be required to set population and harvest objectives for the identified populations. This, again, would mirror requirements in the current intensive management law in AS 16.05.255(e) - (g). Opponents, and courts, have debated the current law's meaning in this regard, and whether active, or "intensive," management should be driven by population declines, or by harvest declines, or by both. The language in sec. 3 of the bill would help by clarifying that the board is to establish objectives that are both population and harvest-based, so that these important game herds would be managed for both abundant numbers and abundant harvest opportunities.

Section 4 of the bill would require the board to then adopt regulations that implement its identifications and objectives, such as by adopting seasons, bag limits, and other regulations that accommodate and foster high levels of use when population sizes allow, and that will increase the population sizes as necessary to approach or meet harvest objectives, when doing so would be conducive to achieving the objectives. The board would be required to adopt regulations it deems advisable to restore herd numbers and harvest levels when a population is depleted or reduced in productivity, including taking active management measures. These provisions also track a current statutory requirement, but with language that is clearer and would provide the requisite discretion the board needs to be innovative in tailoring its active management programs to the specific problems and circumstances in each area. It should assist courts and the public in understanding the goals and requirements of active management programs in areas where there is current confusion.

Next, the bill would define the key terms "high level of human harvest" and "active management." The first is relatively unchanged from the current definition, adding only the concept that the term is designed to achieve an ability to allocate a high level of harvest in the future, and does not require that the allocation be based on currently depleted numbers, as some have argued. The second term is new and is used in place of "intensive management." "Active management" is generally viewed as a broader term by wildlife managers, and encompasses strategies that may be useful in the state's varied terrain and conditions but that do not necessarily rise to the level of "intensive" management. Because it is such a broad term, no exhaustive listing of techniques is attempted, but predator control is included as one example so that there is clear legislative direction that this technique is an appropriate tool in the overall tool kit of the state's game managers. The bill also would eliminate several current definitions that have proven to be problematic for both the board and the courts, and that vary from existing legal authorities and common usages within the wildlife management community.

The above changes would tend to make the principles of active management more compatible with the state's subsistence law, AS 16.05.258, and give legislative direction in accordance with the state's constitutional requirements to manage game under the maximum use, maximum benefit, common use, and sustained yield principles in art. VIII, secs. 1 - 4, of the Constitution of the State of Alaska. Thus, managing for high levels of all human consumptive uses would be set out as the overall mandate. However, under the proposed changes, the board would be given more discretion to respond to declines in herd numbers or productivity while considering biological constraints, subsistence needs, and many other factors that it must take into account in regulating uses of these important game herds. Under current language, the board is essentially prohibited from significantly reducing the taking of a herd without adopting a predator control program, unless complex and legally vulnerable findings can be made or equally vulnerable emergency actions are taken. Thus, the board's sustained yield obligations, which must always come first, are significantly hampered by a complex, difficult to follow and defend, decisional process. The changes eliminate this unworkable process, allowing reductions to occur while retaining the obligation to always manage for abundance.

The bill would clarify and simplify the current "same day airborne hunting" law, first enacted by an initiative in 1996, in several ways. First, the bill would retain the overall prohibition against the airborne or same day airborne shooting of certain large predators, in keeping with the public votes in favor of declaring this practice to be illegal as an ordinary hunting practice, and it adds brown bears to the list of protected species. Second, the bill also would retain the idea that, in certain situations, game management priorities and biological concerns require that an exception to this general prohibition must be allowed so that important game management programs may proceed. However, the bill would eliminate the current complex, controversial, and problematic decisional process that the board has been required to use to authorize game management programs involving airborne or same day airborne shooting and substitutes a simpler process. Under the new language, the board would need to find that such a program would be

conducive to achieving population and harvest objectives set under the active management provisions described in this paragraph, or that it would be conducive to the health of a predator popul tion. In other words, because the Alaska State Legislature would have again affirmed that predator control is an appropriate tool for the state's game managers to use, airborne or same day airborne predator control programs may be authorized when necessary to fulfill those active management requirements or when doing so would aid in helping the predators themselves as, for example, may be the case with the lice problem in Kenai Peninsula wolves. In either case, the program must be limited to the area necessary for the stated purpose. These changes should reduce judicial and public confusion over what standards apply to such decisions and, for the first time, mesh this statute with the active management principles set out in AS 16.05.255. These changes also would give the board more freedom to manage under the state's subsistence law, so that predator control may be used to assist with the recovery of herds necessary for subsistence uses in order that the reasonable opportunity mandate may be met.

The bill also would change a current exception to the "same day airborne hunting" law to clarify that it does not prohibit Department of Fish and Game employees from shooting wolves, bears, and other designated animals on the same day that the employee has been airborne for public safety, scientific, or other legitimate governmental purposes as outlined in AS 16.05.050. The bill additionally would repeal two current provisions of the statute that are redundant. AS 16.05.783(d), which currently authorizes the board to determine the parameters of any predator management or control program, is unnecessary because such powers are fully encompassed within other existing board authorities. AS 16.05.783(e), which prohibits the use of helicopters and state personnel without the commissioner's approval, is unnecessary because the commissioner already makes all fiscal, budgetary, and administrative decisions about such programs. AS 16.05.050 and 16.05.241. Finally, the bill includes a clarification that the airbor ie and same day airborne prohibition does not apply to the administration of drugs, often done with "dart

guns" from aircraft, and eliminates a problematic and unnecessary definition of "game management program."

Overall, the bill takes two laws that were written to achieve almost exactly opposite purposes and rewrites them so that the state's game managers, the courts, and the public would have less trouble understanding how they may work together and which legal requirements apply in which situation. The important principles of limiting use of airborne and same day airborne shooting of large predators is retained, while the process for conducting game management programs that are critical to meeting several of the state's constitutional mandates relating to game management is made simpler, more workable, and more legally defensible. In doing so, this bill addresses the same subjects that are currently pending in a ballot measure, designated as 05HUNT, to be placed on the ballot in 2008, in a holistic approach that harmonizes the essential underlying concepts of that measure in keeping with other important principles and processes required under AS 16 (Fish and Game Code).

I urge your prompt and favorable consideration of the measure.

Sincerely,

Sarah Palin
Governor

Answers to Commonly Asked Questions about HB 256

Submitted by:

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1. *Isn't the bill just a response to current litigation challenging Alaska's predator control programs?*

No, the bill was in draft well before any of the current lawsuits were filed. It was done in response to requests from several legislators to the Murkowski Administration that ADF&G and the Dept. of Law be tasked to suggest improvements to the Intensive Management law and the Same-day Airborne law. When the bill was completed, early in the Palin Administration, she agreed that it included improvements that she also supported, and ordered that it be introduced.

2. *Doesn't the bill remove all requirements for science-based decision-making on predator control decisions?*

No, the Department's role as the Board's science advisor, among other things, is not affected in any way by this bill. There is no need to have individual directives to use science in specific statutes or for any particular Board decisional process because, under its general statutory authorities, the Department always produces all scientific data within its control that is relevant to any Board decision. The Department does not envision its role before the Board changing in any way as a result of this bill, nor does it envision any diminution of the Board's reliance on science.

3. *Doesn't the bill remove requirements for a careful planning process before predator control is initiated?*

This question is frequently asked, but it is deceptive. Much depends on what the questioner considers to be an adequate plan. Currently, the Department does prepare for the Board a detailed predation control implementation plan before predator control is begun, and a great deal of effort, data and public input goes into the creation of these plans. However, opponents argue that such plans are still not detailed enough, and a multi-year, much more expensive planning process involving lengthier public debate should be completed before any predator control may begin. The bill preserves what the state has always understood to be the legislative intent for predator control by requiring timely action to respond to prey population declines, supported by the same excellent planning efforts that are currently developed to support the Board's decisions.

4. *Doesn't the bill weaken the Same-day Airborne law?*
In several ways, the Same-day Airborne law is strengthened. For example, for the first time brown bears are added to the species protected under that law. Also, necessary changes are made so that ADF&G personnel will not run afoul of the law if they are required to dispatch nuisance or threatening wolves, wolverines or brown bears on the same day they have been in an aircraft. The use of tranquilizer guns and other non-lethal forms of "shooting" is also authorized for the first time. What some see as a weakened standard for same-day airborne predator control, the requirement that it be determined to be "conducive" to meeting population and harvest objectives, is important because it harmonizes the Same-day Airborne law with the Intensive Management law where, currently, they are essentially contradictory.

5. *Doesn't the bill make it less likely that intensive (or active) management measures will be adopted? I.E. doesn't it weaken the Intensive Management law?*
No, the bill simplifies the Intensive Management law down to its core principles and states those principles more clearly and forcefully. The Board will be required to identify moose, caribou and deer populations that are important to manage for high levels of human consumptive use and to set population and harvest objectives for those populations. For such populations, the Board will then have an affirmative duty to always manage that population to meet those objectives, including both times of abundance and times of depletion. If objectives are not being met, the Board will also have the obligation to adopt active management measures, including predator control, designed to meet those objectives. Problematic definitions and complicated requirements about what steps must be taken when have been eliminated, leaving the simple statutory duty to manage these important populations for abundance.

6. *How does this bill fit with the pending initiative on the Same-day airborne law.*
As stated above, the bill was drafted and introduced because ADF&G and the Department of Law, with the governor's approval, made commitments to various legislators to submit language that improves the Intensive Management and Same-Day Airborne laws. The bill should stand or fall on that basis. It is a comprehensive effort to rewrite these two laws in a way that makes them both workable, while preserving the important principles which underlie each one. Legislators and possibly voters, will make up their own minds about whether Alaska's predator and prey management is better with the bill or without it.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 256**
() Publish Date:

Identifier (file name): **HB256-DFG-DWC-01-08-08**
Dept. Affected: Fish and Game
Title: Active Game Management/Airborne Shooting
RDU: Wildlife Conservation
Component: Wildlife Conservation
Sponsor: Rules by Request of the Governor
Requester: House Resources Committee
Component Number: 473

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**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**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**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**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this bill will not have any fiscal impact on the Department of Fish and Game.

Prepared by: Doug Larsen, Director — Phone: 465-4191
Division: Wildlife Conservation — Date/Time: 1/8/08 4:00 PM
Approved by: Denby Lloyd, Commissioner — Date: 1/8/2008
Department of Fish and Game

Revised 11/15/2007 CVB

Applicability of subsection (a). — Subsection (a) applies to allocation of fish resources between two commercial fisheries. Peninsula Mktg. Ass'n v. State, 817 P.2d 917 (Alaska 1991)

In adopting a regulation for the allocation of harvestable treaty salmon, the Board of Fisheries had discretion to treat guided and unguided sport fishing as a single category and to make a separate allocation to the commercial trolling fishery. Rutter v. State, Bd. of Fisheries, Dep't of Fish & Game, 963 P.2d 1007 (Alaska 1998).

