

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12589



**Alaska**

May 9, 2007

The Honorable Hollis French, Chair  
Senate Judiciary Committee  
Alaska State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 217 - Tourism Disclosures and Notices

Dear Senator Elton,

On behalf of the Alaska Chapter of the National Federation of Independent Business, I wish to express our support for House Bill 217. The Alaska Chapter of the National Federation of Independent Business is the largest small-business advocacy group in the state.

House Bill 217 resolves a basic unfairness created in the disclosure section of the cruise ship initiative passed last summer. Not only is this corrective legislation supported by NFIB, the initiative sponsors encouraged its passage. The current law requires disclosure of proprietary information of small and independent Alaska shorside businesses. HB 217 provides better disclosure to the consumer without requiring disclosure of proprietary pricing decisions by Alaska's businesses.

It is important to small and independent businesses that we resolve this problem prior to the beginning of the season.

We appreciate your introduction of HB 217 and your willingness to address this important issue affecting small and independent Alaskan businesses.

Sincerely,

Dennis L. DeWitt  
Alaska State Director  
National Federation of Independent Business

cc: Senate Judiciary Committee  
Representative Lindsey Holmes

April 02, 2007

Representative Lindsey Holmes  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Holmes,

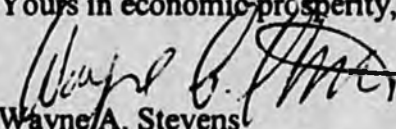
The Alaska State Chamber of Commerce supports and endorses your efforts to clarify the requirements recently adopted under the cruise ship initiative. The vendor disclosure provision of the cruise ship initiative unfairly penalizes those that benefit most directly from the cruise and visitor industries. HB 217 seeks to rectify the vendor disclosure portion of the passed initiative.

The disclosure provision of the initiative requires Alaska businesses that sell day excursions and products to cruise passengers to reveal their confidential pricing structure. As an Alaska business association, we are concerned with this provision. It is patently unfair in that it requires just one segment of the business community to disclose their proprietary pricing information. No other industry is required to disclose its pricing structure. The provision requiring cruise lines to disclose in big type the commission they earn for selling bus tours, flight-seeing tours and other ground tour packages places these shore-side vendors at a serious competitive disadvantage.

Good business in Alaska should be based on an even playing field for all Alaskan businesses. Under the current passed initiative, some businesses maybe unfairly penalized by providing proprietary business information required under the initiative. The Alaska State Chamber of Commerce lauds your efforts to change this provision of the initiative.

We look forward to a better business climate in Alaska, and we believe HB 217 moves Alaska's businesses in the right direction.

Yours in economic prosperity,

  
Wayne A. Stevens  
President/CEO



April 6, 2007

Dear Legislator:

The Anchorage Chamber of Commerce today reviewed and supports HB217 regarding the disclosure section of Ballot Measure 2: "The Cruise Ship Initiative".

The tourism industry is important to our state's economy and economic well-being. Of the Anchorage Chamber's 1,200 members, more than 75 percent have fewer than 25 full-time, year-round employees. Many members are directly involved in the industry; many more benefit indirectly.

Ballot Measure 2 as written is punitive to Alaska businesses that offer tours to cruise line passengers because it exposes the price structures of these businesses, leading to unfair price undercutting. The ramifications of such legislation may be detrimental to more Alaska businesses.

To that end, the Anchorage Chamber of Commerce Board of Directors believes HB217, that allows a choice between disclosing commission rates (as under current law) or alternative methods provided in the bill is consistent with the intention of Ballot Measure 2, and we encourage you to support HB217.

Please contact us at [president@anchoragechamber.org](mailto:president@anchoragechamber.org) or (907) 677-7109 with any comments or questions.

Sincerely,

William J. Evans  
Anchorage Chamber of Commerce  
Board Chairman, 2006-07

Stacy Schubert, IOM  
Anchorage Chamber of Commerce  
President

cc. Representative Lindsey Holmes



2006 - 2007

Executive Officers

Chair  
Patti Mackey  
Kelchikan Visitors Bureau

Vice Chair  
Brett Carlson  
Northern Alaska Tour Company

Government Relations Chair  
Stan Stephens  
Sean Stephens Cruises & Wildlife Trips

Marketing Chair  
Deb Hickok  
Fairbanks CVB

Secretary  
Paul Allen  
Holland America Line

Treasurer  
Ken Dole  
Waterfall Resort & Promech Air

Past Chair  
Gary Odla  
Alaska Highway Cruises

President & COO  
Ron Peck  
Alaska Travel Industry Association

Board of Directors

Charlie Ball  
Princess Tours

Roark Brown  
Homer Ocean Charters

Bruce Bustamante  
Anchorage CVB

Ann Campbell  
Aurora Consulting

Kelli Dindinger  
Alaska Travel Adventures

Pam Foreman  
Kodiak Island CVB

Scott Habbarstad  
Alaska Airlines

Don Habeger  
Royal Caribbean Int'l & Celebrity Cruises

Kirk Hoessla  
Alaska Wildland Adventures

John Kreilkamp  
Cruise West

Tim McDonnell  
Temsco Helicopters, Inc.

Bonnie Quill  
Mal-Su CVB

Scott Ralsland  
Denali Grizzly Bear Resort

Suzanne Rust  
K2 Aviation

Jerry Scholand  
Alaska B & B Association

Bob Wysocki  
Huna Totem Corporation

**Resolution  
In support of HB 217**

*"An Act relating to required onboard disclosures and displays about tours, flightseeing operations, other shoreside activities, and visitors bureaus; and providing for an effective date."*

WHEREAS, the visitor industry is an important economic engine of Alaska's private sector; and,

WHEREAS, travel and tourism expenditures in Alaska represent more than \$1.5 billion annually; and,

WHEREAS, the visitor industry represent more than 40,000 jobs annually; and,

WHEREAS, the visitor industry has substantial opportunity for continued growth; and,

WHEREAS, the cruise industry delivers almost 1,000,000 visitors annually to Alaska; and,

WHEREAS, a vital part of the cruise and tour visitor's experience is shore excursions and land tours; and,

WHEREAS, the Cruise Ship Ballot Initiative passed in August of 2006, requires disclosure of commissions and proprietary business information; and,

WHEREAS, this aspect of the Cruise Ship Ballot Initiative will harm Alaskan owned and operated tour businesses; and,

WHEREAS, This legislation, HB 217, corrects serious flaws in the law created by the over-broad ballot initiative and it provides consumers with useful information, but not proprietary information about individual Alaskan tour operators;

THEREFORE, BE IT RESOLVED, that the ALASKA TRAVEL INDUSTRY ASSOCIATION BOARD OF DIRECTORS is in support of the passage of HB217 because it implements an alternative means of communicating the cruise line and shore excursion operator business relationship.

Signed: \_\_\_\_\_  
Ron Peck, President & COO, Alaska Travel Industry Association



**ANCHORAGE CONVENTION & VISITORS BUREAU  
BOARD OF DIRECTORS**

**RESOLUTION 2007-01**

**A Resolution in support of House Bill 217**

**WHEREAS, Alaska's tourism industry and small businesses contribute heavily to the state's economic well-being; and,**

**WHEREAS, the disclosure law as written in Ballot Measure 2 has the potential to be extremely punitive to Alaska businesses that offer tours to cruise line passengers; and,**

**WHEREAS, the required disclosure would expose the price structures of these businesses, leading to unfair price undercutting; and,**

**WHEREAS, House Bill 217 would offer an alternative to businesses, especially those that contract with the cruise lines, to provide an alternative method of disclosure.**

**NOW THEREFORE be it resolved that the Board of Directors of the Anchorage Convention & Visitors Bureau supports House Bill 217 as a measure that will both protect and enhance Alaska tourism businesses.**

**Approved on this, the 30<sup>th</sup> day of March, 2007.**

**ATTESTED BY:**

  
**Dave Karp**  
Chair

  
**Bruce Bustamante**  
President & CEO

**Alaska State Legislature**  
**House of Representatives**

Alaska State Capitol  
Juneau, Alaska 99801-1182  
1-907-465-4919 (phone)  
1-888-478-4919 (toll free)  
1-907-465-2137 (fax)



Interim Address  
716 West Fourth Avenue  
Anchorage, Alaska 99501-2133  
(phone) 1-907-269-0120  
(fax) 1-907-269-0122

**Representative Lindsey Holmes**  
District 26

The following additional letters of support were received for HB 217:

1. **Betsey Burdett of Southeast Exposure (Ketchikan)**
2. **Ethan Tyler of Kenai Fjords Tours/Prince William Sound Cruises and Tours (Anchorage)**
3. **Bart Henderson of Chilkat Guides (Haines)**
4. **Fred Drake of Snorkel Alaska (Ketchikan)**
5. **Rob Scheer of Experience Alaska Tours (Ketchikan)**
6. **Rob Scheer of The Great Alaskan Lumberjack Show (Ketchikan)**
7. **Len Laurance of Alaska Rain Forest Sanctuary (Ketchikan)**
8. **Karen Hess of Chilkat River Adventures (Haines)**
9. **Brien Salazar of Taquan Air (Ketchikan)**
10. **Kris Singstad of Alaska Canopy Adventures (Ketchikan)**
11. **Mike Cooney of Alaska Canopy Adventures (Ketchikan)**
12. **Carole Tallman of Four Seasons Marine Services (Auke Bay)**
13. **Loren Gerhard of Four Seasons Marine Services (Auke Bay)**
14. **Kerry and Joyce Town of Canal Marine and Oceanside RV (Haines)**
15. **Vyonne Zartman (Haines)**
16. **Laurie Booyse of Allen Marine Tours (Ketchikan)**
17. **John Dunlap of Allen Marine Tours (Sitka)**
18. **Jim Collins of Allen Marine Tours (Auke Bay)**
19. **Greg Cushing of Allen Marine Tours (Sitka)**
20. **Amanda Painter of Allen Marine Tours (Ketchikan)**
21. **Dot Wilson of Coastal Helicopters**

22. Mike and Sydnie Wallisch of Alaska Adventures Unltd. & Southeast Sportfishing  
(Sitka)
23. Bob and Christy Fowler of the Pioneer Bar and Bambo Room Restaurant  
(Haines)
24. Steve Judd of Alaska Tour & Travel (Anchorage)
25. Chris Anderson of Glacier Brewhouse and Orso (Anchorage)
26. Bruce Bustamante of Anchorage Convention and Visitor's Bureau (Anchorage)
27. Drew Green of A.J. Juneau Dock (Ketchikan)
28. Jack Cadigan of Cadigan Enterprises
29. Stan Stephens of Stephens Cruises and Wildlife Tours (Valdez)
30. Kelli Dindinger of Alaska Travel Adventures (Juneau)
31. Janis Horton of Chilkoot Lake Tours (Haines)
32. Anna Neidig ATIA (Anchorage)
33. C.D. & Kathleen McCurry of Copper Moose B&B Copper Center
34. Scott Laird of USTravel
35. Shirley Laird of ATIA (Anchorage)
36. Tory Korn of Cape Fox Tours (Ketchikan)
37. Kari Christman of Era Helicopters (Wasilla)
38. Jim Shook (Haines)
39. Chris von Imhof of Alyeska Resort (Girdwood)
40. John Lucas of Wings Airways
41. Kari Erickson of Gray Line of Alaska (Ketchikan)
42. Mark Miller (Anchorage)
43. Jeremy Gieser of Gastineau Guiding (Juneau)
44. Sherry Aitken (Sitka)

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

### BALLOT LANGUAGE

This initiative would impose a \$46 per person per voyage tax on large cruise ships to pay for vessel services. It would provide for the proceeds from the tax to be deposited in the state general fund and, subject to appropriation by the legislature, distributed to municipalities. It would levy a tax on cruise ship gambling activities in state waters. It would change the way cruise ship corporate income tax is calculated. It would require cruise ship operators to gather and report more information, and get a new type of permit for sewage, graywater or other wastewater before discharging in state marine waters. It would assess a \$4 per passenger berth fee and require large cruise ships to have state-employed marine engineers (Ocean Rangers) licensed by the Coast Guard to observe health, safety and wastewater treatment and discharge operations. It would authorize citizen lawsuits against an owner or operator of a large cruise ship, or against the Department of Environmental Conservation, for an alleged violation of any permit condition, provision of environmental statutes or performance of duties. It would also enable a person who provides information leading to enforcement of the law to receive 25 to 50 percent of fines imposed. It would impose additional requirements on disclosures about on-ship promotions of shore-side businesses.

### SHOULD THIS INITIATIVE BECOME LAW?

- Yes  
 No

### LEGISLATIVE AFFAIRS AGENCY SUMMARY

Part of this bill is about cruise ship taxes. It imposes a \$46 a person tax on cruise ship passengers. That money goes into a special account in the state's general fund. The legislature may appropriate part of that money to the vessel's ports of call. But, towns that receive that money cannot impose local cruise ship head taxes. The bill also taxes gambling on cruise ships. The tax is 33 percent of the cruise ship's adjusted gross income from the gambling. The bill changes the state's corporate

income tax law so it could be applied to cruise ships.

The bill also changes environmental laws that apply to cruise ships. It requires wastewater discharge permits for cruise ships. It sets minimum standards and conditions for use of those permits. It prohibits wastewater discharges without a permit. It changes the monitoring and record keeping requirements for wastewater discharges. It establishes a new ocean ranger program. A ranger is a marine engineer. It requires each cruise ship to have a ranger on board. The ranger is an independent observer. The ranger monitors compliance with pollution laws. The bill imposes a four-dollar fee per berth for operating the ranger program. It gives private citizens the right to sue for discharge violations. It also establishes financial penalties for violations of environmental laws.

Finally, the bill regulates sales on cruise ships. Persons paid to mention or promote a business in a state port must say they are paid. Written materials must also say that the person is paid. Persons selling tours and other shore-side activities on board a cruise ship must disclose how much they are paid for each sale. A seller must give the address and phone number of the shore-side business if asked. It makes violation of these laws an unfair trade practice.

### STATEMENT OF COSTS AND REVENUES FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX - Prepared by the Alaska Department of Revenue

As required by AS 15.58.020(b), the Alaska Department of Revenue has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 - Initiative 03CTAX.

### COSTS

In order to administer the tax collection process required by this initiative, the Department of Revenue would require six new positions, at an estimated cost of \$626,000 per year for staff and associated costs.

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

### REVENUES

This initiative would impose an excise tax of \$46 per passenger per voyage on travel on commercial passenger vessels with 250 or more berths, and a "Ranger fee" of \$4 per passenger berth.

We assume that 2007 cruise ship activity will be similar to the scheduled 2006 cruise ship activity. We cannot predict whether the excise tax might impact the number of passengers.

Assuming the ships sail at 100 percent capacity, we estimate the \$46 per passenger excise tax would be applied to approximately 900,000 passengers in the 2007 season, resulting in revenue of approximately \$41 million. About \$14 million of that revenue would be shared with municipalities at which the cruise ships stopped. Twenty-five percent of the total, or approximately \$10 million, would be placed in a "Regional Cruise Ship Impact Fund," to be distributed to other affected municipalities. The \$4 per berth Ranger fee would bring in approximately \$3.6 million.

Net revenues to the state, after deducting costs for the Departments of Revenue and Environmental Conservation, and deducting the \$24 million in shared revenues cited above, would be approximately \$14.4 million.

This initiative would impose a tax of 33 percent of the adjusted gross income from operation of gaming or gambling activities on ships operating in Alaskan waters.

The Department has no data on the extent or profitability of cruise ship gaming in Alaskan waters, and therefore cannot calculate revenues from the proposed gaming tax.

This initiative would also change the way the corporate income tax is calculated for the cruise ship industry. The Department does not have adequate data to estimate the effects of this change on corporate income tax revenue.

### STATEMENT OF COSTS FOR BALLOT MEASURE 2 - INITIATIVE 03CTAX- Prepared by the Alaska Department of Environmental Conservation

As required by AS 15.58.020(b), the Alaska Department of Environmental Conservation ("DEC") has prepared the following statement of costs to the Department of implementing the law proposed in Ballot Measure 2 Initiative - 03CTAX.

The initiative would require DEC to develop and maintain a new permit program for Large Commercial Passenger Vessels ("cruise ships") to replace the current program for regulating these vessels. It would also require DEC to place marine engineers ("Ocean Rangers") licensed by the Coast Guard on the cruise ships to monitor compliance with State and Federal environmental laws. Two marine engineers working alternating twelve-hour shifts would be placed on each cruise ship operating in Alaska waters.

The cost to the state during the first full year of the implementation of this initiative is estimated to be approximately \$5.6 million.

### FULL TEXT OF THE PROPOSED LAW

**FOR AN ACT PROVIDING FOR TAXATION OF CERTAIN COMMERCIAL SHIP VESSELS, PERTAINING TO CERTAIN VESSEL ACTIVITIES and RELATED TO SHIP VESSEL OPERATIONS TAKING PLACE IN THE MARINE WATERS OF THE STATE OF ALASKA**

**Be it enacted by the People of the State of Alaska:**

\* Section 1. AS 43 is amended by adding a new chapter to read:

**Chapter 52. Excise Tax on Travel Aboard Commercial Passenger Vessels.**

**Sec. 43.52.010. Levy of excise tax on overnight accommodations on commercial passenger vessels. There is imposed an excise tax on travel on commercial passenger vessels providing overnight**

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

accommodations in the state's marine water.

**Sec. 43.52.020. Rate of tax.** The tax imposed by AS 43.52.010 - 43.52.095 is levied at a rate of \$46 a passenger per voyage.

**Sec. 43.52.030. Liability for payment of tax.** A passenger traveling on a commercial passenger vessel providing overnight accommodations in state marine water is liable for the tax imposed by AS 43.52.010 -- 43.52.095. The tax shall be collected and is due and payable to the department

(1) by the person who provides travel aboard a commercial vessel for which the tax is payable; and

(2) in the manner and at the times required by the department by regulation.

**Sec. 43.52.040. Disposition of receipts.**

(a) The proceeds from the tax on travel on commercial passenger vessels providing overnight accommodations in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund. The legislature may appropriate money from this account for the purposes described in (b) and (c) of this section, for state-owned port and harbor facilities, other services to properly provide for vessel or watercraft visits, to enhance the safety and efficiency of interstate and foreign commerce and such other lawful purposes as determined by the legislature.

(b) For each voyage of a commercial passenger vessel providing overnight accommodations, the commissioner shall identify the first five ports of call in the state and the number of passengers on board the vessel at each port of call. Subject to appropriation by the legislature, the commissioner shall distribute to each port of call \$5 per passenger of the tax revenue collected from the tax levied under this chapter. If the port of call is a city located within a borough not otherwise unified with the borough, the commissioner shall, subject to appropriation by the legislature, distribute \$2.50 per passenger to the city and \$2.50 to the borough. Each port of call receiving funds under this section shall use the funds in a manner calculated to improve port and harbor facilities and other services to properly provide for vessel or water craft visits

and to enhance the safety and efficiency of interstate and foreign commerce.

(c) A "Regional Cruise Ship Impact Fund" consisting of 25% of the proceeds from the tax on travel aboard commercial passenger vessels providing overnight accommodations in the state's marine water shall be established as sub-account of the funds established in (a), above, and deposited in the general fund. Subject to appropriation by the legislature and regulations adopted by the Department of Revenue, the commissioner shall distribute funds to municipalities or other governmental entities within the Prince William Sound Region, Southeast Alaska or any other distinctive region impacted by cruise ship related tourism activities but not entitled to receive funds based on port of call visitation as allowed by (b), above, provided that any funds used from this account shall be used to provide services and infrastructure directly related to passenger vessel or water craft visits or to enhance the safety and efficiency of interstate and foreign commerce related to vessel or water craft activities.

**Sec. 43.52.050. Administration.**

(a) The department shall

(1) administer this chapter; and

(2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter.

**Sec. 43.52.060. Local levies.** Any municipality, whether home rule or general law, that receives passenger ship fee funds under this chapter may not impose an additional form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters. Any form of tax on travel on commercial passenger vessels engaged in activities involving overnight accommodations for passengers in state marine waters enacted by a municipality, whether home rule or general law, prior to the effective date of this legislation shall expire one year after enactment of this law if that municipality elects to receive funds under this chapter.

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

**Sec. 43.52.095. Definitions.** In this chapter, (1) "commercial passenger vessel" means a boat or vessel that is used in the common carriage of passengers in commerce; "commercial passenger vessel" does not include

(A) vessels with fewer than 250 berths or other overnight accommodations for passengers;

(B) noncommercial vessels, warships, and vessels operated by the state, the United States, or a foreign government;

(2) "marine water of the state" and "state marine water" have the meaning given to "waters" in AS 46.03.900, except that they include only marine waters.

(3) "passenger" means a person whom a common carrier has contracted to carry from one place to another.

(4) "voyage" means any trip or itinerary lasting more than 72 hours.

\* **Sec. 2.** AS 05, is amended by adding a new chapter to read:

**Chapter 16. Games of Chance and Contests of Skill on Ships Operating on Waters Within the Jurisdiction of Alaska.**

**Sec. AS 05.16.010. Gambling activities aboard commercial vessels purportedly authorized by federal law.** This chapter applies to the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended for gaming or gambling used in the waters under the jurisdiction of the State of Alaska on a voyage described in 15 U.S.C. Section 1175(c)(2), and to any other gambling activities taking place aboard large passenger vessels in the state.

**Sec. AS 05.16.020. Tax on gambling activities authorized by AS 05.16.010.** There is imposed on the operator of a gaming or gambling activities aboard large passenger vessels in the state a tax of 33% of the adjusted gross income from those activities. "Adjusted gross income" means gross income less prizes awarded and federal and municipal taxes paid or owed on the

income. The tax shall be collected and is due and payable to the department of revenue in the manner and at the times required by the department of revenue.

**Sec. 05.16.030. Disposition of receipts.** (a) The proceeds from the tax on gambling operations aboard commercial passenger vessels in the state's marine water shall be deposited in a special "Commercial Vessel Passenger Tax Account" in the general fund.

\* **Sec. 3.** AS 43.20.021 is repealed and reenacted as follows:

**Sec. 43.20.021(a). Internal Revenue Code adopted by reference.** (a) Sections 26 U.S.C. - 1399 and 6001 - 7872 (Internal Revenue Code), as amended, are adopted by reference as a part of this chapter. These portions of the Internal Revenue Code have full force and effect under this chapter unless excepted to or modified by other provisions of this chapter.

(b) Nothing in this chapter or in AS 43.19 (Multistate Tax Compact) may be construed as an exception to or modification of 26 U.S.C. 883.

(c) The provision in (b), above, does not apply to commercial passenger vessels as defined in AS 43 52.095.

\* **Sec 4.** AS 46.03.462 is repealed and re-enacted as follows:

**Sec. 46.03.462. Terms and conditions of discharge permits.** (a) An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100, which shall comply with the terms and conditions of vessel discharge requirements specified in (b) of this section.

(b) The minimum standard terms and conditions for all discharge permits authorized under this provision require that the owner or operator:

(1) may not discharge untreated sewage, treated sewage, graywater, or other waste-

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

waters in a manner that violates any applicable effluent limits or standards under state or federal law, including Alaska Water Quality Standards governing pollution at the point of discharge;

(2) shall maintain records and provide the reports required under AS 46.03.465(a);

(3) shall collect and test samples as required under AS 46.03.465(b) and (d) and provide the reports with respect to those samples required by AS 46.03.475(c);

(4) shall report discharges in accordance with AS 46.03.475(a);

(5) shall allow the department access to the vessel at the time samples are taken under AS 46.03.465 for purposes of taking the samples or for purposes of verifying the integrity of the sampling process; and

(6) shall submit records, notices, and reports to the department in accordance with AS 46.03.475(b), (d), and (e).

\* Sec. 5. AS 46.03.463 is amended to read as follows:

Sec. 46.03.463(d) is repealed.

Sec. 46.03.463(e) is repealed and reenacted to read: An owner or operator may not discharge any treated sewage, graywater, or other wastewater from a large commercial passenger vessel into the marine waters of the state unless the owner or operator obtains a permit under AS 46.03.100 and AS 46.03.462, and provided that the vessel is not in an area where the discharge of treated sewage, graywater or other wastewaters is otherwise prohibited.

Sec. 46.03.463(g) is repealed.

\* Sec 6. AS 46.03.465 repealed and reenacted to read as follows:

Sec. 46.03.465. Information-gathering requirements. (a) The owner or operator of a commercial passenger vessel shall maintain

daily records related to the period of operation while in the State, detailing the dates, times, and locations, and the volumes and flow rates of any discharges of sewage, graywater, or other waster into the marine waters of the State, provide electronic copies of such records on a monthly basis to the department no later than 5 days after each calendar month of operation in State waters.

(b) while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall provide an hourly report of the vessel's location based on Global Positioning System technology and collect routine samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into marine waters of the State with a sampling technique approved by the department.

(c) while a commercial passenger vessel is present in the marine waters of the State, the Department, or an independent contractor retained by the Department, may collect additional samples of the vessel's treated sewage, graywater, and other wastewaters being discharged into the marine waters of the State.

(d) the owner or operator of a vessel required to collect samples under (b) of this section shall ensure that all sampling techniques and frequency of sampling events are approved by the department in a manner sufficient to ensure demonstration of compliance with all discharge requirements under AS 46.03.462.

(e) the owner or operator of a commercial passenger vessel shall pay for all reporting, sampling and testing of samples under this section.

(f) if the owner or operator of a commercial passenger vessel has, when complying with another state or federal law that requires substantially equivalent information required under (a), (b), or (d) of this section, the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department.

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

\* Sec. 7. AS 46.03 is amended to include new provisions as follows:

**Sec. 46.03.476. Ocean Rangers.** (a) An owner or operator of a large commercial passenger vessel entering the marine waters of the state is required to have a marine engineer licensed by the United States Coast Guard hired or retained by the department on board the vessel to act as an independent observer for the purpose of monitoring state and federal requirements pertaining to marine discharge and pollution requirements and to insure that passengers, crew and residents at ports are protected from improper sanitation, health and safety practices.

(b) The licensed marine engineer shall monitor, observe and record data and information related to the engineering, sanitation and health related operations of the vessel, including but not limited to registration, reporting, record keeping and discharge functions required by state and federal law.

(c) Any information recorded or gathered by the licensed marine engineer shall be promptly conveyed to the Alaska Department of Environmental Conservation and the United State Coast Guard on a form or in a manner approved by the Commissioner of Environmental Conservation. The Commissioner may share information gathered with other state and federal agencies.

**46.03.481. Citizens suits.** (a) Any citizen of the State of Alaska may commence a civil action

(1) against an owner or operator of a large passenger vessel alleged to have violated any provision of this chapter, or

(2) against the department where there is an alleged failure to perform any act or duty under this chapter which is not discretionary. No civil action may be commenced under this section, however, prior to 45 days after the plaintiff has provided written notice of the intent to sue to the Attorney General of Alaska.