If a cooperative fishery and an open fishery use the same type of gear in the same administrative area to take the same fishery resource, an allocation of resources to the cooperative would be an impermissible allocation within a single fishery under subsection (e) of this section. Grimett v. State, 109 P.3d 924 (Alaska 2005)

Allocation criteria addressed in earlier proposal. — Where the Board of Fisheries considered each of the seven allocation criteria for sockeye salmon with an earlier proposal and incorporated its previous deliberations on that proposal into a later proposal, the board properly addressed the allocation criteria for sockeye salmon under subsection (e). Stepovak-Shumagin Set Net Ass'n v. State, Board of Fisheries, 886 P.2d 632 (Alaska 1994)

Regulation delaying the commercial salmon fishing season was consistent with and reasonably necessary for purposes of conservation and development, was not arbitrary and was supported by reasonable objectives. Stepovak-Shumagin Set Net Ass'n v. State, Board of Fisheries, 886 P.2d 632 (Alaska 1994)

Regulation upheld. — In promulgating a regulation governing commercial herring fishing in Norton Sound, the board pursued a permissible objective (allocation of a fishery resource between resident and nonresident fishermen) and employed means within its powers, and the regulation itself was reasonable and nonarbitrary. State v. Hebert, 743 P.2d 392 (Alaska Ct. App. 1987), aff'd, 803 P.2d 863 (Alaska 1990)

Where a mixed stock regulation was the product of a four-day meeting in which the fisheries board took a hard look at the issues and justified its decisions through written findings, and where the regulation was not so indefinite or uncertain that it could be overturned as facially vague or devoid of substance, it was a valid exercise of discretion. Native Village of Elim v. State, 990 P.2d 1 (Alaska 1999)

Regulation held invalid because inconsistent with statutes. — Regulation developed by the Board of Fisheries to identify customary and traditional uses of Cook Inlet salmon qualifying for subsistence priority and codified as 5 AAC 01.597 was held invalid because it was inconsistent with former subsection (b) and AS 16.05.940 and contrary to the legislature's intent in enacting the 1978 subsistence law, ch. 151, SLA 1978. Madison v. Alaska Dep't of Fish & Game, 696 P.2d 168 (Alaska 1985)

Applied in Meier v. State, Bd. of Fisheries, 739 P.2d 172 (Alaska Ct. App. 1987), Tongass Sport Fishing Ass'n v. State, 866 P.2d 1314 (Alaska 1994)

Quoted in Interior State Airboat Ass'n v. State, 16 P.3d 686 (Alaska 2001)

Cited in Reynolds v. State, 656 P.2d 1313 (Alaska Ct. App. 1982), Longesoter v. State, 668 P.2d 1359 (Alaska Ct. App. 1983), State v. Eluska, 698 P.2d 174 (Alaska Ct. App. 1986).

Sec. 16.05.253. Operation of stationary fishing gear. (a) The Board of Fisheries may require a person who holds a limited entry permit or an interim-use permit under AS 16.43 to be physically present at a beach or riparian fishing site during the operation of net gear or other stationary fishing gear at the site, except when the permit holder is at or traveling to or from the location of

(1) a sale of fish caught in the gear; or

(2) other stationary gear of the permit holder.

(b) In this section, "fishing site" means fishing site as defined by the Board of Fisheries and includes any structure used for providing shelter in support of the operation of the net gear or other stationary fishing gear. (§ 1 ch. 9d SLA 1982, am. § 1 ch. 17 SLA 1985)

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 uses; 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)

Revisor's notes. — Subsection (g) was enacted as (h), and paragraphs (j)(1), (2), and (5) were enacted as (j)(3)-(5), respectively. Relettered in 1998, at which time former (g)(1) and (2) were renumbered as (h)(3) and (4), and relettered as (i) in 2000 and as (j) in 2001.

Former subsection (h) was enacted as (i), relettered in 2000.

Subsection (i) was enacted as (j), relettered in 2001, at which time former subsection (i) was relettered as (j).

Cross references. — For restriction on maximum area [illegible] may be closed to multiple use without an act of the legislature, see AS 38.05.300(a).

For legislative findings in connection with the enactment of (j), (e), and (j)(3) and (4) (formerly (e)(g)) of this section, see § 1, ch. 13, SLA 1994 in the Temporary and Special Acts. For legislative findings relating to the 1998 amendment to paragraph (j)(4) (formerly (h)(4)) and the enactment of paragraphs (j)(1), (j)(2), and

(c) It is an affirmative defense to a prosecution under (a) of this section that the person took the bear in defense of life or property if the person who took the bear shows by a preponderance of the evidence that

(1) the necessity for the taking was not brought about by harassment or provocation of the bear by the person who took the bear;

(2) the necessity for the taking was not brought about by the negligent disposal of garbage or the creation of a similar attractive nuisance by the person who took the bear; and

(3) the person exhausted all other practicable means to protect life and property before the bear was taken.

(d) Notwithstanding (a) — (c) of this section, the department may authorize the taking of a problem brown or grizzly bear within one-half mile of a solid waste disposal facility at any time, if the taking of the bear is necessary to protect the public and is consistent with sound game management principles.

(e) In this section

(1) "criminal negligence" has the meaning given in AS 11.81.900(a);

(2) "property" means

(A) a dwelling, permanent or temporary;

(B) an aircraft, boat, automobile, or other conveyance;

(C) a domestic animal;

(D) other property of substantial value necessary for the livelihood or survival of the owner;

(3) "solid waste disposal facility" means a facility for the disposal of solid waste, other than sewage, for which a prior authorization has been issued under AS 46.03.100. (§ 1 ch 64 SLA 1989; am § 1 ch 136 SLA 2004)

Cross references. — For penalties for class A misdemeanors, see AS 12.55.035(b)(5), 12.55.036, and 12.55.135(a).

Effect of amendments. — The 2004 amendment, effective July 1, 2004, substituted "prior authorization" for "permit" in paragraph (e)(3).

Sec. 16.05.783. Same day airborne hunting. (a) A person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne. However, the Board of Game may authorize a predator control program as part of a game management plan that involves airborne or same day airborne shooting if the board has determined based on information provided by the department

(1) in regard to an identified big game prey population under AS 16.05.255(g) that objectives set by the board for the population have not been achieved and that predation is an important cause for the failure to achieve the objectives set by the board, and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives; or

(2) that a disease or parasite of a predator population

(A) is threatening the normal biological condition of the predator population; or

(B) if left untreated, would spread to other populations.

(b) This section does not apply to

(1) a person who was airborne the same day if that person was airborne only on a regularly scheduled commercial flight; or

(2) an employee of the department who, as part of a game management program, is authorized to shoot or to assist in shooting wolf, wolverine, fox, or lynx on the same day that the employee has been airborne.

(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. In addition, the court may order the aircraft and equipment used in or in aid of a violation of this section to be forfeited to the state.

(d) When the Board of Game authorizes a predator control program that includes airborne or same day airborne shooting, the board shall have the prerogative to establish predator reduction objectives and limits, methods and means to be employed, who is authorized to participate in the program, and the conditions for participation of individuals in the program.

(e) The use of state employees or state owned or chartered equipment, including helicopters, in a predator control program is prohibited without the approval of the commissioner.

(f) In this section,

(1) "free-ranging" means that the animal is wild and not caught in a trap or snare; and

(2) "game management program" means a program authorized by the Board of Game or the commissioner to achieve identified game management objectives in a designated geographic area. (§ 1 1996 Ballot Measure No. 3; am §§ 1 — 4 ch 2 SSSLA 1999; am § 2 ch 20 SLA 2000; am § 2 2000 Ballot Measure No. 6; am §§ 1, 2 ch 124 SLA 2003)

Revisor's notes. — Paragraph (f)(2) was enacted as (d)(3) and relettered as (d)(2) in 1999. Subsections (d) and (e) were enacted as (e) and (f) and relettered in 2003, at which time subsection (d) was relettered as (f).

Effect of amendments. — The first 2000 amendment, effective July 20, 2000, inserted "or agent" in two places in paragraph (b)(2).

The second 2000 amendment, effective January 4, 2001, by referendum, deleted "or agent" following "employee" in two places in paragraph (b)(2).

The 2003 amendment, effective June 19, 2003, rewrote subsection (a) and added subsections (d) and (e).

Sec. 16.05.785. Effect of failure to remove old markers. If the Board of Fisheries by regulation uses department markers to establish waters closed to commercial fishing and the state fails to remove the old markers when new markers are posted to establish waters closed to commercial fishing, commercial fishing is expressly permitted in the waters between the new markers and the old

NOTES TO DECISIONS

Quoted in Bobby v. Alaska, 718 F. Supp. 764 (D. Alaska 1989).

Sec. 16.05.782. Taking of brown or grizzly bear near solid waste disposal facility prohibited. (a) Except as provided in (d) of this section, a person who with criminal negligence takes a brown or grizzly bear within one-half mile of a solid waste disposal facility is guilty of a class A misdemeanor.

(b) In addition to the penalty imposed by law under (a) of this section, the court shall order forfeiture of the hide and skull of the bear, but if the hide and skull are not salvaged and delivered to the department then the court shall impose an additional fine of up to $10,000.

(c) It is an affirmative defense to a prosecution under (a) of this section that the person took the bear in defense of life or property if the person who took the bear shows by a preponderance of the evidence that

(1) the necessity for the taking was not brought about by harassment or provocation of the bear by the person who took the bear;

(2) the necessity for the taking was not brought about by the negligent disposal of garbage or the creation of a similar attractive nuisance by the person who took the bear; and

(3) the person exhausted all other practicable means to protect life and property before the bear was taken.

(d) Notwithstanding (a) — (c) of this section, the department may authorize the taking of a problem brown or grizzly bear within one-half mile of a solid waste disposal facility at any time, if the taking of the bear is necessary to protect the public and is consistent with sound game management principles.

(e) In this section

(1) "criminal negligence" has the meaning given in AS 11.81.900(a);

(2) "property" means

(A) a dwelling, permanent or temporary;

(B) an aircraft, boat, automobile, or other conveyance;

(C) a domestic animal;

(D) other property of substantial value necessary for the livelihood or survival of the owner;

(3) "solid waste disposal facility" means a facility for the disposal of solid waste, other than sewage, for which a prior authorization has been issued under AS 46.03.100. (§ 1 ch 64 SLA 1989; am § 1 ch 136 SLA 2004)

Cross references. — For penalties for class A misdemeanors, see AS 12.55.035(b)(5), 12.55.036 and 12.55.135(a).

Effect of amendments. — The 2004 amendment, effective July 1, 2004, substituted "prior authorization" for "permit" in paragraph (e)(3).

Sec. 16.05.783. Same day airborne hunting. (a) A person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne. However, the Board of Game may authorize a predator control program as part of a game management plan that involves airborne or same day airborne shooting if the board has determined based on information provided by the department

(1) in regard to an identified big game prey population under AS 16.05.255(g) that objectives set by the board for the population have not been achieved and that predation is an important cause for the failure to achieve the objectives set by the board, and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives; or

(2) that a disease or parasite of a predator population

(A) is threatening the normal biological condition of the predator population; or

(B) if left untreated, w

(b) This section does n

(1) a person who was

regularly scheduled comm

(2) an employee of the

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(c) A person who violat

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(d) When the Board of

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(e) The use of state em

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(f) In this section,

(1) "free-ranging" means

(2) "game management

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geographic area. (§ 1 1996

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Revisor's notes. — Paragraph

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(§ 1 ch 70 SLA 1980)

Secs. 16.05.786, 16.05.78

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Sec. 16.05.789. Prohib

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(B) if left untreated, would spread to other populations.

(b) This section does not apply to

(1) person who was airborne the same day if that person was airborne only on a regul. .y scheduled commercial flight; or

(2) an employee of the department who, as part of a game management program, is authorized to shoot or to assist in shooting wolf, wolverine, fox, or lynx on the same day that the employee has been airborne.