(b) Subject to appropriation, as necessary, up to 50% and not less than 25% of any fines, penalties or

other funds recovered as a result of enforcement of this chapter shall be paid to the person or entity, other than the defendant, providing information sufficient to commence an investigation and enforcement of this chapter under this provision.

\* Sec. 8. AS 46.03.480 is amended as follows:

**Sec. 46.03.480** is amended by adding a new section to read:

(d) An additional fee in the amount of \$4.00 per berth, is imposed on all large commercial passenger vessels, other than vessels operated by the state, for the purpose of operating the Ocean Ranger program established in AS 46.03.476; said program shall be subject to legislative appropriation.

**Sec. 46.03.480(d)** shall be repealed and reenacted as 46.03.480(e).

\* Sec. 9. AS 46.03.760 is amended as follows:

**Sec. AS 46.03.760** is amended by adding a new section to read:

(f) An owner, agent, employee or operator of a commercial passenger vessels as defined in AS 43.52.095 who falsifies a registration or report required by AS 46.03.460 or 46.03.475 or who violates or causes or permits to be violated a provision of AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, AS 46.14, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under AS 46.03.250 - 46.03.314, 46.03.460 - 46.03.490, or AS 46.14 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than \$5000 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues, and that shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, that shall be determined by the court according to the toxicity, degradability and dispersal characteristics

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality; for a violation relating to AS 46.14, the court, in making its determination under this paragraph, shall also consider the degree to which the discharge causes harm to persons or property; this paragraph may not be construed to limit the right of parties other than the state to recover for personal injuries or damage to their property;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged; and

(4) the need for an enhanced civil penalty to deter future noncompliance.

Sec. 46.03.760(f) shall be repealed and reenacted as 46.03.760(g).

\* Sec. 10. AS 45.50.474 is repealed and reenacted to read as follows:

**Sec. 45.50.474. Required disclosures in promotions and shore side sales on board cruise ships.** (a) A person may not conduct a promotion on board a cruise ship that mentions or features a business in a state port that has paid something of value for the purpose of having the business mentioned, featured or otherwise promoted, unless the person conducting the promotion clearly and fully discloses orally and in all written materials used in the promotion that the featured businesses have paid to be included in the promotion. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(b) A person or other entity aboard a cruise ship conducting or making a sale of tours, flightseeing operations or other shore-side activities to be delivered by a vendor or other entity at a future port of call shall disclose, both orally and in writing,

the amount of commission or percentage of the total sale retained or returned to the person making the sale. The person or entity aboard a cruise ship making or attempting to make a sale of services or goods provided by a shore-side vendor shall disclose the address and telephone number of the shore side vendor if asked by a consumer. All such written notice of disclosure shall be in a type not less than 14-point typeface and in a contrasting color calculated to draw attention to the disclosure.

(c) Each violation of this section constitutes an unfair trade practice under AS 45.50.471, and shall result in a penalty of not more than \$100 for each violation. In this section, "cruise ship" means a ship that operates at least 48 hours in length for ticketed passengers, provides overnight accommodations and meals for at least 250 passengers, is operated by an authorized cruise ship operator, and is certified under the International Convention for the Safety of Life at Sea or otherwise certified by the United States Coast Guard.

\* Sec. 11. Severability. It is the intention of the people of Alaska that any portion of this legislation that is declared unlawful shall be stricken in a manner that preserves the remaining portion of the remaining legislation to the maximum extent possible.

\* Sec. 12. Effective Date. This Act takes effect 90 days after enactment.

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

### STATEMENT IN SUPPORT

The cruise lines should follow Alaska's taxation and pollution rules like everyone else. This initiative protects our fisheries and helps pay for cruise ship impacts on Alaskan communities by establishing/requiring:

1. **\$50 passenger tax** - Alaskans pay tourism taxes when traveling Outside and independent tourists pay taxes on rental cars and lodging in Alaska. Cruise passengers willingly pay similar fees throughout the world. A typical cruise, including tickets, airfare, shopping, tours, gambling, and alcohol, costs over \$3000. A \$50 fee won't make people choose a cruise to New Jersey - therefore there will be no negative impact on Alaska's tourism economy. Federal law requires the funds be spent "servicing the industry," for example, maintaining ports and harbor infrastructure. This tax will help SUPPORT the Alaska tourism economy. Communities preferring their own tax program can opt out of the statewide program.

2. **Meet Alaska Water Quality Standards** - Alaskans need clean water and healthy fish. Cruise ships are the only major polluters not required to have a discharge permit and meet ALL Alaska water quality standards. Everyone else has a permit; no new permitting program is necessary. Nearly every major cruise line has felony convictions for dumping, tampering with pollution control equipment, or falsifying documents to the Coast Guard. This initiative places an independent marine engineer observer on every ship (paid through the passenger tax) to monitor discharges, inspect equipment, and verify logbook entries. The cruise lines have proven they cannot be trusted to help keep Alaska's waters clean and productive.

3. **End tax evasion** - All legal gambling operations in Alaska, except those on cruise ships, pay 1/3 of their profits to charity or in tax. Lucrative cruise line casino operations in Alaska pay nothing. Alaska corporations pay Corporate Income Tax. The cruise industry lobbied for and was granted a specialized income tax exemption for revenue from foreign

registered ships. Under the initiative, the cruise lines will pay the same taxes that local businesses and U.S. registered vessels pay on their income and gambling profits.

4. **Support local businesses** - Since 1994, Alaska law has required oral and written disclosure to passengers by cruise lines when they receive commissions for promoting shore-based tours/businesses. Cruise line promotions are presented as "advice" when they are really "advertisements." This is unfair to local businesses that can't afford the steep, advertising commission. This initiative will require cruise lines to disclose the size of their commissions which will help local businesses compete for tourism dollars. No local businesses will have to report anything.

The cruise lines are "selling" Alaska - while impacting our docks, roads, public facilities, wildlife, and the quality of our lives. This initiative will do nothing to turn visitors away; it will help keep our tourism industry sustainable while protecting the needs of all Alaskans. The Miami/Vancouver-based cruise lines make billions in profits by registering their ships in third world countries to avoid paying U.S. income taxes and wages. The cruise lines can easily afford to play by Alaska's rules like everyone else.

Please vote YES on Ballot Measure 2!

#### RESPONSIBLE CRUISING IN ALASKA

Gershon Cohen  
Haines, Alaska

Joe Geldhof  
Juneau, Alaska

# Ballot Measure 2

## CRUISE SHIP TAXATION, REGULATION AND DISCLOSURE

### STATEMENT IN OPPOSITION

**Vote "No" on Ballot Measure 2  
It just doesn't make sense!**

Dear fellow Alaskans,

Ballot Measure 2 is a direct attack on Alaska's economy. It will hurt our tourism industry -- a growing industry and the 4th largest employer of Alaskans. Additional taxes, lost jobs and more lawsuits in Alaska are not the answer. **Ballot Measure 2 deserves a "No" vote on August 22nd.**

The Alaska State Chamber of Commerce, Anchorage Chamber of Commerce, City of Fairbanks, Associated General Contractors of Alaska, Southeast Conference, Alaska Travel Industry Association, Resource Development Council, Juneau Chamber of Commerce, City of Skagway and the Ketchikan Chamber of Commerce and several hundred others all **oppose Ballot Measure 2 because it's bad for Alaska.**

Measure 2 will:

**Mandate four additional new taxes including a state wide head tax of \$50 per person, \$100 per couple, and \$200 for an average family of four. Rising oil prices are driving up the cost of living, which has reduced all travelers' budgets. Imposing more taxes and fees on top of the other additional travel costs will keep tourists away and hurt our economy instead of helping it.**

**Force the disclosure of confidential business information about Alaska's local small businesses to competitors including those in the lower 48. No other business in Alaska is required to disclose this type of information. Forced disclosure would reduce the pre-purchase of tours and excursions, hurting Alaska businesses.**

**Raise costs and discourage tourism to Alaska. Tourists already pay millions of dollars in taxes and fees on their plane tickets, hotels, restaurants, tours and shopping. Additionally, there are more than 26,000 local jobs provided**

**by the tourism industry contributing tens of millions of dollars to our strong economy. Measure 2 would increase costs, discourage tourism and reduce spending at our local businesses.**

**Open the door and create new motives for lawyers to file predatory lawsuits. Lawyers will be allowed to file suit and collect up to 50% of any fines collected. Out-of-state attorneys will line up and flood Alaska's court systems with frivolous lawsuits. The Measure would even allow individuals to sue the state of Alaska.**

**Increase the amount of bureaucratic red tape, bureaucracy and size of state government in Alaska. Measure 2 creates a new layer of state bureaucracy, red tape, paperwork and unnecessary government regulations that don't provide any additional benefits to Alaskans or the environment. Increasing the number of state bureaucrats, cost of state government and the amount of red tape doesn't solve anything.**

**Tourism is over a \$2 billion dollar industry in Alaska. Attacking the tourism industry through Measure 2 and attempting to pass more taxes, unnecessary and redundant government regulations, and tourism disincentives is the wrong move.**

**Threatening Alaska's economy, over 26,000 local jobs and thousands of small businesses across the state isn't the answer.**

**Also endorsing this letter: Mayor Bob Weinstein, City of Ketchikan; Chris Anderson, ORSO and Glacier BrewHouse - Anchorage**

**Vote "No" on Ballot Measure 2.**

**Carol Fraser  
Aspen Hotels of Alaska**

**Steve Frank  
Rivers Edge Resort in Fairbanks**

**Marc Langland  
President Fiscal Policy Council of Alaska**

**HB**

**256**

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 485-4100  
FAX: (907) 485-2332

#### MEMORANDUM

TO: Senator Hollis French  
Chairmen, Senate Judiciary Committee

FROM: Denby S. Lloyd, Commissioner  
Alaska Department of Fish and Game

DATE: February 20, 2008

SUBJECT: Hearing Request, Senate Bill 176

---

I am writing to request that, at your earliest convenience, you schedule a hearing in the Judiciary Committee of Senate Bill 176, "Active Game Management/Airborne Shooting". I enclose the following:

- A copy of the current version of Senate Bill 176
- The Governor's Transmittal Letter for the bill
- A copy of ADF&G's zero fiscal note for the bill
- The current statutes that would be amended by passage of SB 176
- A "Draft Transmittal Letter", which amounts to a sectional analysis by Senior Assistant Attorney General Kevin Saxby
- "Answers to Commonly Asked Questions about HB 256/SB 176" by Mr. Saxby and Division of Wildlife Conservation Director Doug Larsen
- A packet of materials explaining the Division's active management and predator control programs

When a hearing has been scheduled, we can provide you with a list of witnesses to testify on behalf of the legislation.

Please feel free to contact my legislative liaison, Tim Barry, with questions or for more information. Thank you for your attention to this matter.

\* \* \*

**Cindy Smith**

---

**From:** Lorraine Murray [lrm@alaska.net]

**Sent:** Sunday, March 09, 2008 1:53 PM

**To:** Cindy Smith

**Subject:** Cindy - here is a CORRECTED VERSION , please use this one - Thankyou! Lorraine

Cindy- This is my corrected version of my email testimony. Please distribute this as my Email testimony on SB 176 to all the members.

Dear Senate Judiciary Committee members:

**I urge you not to pass SB 176:**

**SB 176.** This bill puts the welfare of Alaskans Wildlife into the hands of only a few. These few represent only a small percentage of Alaska's population and this is not equal representation. I also strongly believe it is in the best interest of Alaska's Wildlife to have a broad group of Alaskans develop and give input to the wildlife management policies of Alaska and not just a few people. I think the move to make the Wildlife "assets" of the state and therefore closed to public debate was not the intent of the Constitution of the State of Alaska. The citizens of this state must be allowed to continue to bring forth initiatives regarding predator control and the management of our wildlife. The management of Alaska's Wildlife should not be in the hands of the Board of Game, these people are not the best qualified people to make these policies. Our wildlife management policies and predator control program must be based on sound science and we must absolutely require scientific data to support any management decision or policy effecting Alaska's wildlife. To do otherwise is unprofessional, short sighted and not in Alaska's best interest. Alaska deserves the very best and the most qualified professionals to develop and monitor our wildlife management policies. How can the Board of Game monitor and report or even make recommendations for predator control with unsubstantiated, unproven, unscientific, speculative, tenuous data at best? In addition the citizens of this state must be allowed to continue to bring forth initiatives regarding predator control and the management of our wildlife. The initiative process has and always will, serve the greater good, bring forth the better way, because it is the democratic way.

*Article 8 - Natural Resources*

*§ 1. Statement of Policy*

*It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.*

I urge you not to support SB 176.

Sincerely,

Lorraine Murray  
Box 210192  
Auke Bay, Ak 99821

3/10/2008

**Cindy Smith**

---

**From:** Nina Faust [fausbail@horizonsatellite.com]  
**Sent:** Tuesday, March 11, 2008 7:48 PM  
**To:** Cindy Smith  
**Subject:** SB 176

P.O. Box 2994  
Homer AK 99603

March 11, 2008

Senate Judiciary Committee  
Alaska State Senate  
Juneau AK 99811

Dear Judiciary Committee Member:

We are strongly opposed to SB 176 which would remove the requirement to base the need for local aerial predator control programs on thorough surveys and research. Alaska has generally managed its game with a scientific basis for management decisions. To do otherwise is to manage our wildlife politically or simply based on biased opinions of the Board of Game, a very dangerous precedent indeed if wildlife is to be managed wisely. Managing game solely for the objectives of human harvest means that decisions will not necessarily be based on information of game populations or other important scientific studies. A mandate to manage just for human consumption will leave Alaska with such a lopsided decision making process that many predator populations will be at risk. Predators are important for a healthy wildlife system and are a major attraction for wildlife oriented tourism which significantly boosts our economy.

The current system of scientific wildlife management is not broken. Certainly there are some that would like to see more intensive predator control, but if objective science does not support it, it should not occur. Without scientific management, there is the danger that predator control decisions will get further out of balance placing habitat and predator populations at greater risk. Consider the overabundance of deer and other ungulates and consequent habitat damage in some other states where predators have been excessively reduced in numbers or extirpated.

Please support the balance and prudent method of wildlife management by opposing SB 176 and continuing to require science based management decisions.

Sincerely,

Nina Faust

Edgar Bailey

**Cindy Smith**

---

**From:** Alaskan Alpine Treks [carl@alaskanalpinetreks.com]  
**Sent:** Wednesday, March 12, 2008 12:48 AM  
**To:** Rep. Berta Gardner  
**Cc:** Sen. Johnny Ellis; Cindy Smith  
**Subject:** Legislation SB 176

Hello

I am writing you with great concern, regarding the current proposed legislation, specifically SB176. The proposal, as we all know, is simply an attempt by the Alaska State Board of Game to avoid a repetition of the rather unfortunately necessary embarrassment of being sued for failing to comply with their own mandates and laws.

The Board of Game's wish to impose and allow airborne and same day airborne aerial predator exterminating runs contrary to long-standing and respected Alaskan hunting traditions. The Board of Game's wish to make decisions without due and careful study, without consideration of the best available sound science is, at best, narcissistic, more probably negligence and gross malfeasance. Any decisions of environmental management must consider and value the best available sound science over the whims of a few people granted political postings.

Of equal importance here is the issue of accountability. The Board of Game's intent to remove the potential for any further litigation against them is unacceptable.

Political decisions must, like all choices we make, come with responsibility and accountability. The Board of Game are flagrantly deriding basic principles of a democracy. Proposing that their own opinion of the time is reason enough to make decisions that flout the opinions of their state constituents is not a basis for any reasonable system of government, and certainly does not belong in the institution of American Politics. Governor Palin touts transparency as a critical structure of her government. Well, this is as transparent as it gets - I'm certain the Alaskan voting population, as well as the hundreds of thousands of tourists who spend their vacation dollars in this state every year can see right through this farcical and completely unacceptable proposal.

Government officials must be accountable to the will of the populace they represent. The Board of Game MUST be required to show any and all factors affecting their decisions, they must be required to reflect conclusions of examined and peer-reviewed sound science that informs their decisions. Policy must be supported by, and reflect, best available objective information, not the egos and outdated Neanderthalic ideologies of a few. Constituents must have opportunity for input, as well as full legal recourse for failing and unreasonable policies. In the interest of Alaskan tourism, of Alaskan community, human and non-human alike, SB176 must not be adopted.

Thank you.

Best Regards

Carl

- Carl Donohue  
Alaskan Alpine Treks  
Visit our website: <http://www.AlaskanAlpineTreks.com>  
<mailto:Carl@AlaskanAlpineTreks.com>  
Phone: (770) 952 4549

Carl Donohue  
4701 Kupreanof St,  
Anchorage, AK, 99507.

3/12/2008

**Cindy Smith**

---

**From:** robert jackson [bobdphoto@gmail.com]  
**Sent:** Tuesday, March 11, 2008 10:38 AM  
**To:** Cindy Smith  
**Subject:** Oppose bill SB 176

To Whom it may concern,

I strongly appose bill SB 176. Aerial predator control of brown bears and wolverines is completely unnecessary and would add to the already dwindling numbers of these species. Game animals are quite simply being over hunted by subsistence hunters and sport hunters. This is neither right or wrong it's just a fact. Yes, predators do take game animals, but that's been the natural progression of life and death for these animals for thousands of years. Only man has caused the depletion of wildlife in your forests not brown bears and wolverines.

passing bill SB 176 would be a tremendous mistake that would have catastrophic consequences.