(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. In addition, the court may order the aircraft and equipment used in or in aid of a violation of this section to be forfeited to the state.

(d) When the Board of Game authorizes a predator control program that includes airborne or same day airborne shooting, the board shall have the prerogative to establish predator reduction objectives and limits, methods and means to be employed, who is authorized to participate in the program, and the conditions for participation of individuals in the program.

(e) The use of state employees or state owned or chartered equipment, including helicopters, in a predator control program is prohibited without the approval of the commissioner.

(f) In this section,

(1) "free-ranging" means that the animal is wild and not caught in a trap or snare; ar *1*

(2) "game management program" means a program authorized by the Board of Game or the commissioner to achieve identified game management objectives in a designated geographic area. (§ 1 1996 Ballot Measure No. 3; am §§ 1 — 4 ch 2 SSSLA 1999; am § 2 ch 20 SLA 2000; am § 2 2000 Ballot Measure No. 6; am §§ 1, 2 ch 124 SLA 2003)

Revisor's notes. — Paragraph (f)(2) was enacted as (d)(3) and relettered as (d)(2) in 1999. Subsections (d) and (e) were enacted as (e) and (f) and relettered in 2003, at which time subsection (d) was relettered as (f).

Effect of amendments. — The first 2000 amendment, effective July 20, 2000, inserted "or agent" in two places in paragraph (b)(2).

The second 2000 amendment, effective January 4, 2001, by referendum deleted "or agent" following "employee" in two places in paragraph (b)(2).

The 2003 amendment, effective June 19, 2003, rewrote subsection (a) and added subsections (d) and (e).

Sec. 16.05.785. Effect of failure to remove old markers. If the Board of Fisheries by regulation uses department markers to establish waters closed to commercial fishing and the state fails to remove the old markers when new markers are posted to establish waters closed to commercial fishing, commercial fishing is expressly permitted in the waters between the new markers and the old markers until the old markers are removed. (§ 1 ch 70 SLA 1980)

Secs. 16.05.786, 16.05.787. Duty of big game transporters to report violations; registration of big game hunting base camps, cabins, and lodges. [Repealed, § 18 ch 37 SLA 1989.]

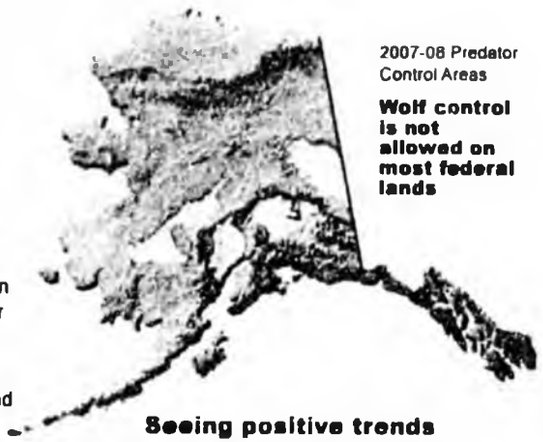
Sec. 16.05.788. Examination fee. [Repealed, § 24 ch 32 SLA 1971.]

Sec. 16.05.789. Prohibition on hunting adjacent to highway between Yukon River and Arctic Ocean. (a) Hunting with firearms is prohibited north of the Yukon River in the area within five miles on either side of the highway between the Yukon River and the Arctic Ocean.

(b) A person who violates this section is guilty of a class A misdemeanor. (§ 2 ch 177 SLA 1980)

Some things to consider about predator control

- Wolves and bears are skilled predators, and may kill up to 80% of the moose or caribou that die each year.
- Predator control programs are active on less than 10% of the state's land mass.
- Predator control is a regulated effort to reduce the number of wolves and bears in order to increase the number of moose or caribou.
- Predator control is not hunting. Only authorized individuals may participate, and fair chase standards do not apply.
- There is no indication that wolf or bear control programs have had a permanent adverse effect on either local or statewide wolf or bear populations.
- ADF&G will continue to closely monitor the effectiveness of wolf and bear control as there is still much to learn.



2007-08 Predator Control Areas

Wolf control is not allowed on most federal lands

Seeing positive trends

Areas with active predator control in 2007-08 include the upper Susitna, Talkeetna, Nelchina and Copper Basins; the McGrath area; the upper Yukon and Tanana Basins; and part of Cook Inlet.

Results from these five areas are preliminary but indicate the beginning of increased moose calf survival and moose population growth.

Board of Game and the public process

Alaska's hunting and trapping regulations are made by seven people appointed by the governor and approved by the legislature. This independent group is the Alaska Board of Game.

The Board of Game listens to all concerned members of the public, along with local Fish & Game Advisory Committees, and ADF&G biologists, in their effort to promulgate regulations that respond to people's concerns, while also considering the need for long term conservation and sustainable harvest of game populations.

It is the Board of Game, under the Intensive Management Law, that directs ADF&G to undertake predator control.

There will always be controversy surrounding predator control. Some people oppose the manipulation of wildlife populations for human benefit, while others demand management practices that allow hunters to harvest a higher percentage of wildlife annually.

It is not expected that one single management approach will satisfy everyone. Therefore, the Board of Game directs ADF&G to use different management strategies in different parts of the state to provide for different values and demands.

ADF&G is committed to maintaining healthy caribou and moose populations *and* healthy wolf and bear populations. The department will continue to manage Alaska's wildlife populations with the health of all wildlife, sustainable harvests, and conservation as guiding principles.

Visit www.wildlife.alaska.gov
Click on the 'Management/Research' section, and scroll down to the link on 'Wolf Control in Alaska.'

The Alaska Department of Fish and Game printed this publication in December 2007 at a cost of $0.24 per unit, to inform the public about predator management.

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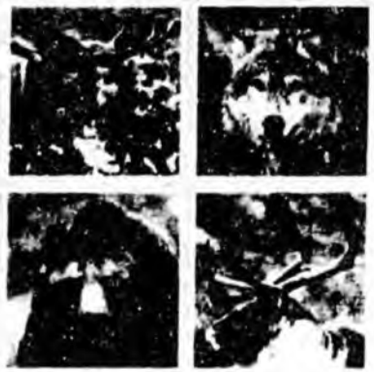
Understanding

and

Predator Control in Alaska



From the
Division of Wildlife Conservation
of the
Alaska Department of Fish & Game

When moose or caribou populations drop below a certain number, the intensive management law goes into effect.

First...

Alaska Department of Fish and Game biologists carefully study all the possible causes of declining moose or caribou numbers. They look at the quality of habitat, the health and reproductive rate of the herd, harvest levels by humans, and the impact of predators. They then undertake the action(s) that will most likely increase moose or caribou numbers.

Their options include:

- **Improving habitat**

In some cases habitat improvement has involved controlled fire or vegetation crushing to generate new plant growth. However, reduced habitat quality or inadequate nutrition are not typically causes of moose or caribou population declines in Alaska.

- **Reducing hunting**

If hunting pressure is thought to be the cause of the decline, wildlife managers may reduce the season or impose strict harvest quotas. Some communities with declining moose populations have even voluntarily opted for moose hunting moratoriums.

- **Easing predator trapping/hunting regulations**

Where excess pressure from predators—typically wolves or bears—is creating the decline of moose or caribou populations, managers may increase the quota or relax restrictions on how people may hunt or trap predators.

Then...

If other methods are inadequate to reverse declining moose or caribou populations, **and studies indicate significant predation from bears or wolves**, the Board of Game may direct ADF&G to undertake predator control.

Non-lethal methods tried

Various forms of non-lethal predator control have been tried in Alaska, including sterilization and relocation of wolves; offering predators alternative food sources during calving; and capturing and relocating bears. While these techniques have had moderate success, they are difficult, labor-intensive, expensive, and take biologists away from other important wildlife management work.

Reduce but don't eliminate predators

Lethal predator control involves killing wolves, and sometimes bears. The intent is to reduce their numbers enough to allow moose or caribou populations to increase—but not to completely eliminate predators. The long-term goal is *increased* numbers of moose or caribou, *increased* harvest by humans, and *sustainable* populations of wolves and bears.

In order for predator control to succeed...

- predation must be a major reason for the decline of the moose or caribou population;
- it must cover a large enough area;
- it must be continued long enough to allow for several years of moose and caribou calf survival;
- it must cover all species of predators affecting the moose or caribou population;
- harvest of prey populations by people must be reduced or eliminated; *and*
- there must be adequate habitat to support an expanding moose or caribou population.

The long-term goal of predator control is to increase numbers of moose or caribou to allow for increased harvest by humans, while maintaining healthy and sustainable populations of wolves and bears.

A little history about...

Alaska's Intensive Management Law

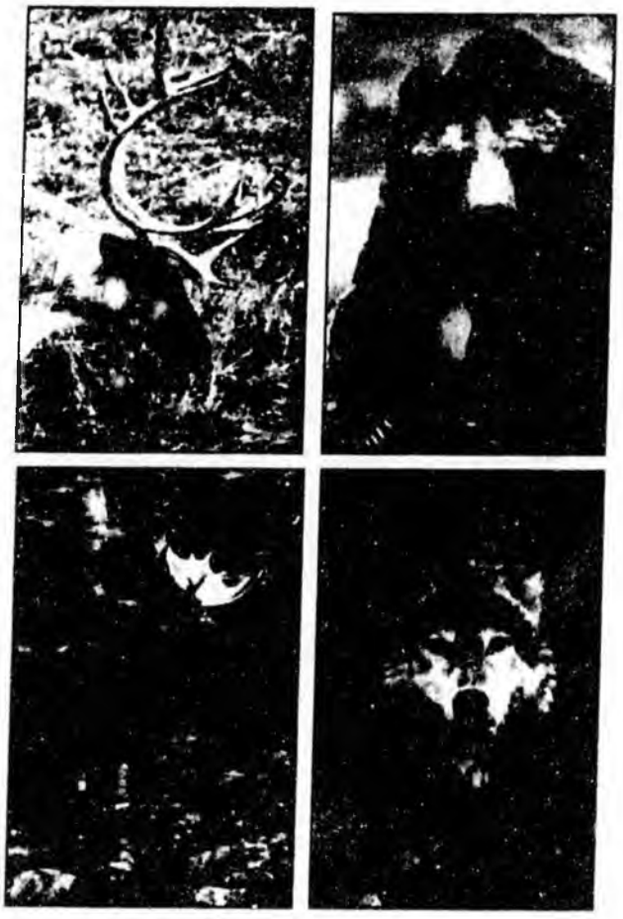
Harvesting wild game is extremely important to many Alaskans. Participating in the hunt, helping with butchering, and sharing the benefits of economical, wild-grown meat are long-standing traditions in Alaska.

The Alaska Legislature recognized the importance of wild game meat to Alaskans when it passed the **Intensive Management Law in 1994**.

This law requires the **Alaska Board of Game** to identify moose and caribou populations that are especially important food sources for Alaskans—and to insure that these populations remain large enough to allow for adequate and sustained harvests by people.

If the moose or caribou populations drop below what the Alaska Board of Game determines is needed for continued harvests by people, the Board works with the Alaska Department of Fish and Game to undertake **intensive management** of that population, which may include predator control.