Sincerely,  
Bob Jackson  
4318 Holt St.  
Bellaire, Texas 77401  
713 661-8569

3/11/2008

**Cindy Smith**

---

**From:** Dianne Jackson [diannejxn@hotmail.com]  
**Sent:** Tuesday, March 11, 2008 10:45 AM  
**To:** Cindy Smith  
**Subject:** oppose bill SB 176

To Whom it may concern,

I strongly appose bill SB 176. Aerial predator control of brown bears and wolverines is completely unnecessary and would add to the already dwindling numbers of these species. Game animals are quite simply being over hunted by subsistence hunters and sport hunters. This is neither right or wrong it's just a fact. Yes, predators do take game animals, but that's been the natural evolution of life and death for these animals for thousands of years. Only man has caused the depletion of wildlife in your forests not brown bears and wolverines.

passing bill SB 176 would be a tremendous mistake that would have catastrophic consequences.

Sincerely,  
Dianne Jackson  
4318 Holt St.  
Bellaire, Texas 77401  
713 661-8569

---

Climb to the top of the charts! Play the word scramble challenge with star power. [Play now!](#)

**Cindy Smith**

---

**From:** John Swanson [allaboard@hctc.com]

**Sent:** Monday, March 10, 2008 2:32 PM

**To:** Cindy Smith

**Subject:** HB 348 & HB 176

As a long time eco tour operator in Southeast, Alaska and the president of SAWTA.ORG (Southeast Alaska Wilderness Tours Association) we are in strong opposition to both of these pieces of legislation. Wilderness tourism is such a strong part of Alaska's economy and aerial hunting of predators as seen by tourists in the lower 48 and abroad has a huge impact on that industry.

A couple of years ago when there was publicity on aerial hunting of wolves in Alaska it actually had a significant impact on our business. Several of our customers voiced real opposition to the proposed aerial wolf hunts. Many things have changed the dynamics of tourism in the last 25 years. One of the big draws throughout Alaska is Bear Viewing why don't you let these outside tourist no you plan to make it easy to hunt them by air and see how many tourists you loose. A few months back there was an incident at McNeil River and I know the Anchorage daily news had a reference to it, where a bear was shot at close range. I heard about it from about 50 different people around the world who were all extremely upset. I know they are not Alaska residents but they represent a vital part of Alaska's economy.

Thank you,

Sincerely,

John Swanson

[www.sawta.org](http://www.sawta.org)

3/10/2008

**Cindy Smith**

---

**From:** awareck@ak.net on behalf of April Warwick [awareck@ak.net]  
**Sent:** Monday, March 10, 2008 9:30 AM  
**To:** Cindy Smith  
**Subject:** My opposition to SB 176

Hello Cindy Smith:

Please pass my comments on the the members and staff of the Judiciary Committee.

I oppose SB 176 because it removes my ability to petition predator control programs in the courts.

I'm totally against predator control programs that do not use science or sound reason for their actions. I find killing wolves from the air to be sick, mean, cruel, and not right. By killing Alpha wolves you only leave a pack with no leader or rules to work with. Soon this pack is doing things all wrong, like killing dogs, as a means to survive without the Alpha and their rules.

The people voted twice, why do you not listen to their voting? It's clear we don't want our wolves killed this way. The Board of Game is a joke, made of only hunters with no one understanding the value of wildlife.

Where is our new and improved "transparent" state Government? Listen to voters, don't kill wolves so hunters can get moose easier. Respect the balance between predators and prey and recognize that humans are the biggest predators and we more than get our share of the moose. That includes all legal hunts, car & train moose killings, poacher killings, etc.


We won't go away, we love wildlife and won't watch it be abused this way. No more silly laws, no more shooting wolves from the sky.

April Warwick  
5716 Kennyhill Drive  
Anchorage, AK 99504  
(907) 338-7777

**DEPENDERS AND FRIENDS OF ADMIRALTY ISLAND  
AND  
TONGASS WILDLANDS WATCH**

**P.O. Box 20791  
Juneau, AK 99802**

**March 17, 2008**



**Senator Hollis French, Chair  
Senate Judiciary Committee  
State Capitol, Room 417  
Juneau, AK 99801**

**E-mail: Sen.Hollis.French@legis.state.ak.us**

**Subject: Opposition to SB176 & HB256**

**Dear Chairman French and Judiciary Committee Members:**

**Friends of Admiralty Island (FOAI) is a non-profit, public interest, volunteer organization which was formed in 1987. Our primary mission is to advocate for the protection of Admiralty Island and its ecological, cultural, and historical values and more generally we advocate for environmental protection in the region. We have over 300 registered members and supporters.**

**FOAI opposes SB176 and its identical companion bill HB256. The primary reason for our opposition is that these bills would eliminate the requirement that any Board of Game (BOG) decision regarding predator control must be predicated on a Game Management Plan that is based upon sound science.**

**These bills would authorize the BOG, under Section 4 of AS 16.05.252, to "adopt regulations it considers advisable to restore the population's productivity and increase human harvest including active management measures and programs." We oppose this section because it would give the BOG full discretion to institute predator control programs. We believe that sound science must be the basis for such programs and that they should be implemented only during biological emergencies. These bills would allow the BOG to approve predator control programs without considering biological information from the Alaska Department of Fish and Game.**

The will of Alaska voters will once again be ignored if either of these bills passes. As you recall, airborne hunting programs were voted down in both 1996 and 2000. SB176 and HB 256 would allow even more permissive airborne hunting programs than in the past. We strongly oppose still another attempt to override the will of Alaskan voters.

We appreciate your considering our position on these bills and urge you to oppose them as well.

Sincerely,

A handwritten signature in cursive script that reads "K.J. Metcalf". The signature is written in black ink and is positioned above the printed name.

**K.J. Metcalf, President**

CC: Sen. Kim Elton  
Sen. Bill Wielechowski  
Sen. Albert Kookesh  
Rep. Beth Kerttula  
Rep. Andrea Doll

1 of 1 DOCUMENT

Caution  
As of: Apr 11, 2008

**HARVEY PULLEN and UNITED FISHERMEN OF ALASKA, INC., Appellants, v.  
FRAN ULMER, Lieutenant Governor of the State of Alaska, FAIRNESS IN  
SALMON HARVEST, INC., Appellees.**

No. 4394, Supreme Court No. S-7642

SUPREME COURT OF ALASKA

923 P.2d 54; 1996 Alas. LEXIS 96

August 26, 1996, Decided

**SUBSEQUENT HISTORY:** [\*\*1] As Corrected  
September 5, 1996.

**PRIOR HISTORY:** Appeal from the Superior Court  
of the State of Alaska, First Judicial District, Juneau,  
Larry Weeks, Judge. Superior Court No. 1JU-95-2385  
CI.

**DISPOSITION:** REVERSED and REMANDED

**COUNSEL:** Arthur S. Robinson, Robinson, Beiswenger  
& Ehrhardt, Soldotna, for Appellants.

Avrum M. Gross and Susan A. Burke, Gross & Burke,  
Juneau, for Appellee Fairness in Salmon Harvest, Inc.,  
Sarah J. Felix, Assistant Attorney General, and Bruce N.  
Botelho, Attorney General. Juneau, for Appellee Fran  
Ulmer.

**JUDGES:** Before: Compton, Chief Justice, Rabinowitz,  
Mathews, Eastaugh, and Fabe, Justices. COMPTON,  
Chief Justice, concurring.

**OPINION BY:** RABINOWITZ

**OPINION**

[\*55] *OPINION*

RABINOWITZ, Justice.

I. *INTRODUCTION*

Pullen and United Fishermen of Alaska, Inc. chal-  
lenge an initiative designed to set priorities among dif-  
ferent salmon harvest users.

II. *FACTS AND PROCEEDINGS*

In August of 1995, Appellee Fairness in Salmon  
[\*\*2] Harvest, Inc. (F.I.S.H.) submitted an initiative  
application to the state. <sup>1</sup> The proposed initiative pro-  
vided that subsistence, personal use, and sport fisheries  
would receive a preference to take a portion of the  
salmon harvest before the remaining harvestable salmon  
are allocated to other harvest users. The proposed initia-  
tive also sets a limit on the amount to be allocated to  
personal use and sport fisheries of five percent of the  
total projected statewide salmon harvest, though this  
limit may be exceeded for any particular species or re-  
gion.

<sup>1</sup> Pullen notes that "the application was filed by  
Alaskans who believed that the Alaska Board of  
Fisheries was, in some circumstances, allocating  
an unreasonable portion of salmon to commercial  
fisheries at the expense of personal consumptive  
uses."

The F.I.S.H. initiative, entitled "An Act Relating to  
the Management of Salmon" reads in full:

**BE IT ENACTED BY THE PEOPLE  
OF THE STATE OF ALASKA**

"An Act relating to the management  
of salmon"

Sec. 1. [\*\*3] PURPOSE (a) This act provides that, after maintenance of salmon stocks at sustained yield levels is assured, subsistence, personal use, and sport fisheries shall receive a preference to take a portion of the harvestable surplus of salmon stocks. Subsistence, personal use, and sport fisheries must be ensured of a reasonable opportunity to take enough salmon necessary to satisfy the harvest needs of those fisheries before other fisheries may be allocated the remaining portion of the harvestable surplus.

(b) This Act does not alter existing or establish new allocations or preferences among subsistence, personal use, and sport fisheries.

(c) This Act does not give additional authority to the Board of Fisheries or the Department of Fish and Game, but relies upon the existence of their respective authorities to implement this Act.

Sec. 2. AS 16.05 is amended by adding a new section to article 5 to read:

Sec. 16.05.735 MANAGEMENT OF ALASKA SALMON STOCKS. (a) After providing for biological escapement needs of Alaska salmon stocks, the Board of Fisheries and the department shall exercise their respective authorities under this title to reserve a priority for the harvest [\*\*4] needs of common consumptive uses for each salmon stock, to the extent that is technically possible, prior to allocating a portion of the harvestable surplus to non-priority uses along the entire migratory [\*56] path of a stock. The total number of salmon, without regard to the species of salmon, reserved to satisfy the harvest needs of personal use and sport fisheries may not exceed five percent of the total projected statewide harvest of all species of salmon. Personal use and sport fisheries may harvest in excess of five percent of a particular species or stock and or in excess of five percent of the total harvest in a given geographic region of the state. However, the harvest priority for personal use and sport fisheries may not exceed five percent of the total projected statewide harvest.

(b) All harvests shall be made in a habitat responsible manner. The Board

shall adopt regulations establishing methods and means of taking salmon that protects salmon spawning and rearing habitat from damage that will, individually or cumulatively, result in significant reduction in the productivity of salmon stocks.

(c) In this section,

(1) "common consumptive use" means the use of [\*\*5] salmon harvested under subsistence, personal use, or sport fishing regulations or statutes;

(2) "harvest needs" means the harvest capability, using bag limits as established by the Board and the department of all common consumptive uses based upon projected participation, and assuming a harvestable surplus of salmon exists after ensuring an adequate biological escapement;

(3) "salmon" means Coho, Chinook, Sockeye, Pink, and Chum salmon that originate in or will return to spawn in Alaskan waters; salmon does not include Steelhead or other anadromous fish;

(4) "stock" means a population or aggregation of a particular species that typically possess common characteristics such as area of origin, migration patterns, run timing, habitat, and share in a common gene pool;

(5) "statewide salmon harvest" means the total projected annual harvest, in numbers of fish caught, of all combined species of salmon.

Lieutenant Governor Fran Ulmer certified the proposed initiative.<sup>2</sup> The initiative sponsors then circulated the petition among voters and obtained enough signatures to place the proposed initiative on the 1996 general election ballot.<sup>3</sup> Thereafter, the Division of [\*\*6] Elections verified that the petition had the required number of signatures, and directed that the Department of Law prepare the ballot accordingly.

2 The Lieutenant Governor is charged with reviewing initiative applications for compliance with AS 15.45.010-.080. Upon request from the Lieutenant Governor, the Attorney General's Office reviewed the proposed initiative as to whether it was in proper form under applicable state constitutional provisions and statutes. The

Attorney General's Office concluded that it was a close question as to whether the proposed initiative is in proper form, but recommended that it be certified even though there is some doubt as to its validity.

A determination by the Lieutenant Governor that a proposed initiative is in the proper form includes a determination that it does not cover a subject that is restricted for enactment by the Alaska Constitution. *AS 15.45.010-080*. See also *Boucher v. Engstrom*, 528 P.2d 456, 460-61 (Alaska 1974) (overruled on other grounds, *McAlpine v. University of Alaska*, 762 P.2d 81, 84 (Alaska 1988)). This determination is put in issue by Pullen's appeal.

[\*\*7]

3 In accordance with *AS 15.45.090(2)*, the Lieutenant Governor prepared a petition containing the proposed bill as well as a summary of the proposed initiative.

On November 7, 1995, appellants Harvey Pullen and United Fishermen of Alaska (Pullen) filed suit for declaratory and injunctive relief challenging, on several grounds, the Lieutenant Governor's certification of the initiative. More particularly, Pullen asserted that (1) the proposed bill is not a proper subject of an initiative because it would make an appropriation of the State of Alaska's salmon resources, (2) the allocation of salmon resources of the state among common users is exclusively the responsibility of the legislature, (3) the Lieutenant Governor's impartial summary explaining the proposed bill is misleading as to its terms and effects, and (4) the proposed classification of common users of the state's salmon resource is underinclusive and unfair because the initiative denies commercial fishers equal treatment and protection, a violation of the Uniform Application [\*57] clause in *article VIII, section 17 of the Alaska Constitution*. [\*\*8] By way of relief, Pullen sought a declaration of unconstitutionality and an injunction prohibiting the Lieutenant Governor from placing the initiative on the November 1996 general election ballot.

4 Grounds numbered three and four are not at issue in this appeal.

Thereafter, Pullen moved for summary judgment, with all parties agreeing that no genuine issues of material fact existed. Pullen grounded his summary judgment motion on the contention that the proposed initiative is not a proper subject for an initiative and is in violation of articles VIII, XI, and XII of the Alaska Constitution as well as *AS 15.45.010*.

In opposition, the Lieutenant Governor argued that the proposed bill is a proper subject for an initiative because it merely creates a new priority system for the allocation of salmon resources among groups of fishers, that the allocation of salmon is not within the exclusive law-making power of the legislature, and that it does not make an appropriation by the state. F.I.S.H. in turn contended [\*\*9] that salmon in their natural state are not property subject to appropriation. F.I.S.H. further argued, in the alternative, that if salmon are considered state property subject to appropriation, the initiative does not make an appropriation of salmon.

The superior court denied Pullen's motion for summary judgment, and entered final judgment, for Lieutenant Governor Ulmer and F.I.S.H. In granting summary judgment, the superior court ruled that salmon are public assets of the state which may not be appropriated by initiative; <sup>7</sup> that neither the Alaska Constitutional Convention Minutes nor *article XII, section 11 of the Alaska Constitution* support Pullen's assertion that the Public Trust doctrine prohibits establishing a new priority of the state's natural resources directly through the initiative process; <sup>6</sup> and that the initiative does not make an appropriation of state assets. <sup>7</sup>

5 In its Memorandum and Order, the superior court stated:

The court believes that while the state does not literally own salmon resources, salmon are public assets which may not be appropriated by initiative. The Alaska Constitution contains explicit provisions which state that the natural resources of the state belong to the state, which controls them as trustee for the people of the state. The state takes in significant revenues from fish taxes. The right to participate in the statewide harvest of salmon is valuable to all user groups. Fish have long been an important part of the economy and the desire to control fish resources was an important motivation for Statehood. Permits granted by the state to take fish sell for significant sums. The state devotes substantial financial resources for the protection and management of fish and other wildlife. These factors taken together provide a basis for concluding that the state has sufficient interest in salmon as public assets

so as to characterize them as state property which may not be appropriated by initiative.

(Footnote omitted.)

[\*\*10]

6 In regard to this holding the superior court stated:

The court believes that neither the Alaska Constitutional Convention Minutes nor *Article XII, section 11 of the Alaska Constitution* support the plaintiffs' assertion that the public trust doctrine prohibits establishing a new priority of the state's natural resources directly through the initiative process. The delegates to the constitutional convention after considerable debate regarding the impact of the authority of Alaskans to enact legislation directly through initiative, decided not to distinguish between matters in the hands of the legislature and matters subject to the initiative process. The court finds nothing in Article XI, Article XII, or the Minutes of the Alaska Constitutional Convention which (aside from an appropriation argument) would prohibit the subject matter of the F.I.S.H. Initiative from being enacted by the people of Alaska directly through the initiative process.

The plaintiffs' public trust doctrine argument may pose a separate, post ballot-box issue. At the current stage of the enactment process, the only issue for the court is whether by creating a new priority among beneficial users of the state's fishery resources, the F.I.S.H. Initiative makes an appropriation under the *McAlpine* test.

[\*\*11]

7 As to this last holding, the superior court in its Memorandum and Order wrote:

The court finds that the F.I.S.H. initiative does not constitute an appropriation as defined by the Alaska Supreme Court in *McAlpine*. The substantive portion of the F.I.S.H. Initiative creates a new system of preference among beneficial users of the statewide salmon harvest. The F.I.S.H. initiative requires that after escapement decisions are made, the Board of Fisheries must then determine what percentage, if any, will be allocated to personal use and sport fisheries up to a maximum of five percent. The initiative does not alter or establish new allocations or preferences among subsistence, personal use, and sport fisheries. By itself, the initiative does not convey or allocate any part or definite amount of the salmon harvest to a specific user group. Further action by the Board of Fisheries is required before fish resources are allocated to competing user groups.

The Board has broad discretion under the initiative to make allocations to consumptive and non-consumptive users based on the amount of fish available and escapement needs. There are no definite or calculable amounts to which any user group is automatically entitled. The directive that up to five percent of the statewide harvest must be reserved for consumptive users provides a maximum "preference" that is within the Board's discretion to implement. The initiative does not guarantee that personal use and sport fisheries will be allocated any fish. Despite the preference scheme, the Board has considerable discretion to determine the amount of fish each group is entitled to and may still allocate based on what it sees as the best interests of the whole.