Predator Management in Alaska



Alaska Department of Fish and Game
Division of Wildlife Conservation
November 2007

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ADF&G ADA Coordinator, P.O. Box 115526, Juneau, AK 99811-5526

U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, MS 2042, Arlington, VA 22203

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Predator Management in Alaska

Alaska Department of Fish and Game
November 2007

Table of Contents

1.0 PURPOSE OF DOCUMENT

As the primary agency charged with managing resident wildlife populations in Alaska, the Alaska Department of Fish and Game (ADF&G) has a responsibility to provide the public with the best information regarding its management programs, including predator control. Continuing scientific, legal, and general public attention to predator management accentuates the need for ADF&G to inform Alaskans about their wildlife resources and how they are managed. These concerns are the impetus for this report.

This paper offers an overview of the social, legal, and biological bases for predator control in Alaska. It presents ADF&G's perspectives on predator management, lays out the reasons for specific wildlife management actions, describes the scientific information assembled by ADF&G that affects decisions on implementing predation control, and explains how ADF&G evaluates results. Abbreviated versions and other forms of this paper will be made available to help inform the public on this important issue. This document will be updated as new information and findings become available.

2.0 THE ISSUE

2.1 Definition of Predator Control

Big game species in Alaska, including predator populations, are affected by and managed primarily through regulated hunting and trapping. In contrast, predator control is a program used when other management techniques are not effective to reduce the limiting effects of predation on prey populations (e.g., moose, caribou, deer, Dall sheep, mountain goats). Predator control is intended to ultimately allow a higher sustainable harvest of prey in a particular area. The initial objective in a control program is a reduction (not elimination) in numbers of predators in the shortest possible time, in a specified area, followed by maintenance of predators at this temporarily lower level to enable the prey population to increase. After harvest and prey population goals set by the Alaska Board of Game (board) and ADF&G have been met, and predator populations have begun to increase in response to increased food resources, regulated hunting and trapping harvests of predators need to be sufficient to limit the growth of those predator populations. If these activities are insufficient, predator control programs may be reinstated.

Techniques used in predator control programs are determined based on what can be effective. For example, in many remote areas where ground access is difficult, the only effective method of reducing numbers of wolves is through the use of aircraft, in either land-and-shoot or aerial shooting. Land-and-shoot involves landing, exiting an aircraft, and shooting, whereas aerial shooting involves shooting from a flying aircraft.

Predator control is not the same as hunting and is not conducted under the same regulations as hunting or trapping. Hunting and trapping involves taking animals on a sustainable basis for food, to satisfy cultural needs, for monetary gain (trapping) and for recreation. They are governed by laws and regulations prescribing methods, means, and bag limits, and hunting involves the fair chase ethics of the individuals participating.

Hunting and trapping are broadly available to citizens who qualify for and purchase the appropriate licenses and tags. Take of predators by conventional hunting and trapping may be increased through liberalized seasons and bag limits to reduce the effects of predation on prey populations.

If conventional harvest is insufficient to produce the desired effect, predator control programs may be undertaken. Predator control is intended to reduce predator numbers while still retaining viable populations, and often employs methods not available to conventional hunters. These methods include: 1) aerial shooting (taking or attempting to take an animal by discharging a firearm from an airborne aircraft), 2) land-and-shoot (using an aircraft to locate an animal, landing the aircraft, exiting the aircraft, and immediately shooting or attempting to shoot the animal), and same-day-airborne shooting (taking an animal without waiting until after 3:00 a.m. following the day in which the person was airborne). Special permits are required to authorize members of the public using aircraft for predator control. Although the hides of wolves and bears taken under control programs must be salvaged, fair chase ethics are not applied to predator control programs.

Predator control is typically undertaken to benefit people (to maintain or increase the harvest of caribou and moose by people for food), not necessarily because it is needed to benefit moose, caribou, or deer populations. Predator control can be used to 1) allow prey populations to increase, 2) reallocate the harvest of prey by predators to people, 3) stabilize or prevent growth of predator populations, or 4) halt or reverse prey population declines due to hunting or other events.

Predator control programs are proposed by the public or ADF&G. Proposals are evaluated by ADF&G and may be adopted by the Alaska Board of Game. Programs are then designed by ADF&G and are conducted by ADF&G staff, permitted members of the public, or a combination of both. Budget constraints frequently preclude control activities conducted solely by ADF&G, so control programs currently depend on private citizen volunteers, who are issued permits to take wolves or bears using their own time and resources.

2.2 Alaska's Range of Values

Citizen opinion varies widely about how wildlife should be managed. One of the most fundamental and controversy-generating differences of opinion is whether wildlife populations should be manipulated by people for human benefits.

Hunting is extremely important in Alaska. It is integral to lifestyles, traditional cultures, the economy, and basic food needs for many Alaskan families. Approximately 25,000 caribou (estimated) and 7,000 moose (reported) are harvested each year. Unlike in other states, many small communities in Alaska have few or no practical alternatives for meat. Frequently, these communities are not connected to road systems, are hundreds of miles from larger cities, have no commercial scale agriculture, and lack big grocery stores. Costs to acquire meat and other items from outside are high and, in many cases,

prohibitive. Wild game is a high quality, local, organic, free-range food source, and many Alaskans – even those who live on the road systems – prefer this meat over farmed or feedlot products. As a result, moose, caribou, deer, Dall sheep, and mountain goats provide an important food source for both rural and urban residents.

In this document, the term "prey" generally refers to moose and caribou. In much of Alaska, large predators kill far more prey than do hunters. Studies indicate that predators often take 70% to 80% of the moose and caribou that die each year.

In some situations, traditional hunting and trapping efforts have been able to adequately manage predator numbers. However, these efforts generally have the greatest effect in and around urban areas, where land is accessible and the number of hunters and trappers is high. Many rural areas of the state have lower numbers of hunters and trappers, more difficult and expensive access, and, in general, persistently low moose and caribou populations. These are also the areas whose residents rely most heavily on sustainable prey populations for food, where cash economies are not well-developed and income is limited, and food prices are the highest. In addition to remote terrain, poor weather conditions can make predator harvests in some years difficult if not impossible.

Citizen views range from believing that wildlife populations should not be manipulated for human benefits, and that people should harvest only the number of animals that the population can naturally replenish each year (the extreme range of that end of the spectrum includes people who believe wildlife should not be harvested at all), to a demand for manipulating most, if not all wildlife populations to allow people to harvest a high percentage of wildlife populations annually.
No single management approach can satisfy everyone in an environment with such radically opposed philosophies. ADF&G uses different management strategies in different parts of the state to provide for different values, interests, and demands. Some areas are managed aggressively – including the use of wolf and/or bear control – to maximize prey harvesting opportunities. Conventional management tools are used throughout most of the state to support hunting and wildlife viewing opportunities. Some areas are closed to hunting where wildlife viewing is the primary objective. ADF&G remains committed to maintaining viable predator and prey populations, and will continue to manage Alaska's wildlife populations with long-term health, sustainable harvests, and conservation as guiding elements.

2.3 Why and When Predator Control is Used

Low numbers of prey or low harvests are not necessarily biological, conservation, or management problems. Many parts of Alaska have prey populations at levels below what habitat can support. Low numbers, densities, or harvests become management problems when people want or need something different than what an area is providing. Predator control is considered when these conditions all occur: a) people request it, b) predation is limiting the number or harvest of prey by hunters, c) the habitat can support more prey animals, and d) other means of achieving prey population or harvest objectives are ineffective.

3.0 HISTORY

3.1 Pre-Statehood

Control of predation intended to increase human consumptive use of populations of moose, caribou, deer, and other game in Alaska began before contact with Europeans. Alaska Natives actively manipulated predator populations using a variety of techniques, including "wolf pupping" and "springbaits." The territorial government implemented a bounty in 1915, followed by federal programs to kill coyotes and wolves in the late 1920s. Federal agents and others used a number of methods to significantly reduce numbers of predators, including poisoning, statewide bounties, and aerial hunting (before the advent of the 1971 federal Airborne Hunting Act). Widespread predator control that began in the 1940s ended at statehood. (See Section 7.1 for more information about early control programs in Unit 13.)

3.2 Post-Statehood

Limited programs involving shooting wolves from aircraft by state and/or private pilots or ground-based wolf removal methods have occurred intermittently for periods of about 2 – 6 years since the 1970s. Experimental programs to control bear predation have been conducted intermittently since the 1980s. (See Section 7.3 for more information about recent programs.)

Widely divergent opinions about the appropriateness of predator control led to ballot initiatives that prohibited shooting of wolves the same day airborne (1996) and a referendum that repealed legislative changes regarding aerial shooting of wolves by the public (2000). Both were substantially altered by legislative action within two years. Another initiative about same day airborne shooting by private pilots is scheduled for the 2008 primary election ballot in Alaska.

4.0 LEGAL CONSIDERATIONS

4.1 Constitutional Mandate

State government is charged with managing Alaska's fish and wildlife resources by Alaska's Constitution. Article VIII, Section 1 describes maximum use and development of natural resources, Article VIII, Section 2 directs that maximum benefit shall accrue to Alaskans through development of natural resources, and Article VIII, Section 3 reserves fish and game to the common use of all Alaskans. Specifically regarding fish and game management, Article VIII, Section 4 states: "Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses." This constitutional mandate is the state's primary directive for managing all fish and game species in Alaska, and is augmented by numerous state laws, contained largely in Title 16 of the Alaska Statutes (AS), and regulations, found mostly in Title V of the

Alaska Administrative Code (AAC). For precise wording of these legal documents, visit the state's website at: http://www.law.state.ak.us/doclibrary/doclib.html

"Sustained yield" is a basic principle of conservation specific to human use of resources. At its simplest, it means annual harvest should not exceed the annual regeneration of a resource, unless management goals encompass reducing a population to a lower, but still sustainable, level. This principle ensures harvests will not extirpate populations or drive species to extinction. This principle alone, however, provides little guidance where high levels of human use are mandated or desired.

4.2 Intensive Management

In 1994, the Alaska State Legislature (legislature) enacted AS 16.05.255, the "Intensive Management Law." The law requires the board to designate intensive management populations, for which human consumptive use is the highest priority use, and to set population and harvest objectives for those areas. If moose, caribou, or deer populations or harvests fail to meet management objectives, the board must consider and evaluate intensive management actions as a means of attaining the objectives.

The sequence of intensive management actions typically progresses from the more benign to the most aggressive. For instance, initial actions may include reducing or eliminating non-resident hunting, reducing or eliminating resident hunting, liberalizing hunting and trapping regulations for wolves and bears, and habitat improvement projects (primarily prescribed fire).

If these actions do not result or are unlikely to result in increased harvests of moose, caribou, or deer for food, the board will consider predator control, but only if habitat can support more of these animals and predation is a significant limiting factor. Predator control plans must consider the long-term viability of predator populations.

5.0 MAKING DECISIONS

5.1 Alaska Board of Game

The board is Alaska's regulatory authority that adopts regulations to conserve and develop the state's wildlife resources and allocates uses of those resources. ADF&G works to actively monitor trends in wildlife populations, makes recommendations to the board to manage these populations, and implements regulatory programs established by the board.

The board consists of seven citizens appointed by the governor and confirmed by the legislature. The board promulgates hunting, trapping, and other regulations for wildlife, including predator management policy, through a well-established public process.

More than 80 local fish and game advisory committees, various organizations, and individual members of the public participate in the state's regulatory process every year.

Any individual or organization may propose new regulations or changes to existing regulations, and may offer oral and/or written testimony on regulatory proposals. For every proposal, ADF&G provides available scientific information pertinent to the issue and analyzes effects of proposals, if adopted. ADF&G also makes recommendations to the board to adopt or not adopt proposals. However, ADF&G normally does not make recommendations on proposals that affect allocation of a wildlife resource between competing user groups. Allocation issues are specifically the purview of the board, subject to pertinent legal review.

By law, the board considers all of the information presented to them in their decision-making process. The amount of data upon which the board bases its decisions is variable. Alaska is a huge state; it is financially impossible to amass detailed information on all wildlife populations in all areas. In some areas, the board and ADF&G must rely upon general information to make management decisions. In other areas, information is much more specific.

5.2 Alaska State Legislature

The legislature may revise or create new statutes regarding wildlife management. Changes in state law necessarily affect how the board and ADF&G conduct their activities. The legislature delegates management authority to the board and ADF&G, who conduct their activities within the boundaries of state law and sometimes with specific legislative instructions.

5.3 Alaska Department of Fish and Game

ADF&G is the state agency responsible for managing Alaska's fish and wildlife resources through constitutional mandate, state laws and regulations, and it is the government body wherein wildlife management expertise exists. The department contains the staff, resources, and local knowledge to implement and conduct management and research programs as well as make wildlife management recommendations on regulatory proposals to the board. Once the board has made regulatory decisions, it is up to ADF&G to implement the regulations.

ADF&G carries out a wide variety of programs to meet diverse public interests in the conservation and use of wildlife. These programs range from protected areas where only viewing is allowed (e.g., McNeil River, west of Cook Inlet) to intensive management of habitat, predation, and harvest to produce high yields of game species such as moose or caribou for consumptive use (e.g., the Fortymile River drainage north of Tok). Diverse public interests often preclude managing for multiple objectives in any given area, so management programs often differ among areas of the state.

ADF&G strives to determine when predators are preventing prey populations from either increasing or meeting minimum harvest targets. Additionally, ADF&G forecasts what effects predator control might have in given situations, and helps the public and the board

objectively evaluate results after predator control is initiated. ADF&G's primary goal is to manage and maintain healthy populations of all wildlife in perpetuity.

5.4 Federal Management Authorities

While the board and ADF&G have management authority over most of Alaska's wildlife resources, the federal government owns about 60% of the land in Alaska, including seventeen National Park Service (NPS) areas that cover 54 million acres, and a national wildlife refuge system that covers 69.5 million acres, administered by the U.S. Fish and Wildlife Service (USFWS). Both of these agencies have policies in place that either prohibit wolf and bear control or require elaborate procedural steps in order to implement predator control. As a matter of policy, the State of Alaska has not extended the wolf or bear control programs to these federal lands. Collectively, USFWS and NPS lands compose approximately one-third of Alaska's land area.

6.0 THE ROLE OF SCIENCE

Biological information is used to estimate the size of predator and prey populations, detect if predators are limiting prey numbers or affecting prey population trends, forecast what effects predator control might have in given situations, and evaluate the results of predator control programs when they are implemented.

Science cannot answer the question of whether management programs should or should not be conducted – that is a value-based decision rendered from a mix of decision-making processes that involve the board, the legislature, and the public.

6.1 Predators and Prey

Wolves and bears are powerful and effective predators. ADF&G estimates that roughly 7,000 to 11,000 wolves, approximately 30,000 grizzly bears, and more than 100,000 black bears live in Alaska. Since statehood, populations of wolves and bears have been neither threatened nor endangered in Alaska. These predators' diets include large and small prey such as deer, caribou, moose, mountain goats, Dall sheep, fish, hares, and rodents. Bears also eat vegetation such as roots, berries, sedges, and grasses. Research in Alaska and Canada has shown that predation by wolves and bears can be an important factor in population declines or maintaining low densities of moose and caribou. ADF&G research has shown a single wolf consumes 12-13 moose in a typical year, and/or 30-40 caribou, mostly calves. But when faced with large predator populations of only one species, either wolves or bears, moose can reach relatively high densities.

Although caribou populations are subject to significant fluctuation, ADF&G estimates that more than one million currently live in Alaska in 32 herds. They eat lichens and other plant material and migrate widely between winter and summer ranges. About 175,000 – 200,000 moose live in Alaska and are widely distributed throughout the state in densities that vary markedly. Moose eat willows, shrubs, sedges, grasses, mushrooms, and aquatic plants during the summer and mostly woody twigs during the winter.

6.2 Monitoring and Managing Predators and Prey

Managing wildlife populations requires biologists to monitor prey populations to ensure that the capacity of the habitat to support them is not exceeded. Surveys of predators help biologists understand predator-prey dynamics and enable them to ensure long-term viability of populations of both.

ADF&G uses a variety of tools to monitor predator and prey populations including aerial surveys, radio-tracking, harvest reports, mortality studies, calving surveys, body condition surveys, and habitat surveys. Hunting and trapping seasons and bag limits are constantly monitored and regularly revised to make sure populations are sustainable in the long term.

6.3 Wildlife Surveys

A key element in managing wildlife is knowing or estimating the status and dynamics of given populations. Geography, vegetative cover, snow cover, funding, and many other factors frequently prevent biologists from directly counting individual animals across large areas. In addition to direct observations and reports from the public, wildlife managers use various field survey techniques including statistically rigorous population estimates to relative abundance indices and general counts to estimate animal numbers and relative proportions of sex and age classes of animals in a population. Carefully designed sampling in the form of composition surveys can help detect changes in population trends and reveal important herd characteristics, such as relative abundance of bulls and cows, numbers of calves per 100 cows, and trends in survival of calves. Different situations require different tools.

Caribou

Caribou range widely through a typical year. Biologists generally rely on a subset of radio-collared animals to estimate annual productivity, survival, and movements. In summer after calving, caribou tend to form large aggregations in areas that are identified by aerial tracking of radio-collared animals. Groups are surveyed from low-flying aircraft, photographed, and counted. Counting the number of individuals in the aerial photographs provides a minimum herd size. Accounting for caribou not in the aggregations by radio-tracking and surveying adjacent areas allows estimations of overall population size.

Composition surveys are also important to caribou management. Biologists in helicopters examine a subset of animals and collect information on numbers of calves produced, survival of young and adult animals, and proportions of males to females, and young to older animals.

Moose

The most common method of estimating moose numbers is a stratified random sample, where large areas, commonly Game Management Units (GMU), are divided into survey units and a randomly selected sample of these units is surveyed using small, slow-flying aircraft in winter. The resulting information is projected over entire GMUs or defined portions of GMUs to produce population estimates. Biologists also employ repeated count areas, i.e., counting animals on the same large plots of land year after year. Composition surveys provide information on numbers of calves produced, survival of young and adult animals, and proportions of males to females and young to older animals. Biologists also conduct habitat surveys.

Wolves

Wildlife managers estimate wolf abundance by employing aerial surveys in winter, when snow cover and daylight are most favorable for observing wolf tracks. Wolf numbers may be estimated using reconnaissance techniques, or they may be surveyed using more intensive, expensive techniques that result in statistical estimates. Important data are also provided by trappers and hunters through sealing reports that include information about pack sizes, locations, and movements. Multiple reports of individual wolf packs received throughout the winter from trappers, hunters, and other members of the public help biologists estimate pack sizes, colors, and ranges over large management areas.

Bears

Bears remain in dens over the winter and must be counted in the summer, when thick foliage and a lack of snow create challenges to observation. In non- or sparsely-forested habitats, bears may be observed from the air, and wildlife managers are able to estimate bear populations using mark-and-resight or aerial transect techniques. In habitats too dense for aerial surveys, biologists can use bait sites surrounded with barbed wire to collect individual bears' hair for DNA analysis. Along the Upper Susitna River as well as near McGrath, biologists have experimentally removed and relocated bears, which allowed for a minimum count of bears in those areas.

6.4 Limiting Factors

Habitat

Carrying capacity is defined as the greatest number of animals that can be supported by a certain area of habitat at a given time and at a defined nutritional condition. Although this concept is easy to understand, it is very difficult to measure. Changes in forage quality, vegetative cover, winter conditions, and snow depth all influence an area's carrying capacity over time.

Habitat regulates wildlife populations because as populations grow, competition for forage increases. The declining availability of forage causes nutrition to wane, calf

production to taper off, and mortality to increase. The nutritional condition of populations diminishes the closer they approach carrying capacity. This increases the vulnerability of these populations to severe winters, disease, predation, and other environmental influences. Habitat conditions play an integral role in the productivity and survival of prey populations.

Attempting to manage for the absolute highest density that can be supported may have unintended consequences, such as damage to browse species, poor body condition, risk of widespread mortality during a severe winter, or increased vehicle collision or crop damage. Managers may recommend threshold values of nutritional indices (see Section 6.5) for defining the carrying capacity, or the public may define other thresholds above which negative effects of high prey density become undesirable.

Predators

In much of Alaska, predation by wolves and bears holds moose and caribou populations well below what their habitat can support. High predation rates can keep prey populations at low densities for years, and in some cases, indefinitely. Many moose and caribou populations persist in what biologists refer to as a *low density dynamic equilibrium*, meaning both predator and prey numbers may fluctuate at low levels for indefinite periods of time.

Simply put, births and deaths regulate the number of animals on the landscape. In most of the U.S., where large predators are absent, wild caribou (which exist in very low numbers outside of Alaska) and moose are limited by habitat and commonly experience nutritional stress. In Alaska, moose populations are commonly at low population densities despite widely available forage maintained by wildland fires and floodplain disturbance. In these systems, nutrition is good and the number of calves born relative to the number of cow moose can be quite high, although survivorship is quite low because of predation. If deaths are reduced, these populations will grow and a higher number of animals will be available for harvest.

Very high rates of mortality during the first year – a. specially the first few weeks – of life greatly reduce the number of calves that are "recruited" into the population: i.e., those that survive to become adults. This loss of recruitment can substantially reduce the number of moose and caribou available for harvest and restricts the population from growing larger, or may even cause it to decline. Poor recruitment of calves to adulthood can also limit sustainable harvest from moderate density populations.

Wildlife scientists can determine when predators are keeping caribou and moose at low densities relative to available forage by using information collected from various combinations of field surveys including data from aerial surveys of predators and prey, harvest reports, calf mortality studies, body condition and weight measures, and browse surveys. Reproductive rates in particular are useful indicators of prey populations' potential for growth.

When wildlife habitat is healthy and abundant, moose and caribou are in good physical condition, and calf production is high. Biologists must understand causes of mortality if populations are unable to increase. If disease is not evident, the survival of different age classes of moose and caribou can be assessed, which can be used to indicate if wolves or bears are the primary source of predation. Bears focus predation on very young calves compared to wolves.

In some cases when moose or caribou populations have exceeded what their habitat can support, habitat can be damaged. If severe damage occurs, such as with the Nelchina basin caribou range during the late 1960s, it may take several decades for the habitat to recover. Habitat quantity and quality ultimately determine how many animals a range can support.

6.5 Monitoring Habitat and Nutrition

Habitat

In many other states, where large predators are absent, wild moose (and what few caribou exist outside Alaska) are limited primarily by habitat, winter conditions, vehicle collisions, hunting, and other factors. Generally, animals that are limited by habitat experience poor body condition, low reproductive rates, and higher incidence of disease and parasites. Where prey animals do not show signs of habitat limitations or limitations by other non-predation mortality factors, wildlife managers may suspect and investigate whether prey populations are primarily limited by predation.

Not all habitats are equal. Some areas are inherently more productive than others, given elevation, latitude, and geological differences. While one habitat may not be as high quality as another, it is important to distinguish this situation from habitat damaged by an overpopulation of moose or caribou, or other factors. Overall habitat quality affects prey reproduction, survival, and in the long term, the number of animals in an area.

Nutrition

Wildlife managers monitor several indicators of nutritional health of moose and caribou, including:

- *Twinning Rate.* The percentage of cow moose giving birth to twins declines as the population approaches carrying capacity. Caribou do not twin.
- *Calf weight.* Poorly nourished calves, or calves conceived late in the rut, are smaller the following winter and have lower overwinter survival rates than heavier calves.
- *Forage Characteristics and Use.* More vegetation will show signs of browsing as the population approaches carrying capacity. Moderately high browsing rates on some plant species accelerates regrowth, but severe overbrowsing can actually kill plants or allow plant species less favorable as browse to dominate.
- *Age of first reproduction.* As nutritional condition declines, cow moose have their first calves later in life. For example, in areas where plenty of good food is

available, cow moose and caribou may have their first calves at two or three years of age, but where food is scarce, a majority of cow moose do not reproduce until four years of age. Annual changes in productivity resulting from fluctuating nutritional status are common in caribou, resulting in fluctuations in the proportion of three-year-old cows that have calves.

- *Pregnancy rate.* The percent of females that are pregnant each year is related to nutritional condition of the population during the previous autumn. Predation on last year's calves can reduce over-winter lactation demands resulting in increased pregnancy rates the following fall. Under excellent nutritional conditions, caribou cows can have calves every year and the majority of reproducing cow moose can have twins. Poorly nourished caribou cows often skip a year between pregnancies, and fewer than 10% of poorly nourished moose cows have twin calves.
- *Sources of Mortality.* The percent of moose that die for reasons unrelated to predation or harvest (e.g., disease, malnourishment, or accidents) can increase as a population increases toward the upper limit of habitat carrying capacity.

To date, ADF&G has not identified any Alaska moose populations that have been limited at low densities by poor nutritional status.

6.6 Habitat Enhancement

Rejuvenation of moose winter forage has been accomplished at the landscape scale by working with landowners and managers to allow wildland fire to cycle nutrients and regenerate shrubs and young deciduous trees. However, benefits gained through wildland fire are unpredictable because of the uncertainty of when and where fires will take place. Large prescribed fires have been accomplished, but they are becoming increasingly unpopular with the public, especially near urban interface areas, where there is strong aversion to smoke. Mechanical treatments (e.g., bulldozers) can crush or shear decadent forage species, which stimulates growth of new forage. Mechanical techniques are expensive and inherently limited to small, localized areas, and logging operations are presently small and limited to areas adjacent to the road system in Interior and southcentral Alaska.

6.7 Predator Control as a Management Tool

When conventional hunting and trapping prove insufficient to keep predator populations within management objectives, predator control may be the only practical means of changing this situation. When nutritional condition of moose or caribou is adequate, reducing predation by wolves and/or bears can improve survival of both calves and adult prey to increase population numbers or harvest by hunters.

If prey numbers fall to very low levels, reductions in predation and harvest must be more dramatic. When implemented in a timely manner, predator control can result in shorter-term programs where prey numbers are stabilized and improved more quickly and efficiently. In such cases, the age and sex structure of prey populations can be maintained at optimum ratios of young to adults. When populations boom and crash, age structures

can become skewed, and create difficult management situations long into the future. Harvest regulations also change regularly as the sustainable harvest numbers fluctuate year to year. Predator control programs are designed to maintain stability of elevated harvests while maintaining viable numbers of prey and predators alike.

In control programs, predators are reduced in number but never permanently eliminated from any area; viable populations of predators are a requirement of law. The long-term goal of a successful program is increased prey density, increased harvest, and stable populations of predators. Biologists determine the level of predator removal needed to allow growth of prey populations. Biologists determine predator population objectives for areas that can achieve desired levels of harvest. Intensive management efforts, including predator control, focus on achieving those objectives.

Past wolf control efforts have involved ADF&G staff or members of the public. Current programs allow public permittees to remove a specific number of wolves using land-and-shoot or aerial shooting techniques in designated areas as part of predator control programs. Shooting from aircraft is a federal offense for hunters, and state law prohibits hunters from landing and shooting animals the same day they have been airborne. However, these methods are allowed for permittees involved with predator control programs. Similarly, bear control programs may, in some cases, allow permittees to sell bear hides or set bait stations for grizzly bears in control areas. These activities are prohibited under hunting regulations.

When members of the public participate in control programs, their activities are monitored under a permit system. Wolves killed must be reported promptly, and ADF&G requires permittees to report numbers, colors, and locations of all wolf packs and individual wolves seen or taken.

There is no indication from available scientific data that state-sponsored wolf or bear control programs have permanently adversely affected the persistence or ability of wolf or bear populations to recover following control on either a statewide or local basis. Not all public proposals for predator control are approved for implementation. To date, more proposals have been rejected by the board than approved.

6.8 Can Predator Control Work?

When applied under appropriate conditions, predator control can provide the opportunity for people to increase their harvest of moose and caribou. Predator control has been used in a few areas of Alaska and elsewhere to effectively reverse or stabilize declining moose or caribou populations, increase the numbers and/or densities of prey animals, and increase harvest of moose and caribou. Habitat quality, weather conditions, the mix and movement of predators, human access, management costs, and land ownership can all contribute to or detract from the success of control programs. The response of prey to control efforts depends on many factors, and in some cases, several years of predator reductions. Several studies specifically note reduced hunting and favorable weather during and immediately after predator control as contributors to successful programs.

Moose and caribou population and harvest objectives are usually not met if programs are interrupted or applied sporadically or incompletely.

Predator control programs can be effective when:

- *Predation is a limiting factor of prey abundance and survival.*
- *Significant predation is controlled.* Where more than one predator is responsible for significant levels of mortality on a moose or caribou population (i.e., wolves and bears), reductions in only a single predator such as wolves will be less effective than reductions in both predators.
- *Predators are reduced for sufficient time.* A program must exert sufficient influence long enough to allow increases in calf survival over several years. The sooner prey declines are addressed, the sooner intensive management can be successful. Waiting until a "biological emergency" exists requires the most drastic and intensive predator control.
- *Habitat is sufficient to support more prey.* Forage must be able to support higher numbers of prey, and snow must be shallow enough to allow access to the forage. Food, space, cover, and arrangement of habitat resources must be adequate to support the population and harvest objectives. The history of natural disturbances (e.g., fire and flooding) and management of each area is important in understanding and determining how many animals a particular area can support.
- *Control is conducted in sufficient area.* Experience gained from successful predator control programs suggests control areas should be at least 10,000 square kilometers (3,861 mi^2) in size to both account for prey movements and dispersal and to reduce the effect of immigration of predators from adjacent areas. Wolves especially have very high dispersal rates and can quickly re-populate areas having low numbers of wolves as prey populations increase.
- *Harvest of prey by hunters is limited.* Harvest of the prey population, including subsistence harvest, must not be excessive and may be reduced or, in extreme situations, even eliminated during a control program. Typically, before predator control is implemented, harvest is severely restricted and often limited to subsistence only.

6.9 Numbers of Predators Removed

The numbers of predators that must be removed to achieve program objectives is unique to each area. Not all areas have the same suite of predators and prey. For example, GMU 13 contains moose, caribou, wolves, brown bears, and black bears, with limited availability of salmon, whereas GMU 16 includes moose but relatively few caribou, wolves, more brown bears, more black bears, and abundant salmon (which are important food for predators). Further, availability and quality of forage differs by area and species (i.e., more calves may be born in one population than another), creating a better situation for population recovery. General reduction targets are not simply applied across the state but are specifically designed for each situation.

Several published studies report increases in prey numbers in Alaska and the Yukon after wolf control occurred that reduced wolf numbers to at least 55% or less of their pre-

control numbers for at least four years. Wolf fecundity increases in response to control efforts as well. For example, in GMU 13 from 1980 to 1999, normal, regulated hunting and trapping removed only 20-50% of the wolves annually. While that may appear high, given the dispersal, reproduction, and harvest patterns of wolves in this area, the GMU 13 wolf population actually increased to an all-time high during this period.

In some cases, there are enough historical data on predator and prey populations to demonstrate the reduced level at which wolf populations will allow moose and caribou populations to increase. In other areas, this level of information is lacking, requiring less specific, more generalized approaches in the implementation of predator control. Given changing wildlife productivity, as well as changing access and the ability of regulated hunters and trappers to remove predators in specific areas, each situation must be carefully reviewed before intensive management programs are implemented.

6.10 Duration of Control

The duration of intensive predator control programs needed to achieve success depends on specific situations. Intensive, short-term wolf control cannot be reasonably expected to initiate a successful, sustainable, long-term increase in harvest of moose or caribou. Calf survival must be protected for at least three to four years until the calves are old enough to produce calves of their own. The National Research Council's (NRC) 1997 review of predator control programs in Alaska and Yukon found that successful programs lasted at least four years.

Wolf control is stopped when prey populations and/or harvest objectives are reached. After control has been terminated, long-term, sustained harvest of wolves and bears usually remains necessary to sustain the higher prey populations. If moose or caribou populations are increased, those populations constitute not only increased harvesting opportunity for hunters, but also an increased source of food for predators, whose populations will predictably tend to increase in size in response to greater food availability.

Therefore, harvest of wolves and bears – through traditional hunting and trapping or other means – must limit the natural growth of predator populations, which would otherwise normally return the predator-prey situation to the same low density dynamic equilibrium condition that existed before the control program was initiated. Efforts by the public or possibly periodic, short-term secondary predator control will sometimes be a necessary part of overall, intensive management programs designed to increase harvests of moose and caribou.

6.11 Alternatives to Lethal Predator Control

Non-lethal methods have been effective in reducing predation on moose and caribou. However, some of these methods tend to be very expensive or logistically impractical, except in relatively small areas. Although these methods have the potential to be relatively efficient, effective, and easy to monitor in some situations, they often are

difficult to implement on a geographic scale large enough to be effective in most intensive management situations. However, these non-lethal methods will continue to be considered in Alaska's predator control programs on a case-by-case basis to determine if they are applicable in specific situations.

The following methods have been applied in Alaska:

- ***Surgical sterilization/relocation.*** In GMU 20E (Fortymile drainage), surgical sterilization of primary male and female wolves in 15 packs prevented pairs from producing pups; yet the pairs continued to defend their territories against incursions by other wolves. In addition, all other subordinate wolves in these targeted packs were removed either through live-capture and release at remote sites or by public trapping and hunting. This reduced the number of wolves in the vicinity of caribou calving grounds, which reduced the amount of predation on caribou calves. This program was relatively expensive, and it was difficult to find release sites acceptable to the public for the wolves that were live-captured and removed from the control area. Public concerns arose about translocated wolves causing predation problems in the areas where they were released.
- ***Diversionary feeding.*** In GMUs 20D (Delta) and 20E, studies have demonstrated that providing wolves and bears with alternate sources of food during the moose calving season produced an increase in moose calf survival to early winter. Reduction in predation stops as soon as the diversionary feeding is discontinued. This technique is cost prohibitive for large scale efforts.
- ***Predator relocation.*** In GMUs 13B, 13E, and 19D, capturing and relocating grizzly and/or black bears has resulted in substantial reductions in moose calf mortality. Two studies were conducted primarily to document the response of moose populations – specifically calf moose survivorship – to reductions in bear predation. These projects were not conducted as routine management techniques, or with an expectation that they would become routine efforts. These projects were expensive, logistically difficult, and unpopular with residents who lived in or had an interest in the localities where the bears were released. Also, bears have a strong tendency to return to their original locations, even over great distances, and may require additional translocations. Relocation of wolves has proven ineffective because wolves quickly return to their original home ranges. In addition, there are no areas of wolf habitat that need additional wolves.

7.0 PREDATOR MANAGEMENT RESULTS

7.1 Pre-statehood Efforts

In several areas, including GMU 13, extensive aerial shooting and poisoning through the late 1940s and early 1950s reduced wolf numbers dramatically. Poisoning likely reduced numbers of many non-target species as well, including black bears, brown bears, coyotes, wolverines, and eagles. Predator numbers were driven to the lowest recorded levels during this early period.

Large scale killing of predators allowed prey numbers to increase, often to levels their

habitat could not support. Many moose and caribou populations responded by growing rapidly and reaching historic high levels in the 1960s. The Nelchina caribou herd reached an all-time high and severely damaged its available habitat. Habitat degradation, severe winters, and over-harvest then combined to cause a large scale crash in the herd. Both moose and caribou in that area fell to very low numbers and it has taken decades for those populations to return to levels approaching those appropriate for the available habitat.

7.2 Post-statehood Efforts

After statehood, different intensive management techniques were tested or used routinely, including relocating brown bears from the Upper Susitna River in GMU 13, diversionary feeding trials for bears in GMUs 13, 20D, and 20E, sterilization of wolves in GMU 20E, and several same-day-airborne and aerial shooting programs to remove wolves. With each effort, ADF&G biologists learned valuable insights about when and where predator control could be used, and what results could be expected in various situations.

The most intensively managed area for moose was the Tanana Flats and Alaska Range foothills south of Fairbanks (GMU 20A), which had predator control programs during 1976-82 (for moose) and 1993-94 (for caribou) and has sustained a relatively high harvest of wolves by hunters and trappers. This area now supports the highest moose density and harvest density in the state for any equal-sized unsettled area, yet predators kill an estimated four times as many moose as do hunters.

7.3 Status of Current Programs

Predator control programs are presently employed on about 9% of Alaska's total land area. There is no indication from available scientific data that state-sponsored wolf or bear control programs have permanently adversely affected the long-term viability of wolf or bear populations on either a statewide or local basis. Wolf and bear populations have maintained their ability to increase after control programs end, even with continued public hunting and trapping.

Presently active wolf control programs are in relatively early stages, and results thus far show trends similar to results experienced in previous programs that successfully increased prey numbers or hunter harvests. Thus far, public participation in bear control areas has been low, and none have shown conclusive results. Bear control programs conducted by the public are relatively new, and it remains to be demonstrated whether the methods allowed thus far for taking bears in these programs will be successful. Additional methods for taking bears may be necessary to make these programs successful.

Status reports for current control programs include the following, with intensive management population and harvest objectives in 5 AAC 92.108 except as noted:

Upper Susitna, Talkeetna, Nelchina, and Copper basins (GMUs 13A, 13B, 13C, and 13E) (wolf control)

Control Area Size: 15,413 mi^2

Control Program Goal: Initiate an increase to the intensive management population objective for these four subunits of 16,400 – 20,000 moose and intensive management harvest objective of 975 – 1,990 moose.

Control Method(s): Public hunting and trapping of wolves and hunting of bears, aerial shooting, and land-and-shoot take of wolves by permittees.

Status: Active

Within the Upper Susitna River (a portion of GMUs 13B and 13E) from 1976-1978, wolves were reduced by 40-60% as part of a multi-year research program to measure effects of brown bear and wolf predation on calf moose. After wolf removal ended, a large proportion of the brown bears were relocated out of the area. Calf survival increased immediately after bear removal, but dropped to pre-relocation levels once bears returned to the area. While attempts were made to liberalize brown bear hunting regulations at the time, harvest regulations and bag limits were conservative compared to current regulations.

Following these experiments, wolf management across GMU 13 kept pressure on wolves. Between 1977 and 1987, the spring wolf estimate averaged 147. While aerial shooting of wolves was prohibited without a permit after 1971, many wolves were harvested by the land-and-shoot method during this period under general hunting and trapping regulations. During the same period, moose numbers within long-term trend count areas covering some 3,500 mi^2 increased 9% annually, almost doubling in size in the ten-year period.

When land-and-shoot was eliminated as a legal method of take under hunting/trapping regulations in 1988, conventional shooting, trapping, and snaring became the only methods by which to manage wolves in GMU 13. While land-and-shoot activities were permitted for two years, 1990-1991, the efforts were too short-lived to have much of an impact on wolf numbers. The wolf population began to grow, and by 1999 and 2000, the population had reached an all-time high (both years the fall estimate was 520 wolves, spring estimates were 300 and 270, respectively). Moose numbers during the same period declined as well; numbers within long-term trend count areas declined by nearly 4% annually to nearly half of their former numbers.

In 2000, an intensive wolf management plan was adopted for GMU 13; the use of snowmachines was liberalized for the taking of wolves at that time, and the same-day-airborne taking of wolves began in January 2004. Between 2000 and 2006, the wolf population was reduced across the intensive management portion of GMU 13 (13A, 13B, 13C, and 13E). Trapping and hunting accounted for nearly 50% of the unit-wide annual wolf take, whereas same-day-airborne take was responsible for the other half. The

number of wolves taken same-day-airborne in GMU 13 has averaged 71 annually. From 2000 to 2006, total moose numbers in long-term trend count areas are up 14%, or about 2% per year; calf numbers increased 110%; yearling bulls increased 176%; total bulls increased 45%; and cows decreased 3%. The current spring wolf population objective for GMU 13 is 135-165, based largely on previous predator/prey dynamics within this area. The wolf population was within that range during spring 2006. ADF&G issued an emergency order April 11, 2007 to close the control program to prevent reduction of the wolf population below the mandated objectives.

While no intensive bear management program has been implemented for GMU 13, brown bears have been identified as significant predators of moose calves in that unit. As a result, hunting regulations have been increasingly liberalized over time. Results of these changes are currently being analyzed.

Cook Inlet (GMUs 16A and 16B) (wolf and bear control)

Control Area Size: 11,105 mi^2

Control Program Goal: Initiate an increase to the intensive management population objective for these two subunits of 10,000 – 11,500 moose and intensive management harvest objective of 500 – 960 moose.

Control Method(s): Public hunting and trapping of wolves and hunting of bears, aerial shooting, and land-and-shoot take of wolves by permittees.

Status: Active

In 2004, when aerial wolf control began in GMU 16B, biologists estimated the unit population at about 200 wolves. The spring 2007 population was estimated at between 45 and 95 animals, for a total reduction of between 53 and 78%. Overwinter survival of moose calves was very high. However, spring to fall survival of newborn calves remained low at about 18%. To reduce predation on newborn calves, the brown bear season was liberalized from a take of one bear every four years to one bear per year beginning in fall 2001, and two brown bears per year beginning in fall 2005. Despite a year-round hunting season and a three bear limit, black bears remain abundant in GMU 16B. In July 2007, ADF&G initiated a black bear control program in 16B, allowing permitted participants to take an unlimited number of black bears of any age.

Middle Kuskokwim/Aniak (GMU 19A) (wolf control)

Control Area Size: 9,969 mi^2. Since control does not occur on federal wildlife refuge lands or on private lands posted against trespass, 9,368 mi^2 of the control area are open to wolf control.

Control Program Goal: Initiate an increase to the intensive management population objective of 7,600–9,300 moose and intensive management harvest objective of 400–550 moose for this unit [5 AAC 92.125(e)(1)(A)(viii)].

Control Method(s): Public hunting and trapping of wolves and hunting of bears, aerial shooting, and land-and-shoot take of wolves by permittees, sale of black bear hides and skulls by permittees.

Status: Active

The five-year wolf control implementation plan, adopted by the board in March 2004 for the Central Kuskokwim, originally consisted of Units 19A and 19B and was initiated in July 2004. The plan was subsequently modified in January 2006 to include only Unit 19A.

During the 2004–2005 regulatory year, 42 wolves were taken same-day-airborne and 71 wolves were reported by all methods. During 2005–2006, 46 wolves were taken same-day-airborne and 76 wolves were reported by all methods. ADF&G issued an emergency order on April 3, 2006 to close the control program as well as hunting and trapping seasons to prevent a reduction of the wolf population below the mandated objectives. During 2006–2007, 7 wolves were taken same-day-airborne and 10 wolves were reported taken by all methods. The low wolf take in 2006–2007 resulted from poor snow conditions unsuitable for effectively tracking wolves.

Surveys conducted during January and March 2006 indicated 114–120 wolves inhabited Unit 19A. Largely based on these data, the board reduced the post-control wolf population objective from 40–53 to no fewer than 30 wolves during their May 2006 meeting.

During 2005–2006, 65% of the wolf population in 19A was taken by all methods. However, the distribution of this take was not uniform throughout the area. During 2004–2005 and 2005–2006, over 70% of the wolves in the lower Holitna, Hoholitna, and Stony River drainages were removed. Removal rates in other portions of Unit 19A were much lower, and probably had minimal effect in reducing predation on moose. Although snow conditions in the Aniak River drainage were not conducive to the use of airplanes to take wolves during 2004–2006, snow events in most winters are sufficient for aerial tracking purposes. Elsewhere in Unit 19A, topography, trees, typical wind and snow conditions, and other factors make it difficult to take wolves using fixed wing aircraft.

In fall 2004, a moose density estimate of 0.19 observable moose/ mi^2 was measured in Unit 19A south of the Kuskokwim. The most recent density estimate, obtained in March 2006 in the western portion of Unit 19A south of the Kuskokwim River, was 0.38 observable moose/ mi^2. No density estimates were obtained during winter 2006–2007 because of poor survey conditions.

During May 2007 a moose calf twinning survey in the Holitna and Hoholitna River drainages within 19A showed a 64% twinning rate. Furthermore, the data recorded on sex and age of observed moose suggested 31% yearlings, 62 calves:100 cows, and 26 bulls:100 cows. Although these observations suggest the beginning of moose population growth and excellent nutritional status, the sample size was too small to make conclusive statements. Biologists were unable to obtain sample sizes sufficient for analysis elsewhere in Unit 19A.

Middle Kuskokwim/McGrath (GMU 19D East) (wolf and bear control)

Control Area Size: 8,513 mi^2 (of this area, 6,245 mi^2 are active).

Control Program Goal: Initiate an increase to the intensive management population objective of 6,000 – 8,000 moose and intensive management harvest objective of 400 – 600 moose.

Control Method(s): Public hunting and trapping of wolves and hunting of bears, aerial shooting, land-and-shoot take of wolves by permittees, and ADF&G relocation of brown bears, hunting black bears over bait, same day airborne by permittees, sale of black bear and grizzly bear hides or skulls by permittees.

Status: Active

Research on the effects of predation on moose in the McGrath area began during spring 2001. Results from that research indicated that habitat is not limiting moose population growth and both bears and wolves were significant predators of moose in the McGrath area. Therefore, during the springs of 2003 and 2004, ADF&G staff removed 115 black bears and 10 grizzly bears from a 528 mi^2 area surrounding McGrath – the "Experimental Micromanagement Area" (EMMA). This removal represented at least a 70% reduction in the bear population for that area. In addition, starting in late winter 2004, a wolf control effort employing aerial shooting was initiated in the same area and remained in effect during the winters of 2004-2005 and 2005-2006. Wolf surveys conducted during spring suggest the wolf population within the area was about 75% lower as a result of the program.

ADF&G continued the basic research program that was initiated in the spring of 2001 during the predator removals, and it is that research project that provided insights into the effectiveness of removing predators in the McGrath area to increase moose numbers. During 2001 and 2002, prior to removal of predators, annual moose calf survival was 33% and 27%, respectively. Following removal of predators, survival of calves was 52%, 40%, 42%, and 65%, respectively, for 2003, 2004, 2005, and 2006. Annual survival rates of yearling moose also increased following removal of predators with 83%, 74%, 75%, 94%, 96%, and 85% surviving in 2001 thru 2006, respectively. Annual survival of adult moose followed the same basic pattern of increase following removal of predators with 86%, 89%, 95%, 100%, 98%, and 98% surviving in 2001 thru 2006, respectively. In addition, moose surveys conducted in the McGrath predator removal area indicated the

moose population in the area had grown from 524 moose in 2001 to 691 moose in 2006, representing an approximately 30% increase in the moose population. By request of the McGrath Advisory Committee, moose harvest in the EMMA has been voluntarily suspended during the control program.

Upper Yukon/Tanana basin (GMUs 12, 20B, 20D, 20E, and 25C) (wolf and bear control)

Control Area Size: 18,745 mi^2. To avoid federal wildlife refuge lands, 15,949 mi^2 are open to wolf control and 4,050 mi^2 are open to grizzly bear control.

Control Program Goals: Initiate increases to: 1) the Unit 12/20E portion of the intensive management population objective of 8,744 – 11,116 moose and intensive management harvest objective of 547 – 1,084 moose [5 AAC 92.125(b)(1)(A)(xv)]; and 2) the Fortymile caribou herd intensive management population objective of 50,000 – 100,000 caribou and the intensive management harvest objective of 1,000 – 15,000 caribou.

Control Method(s): Public hunting and trapping of wolves and hunting of bears, aerial shooting, and land-and-shoot take of wolves by permittees, hunting black bears or grizzly bears over bait in the Brown Bear Control Area, same day airborne by permittees, sale of black bear and grizzly bear hides or skulls from Brown Bear Control Area by permittees.

Status: Active

Results of research and management surveys conducted within the Upper Yukon/Tanana Predator Control Area during the past 24 years indicated wolves were the primary predators on the Fortymile caribou herd, and brown bears and wolves were the primary predators on moose in northern GMU 12 and GMU 20E. A brown bear and wolf control program was initiated in 2005, within a portion of northern GMU 12 and GMU 20E, to reduce predation on moose. In 2006, the wolf control area was expanded to include the Fortymile caribou herd's range in portions of GMUs 12, 20B, 20D, 20E and 25C, to reduce predation on the caribou herd. One hundred wolves and six brown bears have been killed under these programs since it was initiated.

Initial indications suggest moose survival and moose numbers have increased in a 2,452 mi^2 portion of southern GMU 20E, within the west Moose Survey Area (survey area). Annual reductions in the wolf population within the survey area occurred during the winters of 2004-2005 and 2005-2006 as a result of wolf kills by wolf control permittees and harvests by hunters and trappers. The late-winter estimated wolf population within the survey area during the winters of 2004–2005 and 2005–2006 was less than 50% of the pre-control estimate. Results from a 2006 brown bear population survey conducted within the survey area indicated there were fewer grizzly bears within the survey area than reported during research conducted in the 1980s. Extensive fires occurred in southern GMU 20E in 2004 and 2005, which included much of the survey area. These fires may have influenced grizzly bear distributions and may have contributed to lower than normal numbers of bears in the survey area in 2006.

The calf:cow ratios observed in the survey area during 2005 and 2006 fall moose surveys were 30 and 37 calves:100 cows compared to an average of 19 calves:100 cows (range 14-26 calves:100 cows) observed in the survey area during 1998–2004. The fall moose population estimates in the survey area were 1,435 (90% confidence interval ±22%), 1,801 (90% confidence interval ±17%) and 2,398 (90% confidence interval ±19%) during falls of 2004, 2005, and 2006, respectively. This suggested an increase in the moose population between the fall of 2004 (pre-control) and 2006.

While lower numbers of wolves within the survey area likely resulted in increase moose survival, fewer grizzly bears may have accounted for some of the observed increase in the moose calf:cow ratio and the population within the survey area in the falls of 2005 and 2006. The moose population appeared to remain stable in the remainder of GMU 20E and northern GMU 12, where annual wolf reductions did not exceed 30% of the late-winter pre-control population. Additional information is needed to accurately evaluate the effects of the predator control program on the moose population. Because the wolf control program for the Fortymile caribou herd has only been in place for one year, there are inadequate data to evaluate this portion of the program at this time.

From 1981-1984, wolf numbers were reduced in Unit 20E by 30-60%, with no discernible effect on moose calf survival. Grizzly bears killed 50% of the moose calves born in 1984.

8.0 CONCLUSIONS

- Moose, caribou, and deer provide important food for many Alaskans.
- Moose and caribou populations across Alaska frequently persist at low densities, often kept that way by predation. Predators kill more moose and caribou than do hunters.
- The Alaska Board of Game and Alaska Department of Fish & Game are required by Alaska's Constitution and state law to manage predators and prey for all users in Alaska.
- Intensive management statutes require the Alaska Board of Game to adopt regulations that implement programs intended to provide more prey harvesting opportunities for hunters.
- Predator control programs are designed to reduce wolf or bear populations to increase numbers or harvests of moose or caribou. Each situation is approached systematically and individually.
- When properly designed and carried out, predator control programs have a high likelihood of increasing moose and caribou harvests. As populations increase, ADF&G will periodically assess nutritional status to determine capability of the habitat to support increasing populations.

- When members of the public are involved, the state limits participation to qualified applicants through the issuance of special permits and closely monitors the actions of participants.

- ADF&G has collected and continues to collect data to monitor the effectiveness of bear and wolf control programs. There is still much to learn.

- Predator control programs are active on about 9% of Alaska's lands.

- There is no indication from available scientific data that state-sponsored wolf or bear control programs have permanently adversely affected the persistence of wolf or bear populations on either a statewide or local basis.

- Data from each of the five active wolf control areas are preliminary, but indicate beginnings of increased moose calf survival and population growth.

- Current bear control programs in GMUs 16, 19A, and 20E are new and thus far inconclusive; new information is being collected and evaluated.

- Wolf and bear populations maintain their ability to increase after control programs end, even with continued public hunting and trapping.

- Citizen values range from rejecting manipulation of wildlife populations for human benefits, to demanding management practices allowing hunters to harvest higher percentages of wildlife populations annually. Because of these opposing public values, predator control will always be controversial.

- No single management approach can satisfy everyone; ADF&G uses different management strategies in different parts of the state to provide for different values, interests, and demands.

- ADF&G is committed to maintaining viable predator and prey populations and manages Alaska's wildlife populations with long-term health, sustainable harvests, and conservation as guiding principles.

9.0 RESOURCES

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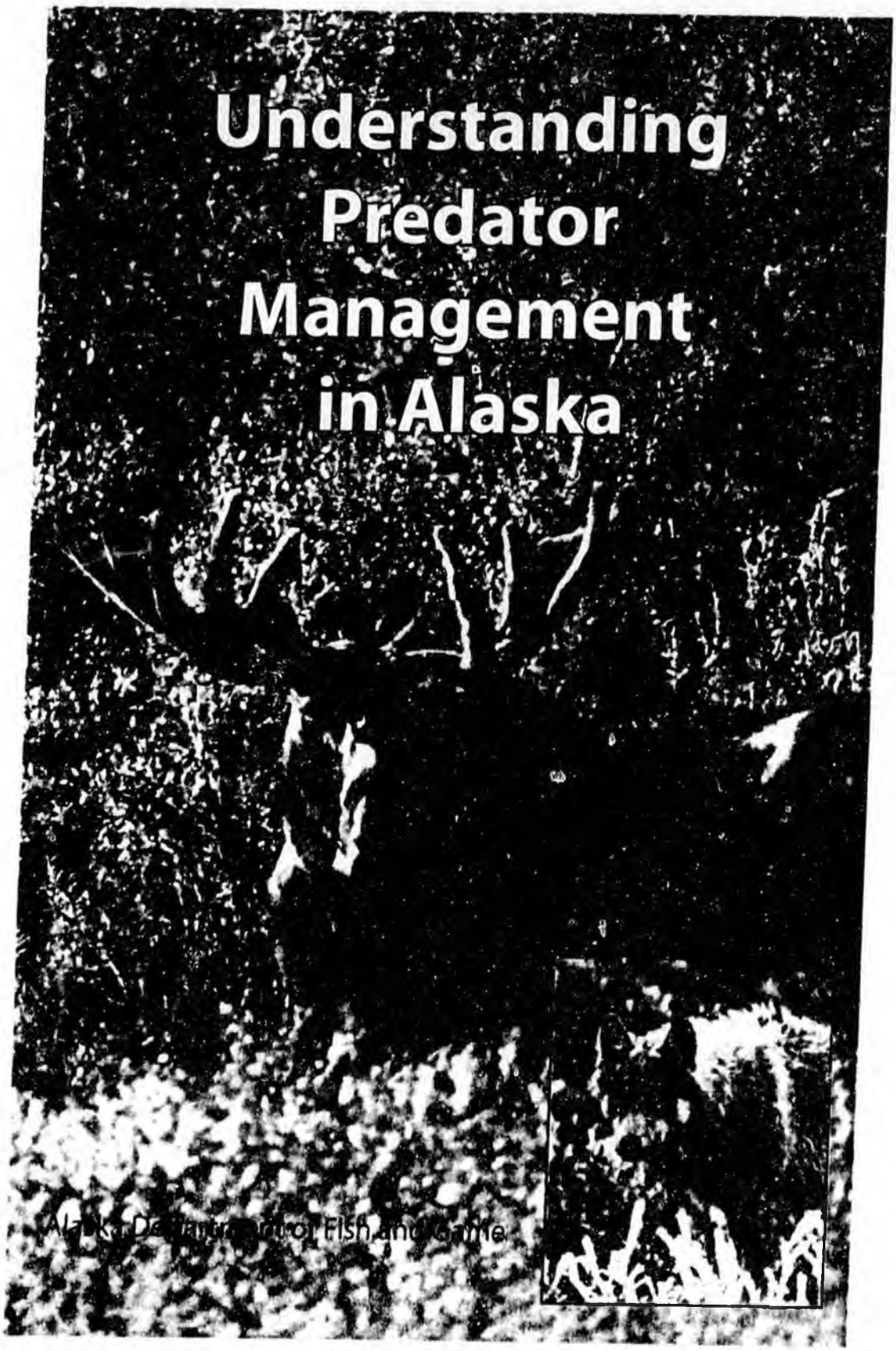

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