This pre-election review of an initiative is limited to a determination of whether the contents of the initiative include subjects which

the people may not enact directly through initiative. The F.I.S.H. Initiative establishes a preference, but retains allocation decisions in the Board of Fisheries. As such, the initiative is not executable, mandatory, or reasonably definite without further legislative action. The initiative does not make an appropriation of state assets as defined by the Alaska Supreme Court in *McAlpine*.

*Article XI, section 7 of the Alaska Constitution* provides in part that "the initiative shall not be used to . . . make or repeal appropriations . . ." In *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977), we endorsed the following definition of "appropriations":

the setting aside from the public revenue of a certain sum of money for specific objects in such a manner that the executive officers of the government are authorized to use that money, and no more for that object, and no other.

### [\*\*12] [\*58] III. STANDARD OF REVIEW

The parties agree that there are no genuine issues of material fact in dispute. The appeal primarily concerns only questions of the constitutionality of the proposed initiative. These are questions of law. In regard to questions of law, we apply our independent judgment. *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991). Regarding questions of law, this court adopts the rule of law that is most persuasive in light of precedent, reason and policy. *Guin v. Ha*, 591 P.2d 1201, 1284 n.6 (Alaska 1979).

Concerning the applicable standard of review in matters involving initiatives, we have said that the usual rule is "to construe voter initiatives broadly so as to preserve them whenever possible. However, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution." *Fairbanks v. Convention & Visitors Bureau*, 818 P.2d 1153, 1155 (Alaska 1991) (citation omitted).

### IV. DISCUSSION

Pullen's appeal from the superior court's decision on summary judgment raises two issues. First, Pullen argues [\*\*13] that management of Alaska's salmon resources falls exclusively within the power of the state legislature as trustee of Alaska's wildlife, and therefore is not a proper subject of an initiative. Second, Pullen contends that the proposed initiative makes an appropriation of state property, in violation of *article XI, section 7 of the Alaska Constitution*. We address this latter contention first.

#### A. The Initiative as an Appropriation

##### 1. Can wildlife be characterized as state property subject to appropriation?

Two subsequent decisions of this court have held that the term "appropriations" as used in *article XI, section 7* embraces not only appropriations of money but initiatives [\*\*14] that propose to "give away" any public asset, including land. In *Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979), we held that an appropriation of state land to the general public was just as much an appropriation as a disposition of money from the treasury. Specifically, we said, "The stated purpose and effect of the Initiative on the state treasury is still an expenditure of state assets in the form of public lands." *Id.* at 9. Subsequently, in regard to an initiative that would have required [\*59] the Municipality of Anchorage to sell a utility to a private non-profit organization for one dollar, we said:

We noted [in *Thomas v. Bailey*] that the constitutional convention delegates "wanted to prohibit the initiative process from being used to enact give-away programs, which would have inherent popular appeal, that would endanger the state treasury." . . . We conclude that the logic of *Bailey* also applies in the instant appeal. The prohibition against appropriation by initiative applies to all state and municipal assets.

*Alaska Conservative Political Action Committee v. Municipality of Anchorage*, 745 P.2d 936, 938 (Alaska 1987) (citation and footnote omitted).

[\*\*15] It is against this decisional background that F.I.S.H. argues that wildlife is not truly an asset of the state. F.I.S.H. argues that state ownership of wildlife is merely a legal fiction, and should not be applied in the context of deciding whether wildlife is an asset of the state which is subject to appropriation. F.I.S.H. cites several United States Supreme Court cases in support of its position that a state does not literally own the wildlife found within its borders. \* More particularly, F.I.S.H. concludes that "as a matter of simple common sense, it should be obvious that whatever the Constitution says

about fish and game 'belonging to the state,' salmon or moose or other wild creatures are not state assets in the same way that money or buildings are assets." (Footnote omitted.)

8 According to F.I.S.H., "the United States Supreme Court itself has been careful in its decisions since [*Geer v. Connecticut*, 161 U.S. 519, 40 L. Ed. 793, 16 S. Ct. 600 (1896)] to clarify the fact that state 'ownership' of fish and game is simply a shorthand way of describing the state's significant interest in preserving and regulating fish and wildlife within its borders." In addition to *Geer*, F. I.S.H. cited *Hughes v. Oklahoma*, 441 U.S. 322, 60 L. Ed. 2d 250, 99 S. Ct. 1727 (1979) (overruling *Geer*); *Baldwin v. Montana Fish and Game Comm'n*, 436 U.S. 371, 384-86, 56 L. Ed. 2d 354, 98 S. Ct. 1852 (1978); *Toomer v. Witsell*, 334 U.S. 385, 402, 92 L. Ed. 1460, 68 S. Ct. 1156 (1948); and *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 284, 52 L. Ed. 2d 304, 97 S. Ct. 1740 (1977) ("The 'ownership' language of cases such as those cited by appellant must be understood as no more than a 19th century legal fiction expressing 'the importance . . . that a state have power to preserve and regulate the exploitation of an important resource.'").

[\*\*16] We agree that this facet of F.I.S.H.'s argument is well established -- the state does not own wildlife in precisely the same way that it owns ordinary property. However, this does not answer the question of whether the state's interest in wildlife is such that it can be appropriately characterized as state property subject to appropriation.

F.I.S.H. asks, "If the moose population plunges due to a sudden increase in the wolf population, does the state have an obligation to notify Moody's so that its bond rating may be adjusted?" F.I.S.H. assumes that the answer is "No," reasoning that these kinds of harms cannot affect the financial health of the state. We think this assumed answer is wrong.

In fact, a precipitous decline in the moose population may not, on its own, be enough to greatly affect the state's bond rating, but the effect on the state would be as significant as the loss of any other asset. Moose are valuable assets to Alaska, helping in attracting tourists, for example. Furthermore, if other wildlife populations also plummeted, the state's finances would obviously be affected as one of the primary tourism attractors disappeared. Finally, if the state's salmon population [\*\*17] precipitously declines, the fishing industry would be devastated, causing even more harm to Alaska's economy and revenue base. The state benefits from the harvest of salmon through the collection of taxes imposed

on business enterprises engaged in the fishery and license fees imposed on sport, personal use, and commercial fisheries.

Insofar as loss, use, or exploitation of wildlife directly affects Alaska's fish, it is a state "asset." The fact that other aspects of ownership may not be present in the state's legal relationship to its wildlife does not change this conclusion. We reach this holding for the following additional reasons.

First, examination of the relevant provisions of the Natural Resources Article of the Alaska Constitution clearly indicates the importance of the state's interest in fish.

[\*60] *Article VIII, section 2 of the Alaska Constitution* provides:

*General Authority.* The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for maximum benefit of its people.

Article VIII, section 3 provides:

*Common Use.* Wherever occurring in their natural [\*\*18] state, fish, wildlife, and waters are reserved to the people for common use.

Article VIII, section 4 provides:

*Sustained Yield.* 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.

In *Owsichek v. State, Guide Licensing*, 763 P.2d 488 (Alaska 1988), we had occasion to analyze the common use clause found in *article VIII, section 3 of Alaska's Constitution*. After noting that the framers of our constitution apparently intended to constitutionalize historic common law principles governing the sovereign's authority over management of fish, wildlife, and water resources, we said:

Thus, common law principles incorporated in the common use clause impose upon the state a trust duty to manage the fish, wildlife and water resources of the state for the benefit of all the people. We have twice recognized this duty in our prior decisions. In *Metlakatla Indian Community, Annette Island Reserve v. Egan*, 362 P.2d 901, 915 (Alaska 1961) *aff'd* 369 U.S. 45, 82 S. Ct. 552, 7 L. Ed. 2d 562 (1962), we stated: [\*\*19]

These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state.

(Emphasis added.) Similarly, in *Herscher v. State, Department of Commerce*, 568 P.2d 996, 1003 (Alaska 1977), we noted that the state acts "as trustee of the natural resources for the benefit of its citizens."

763 P.2d at 495.

In a footnote to this text, we stated:

The Court overruled Geer's state ownership doctrine in *Hughes v. Oklahoma*, 441 U.S. 322, 99 S. Ct. 1727, 60 L. Ed. 2d 250 (1979). That case involved facts almost identical to *Geer*: the Oklahoma statute at issue forbade the export of minnows taken from the waters of the state. *See id.* at 323, 99 S. Ct. at 1729, 60 L. Ed. 2d at 254. The Court struck down the statute as violative of the commerce clause. *Id.* at 338, 99 S. Ct. at 1737, 60 L. Ed. 2d at 263. The Court found the state ownership doctrine to be a legal fiction that created anomalies and did not conform to "practical realities." *Id.* at 335, 99 S. Ct. at 1735, [\*\*20] 60 L. Ed. 2d at 261. Nothing in the opinion, however, indicated any retreat from the state's public trust duty discussed in *Geer*. Indeed, the Court stated, "The general rule we adopt in this case

makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership." *Id.* at 335-36, 99 S. Ct. at 1735-36, 60 L. Ed. 2d at 261.

After *Hughes*, the statements in the Alaska Constitutional Convention regarding sovereign ownership, quoted *supra*, are technically incorrect. Nevertheless, the trust responsibility that accompanied state ownership remains.

763 P.2d at 495 n.12.

These important themes have been consistently reaffirmed. *See Gilbert v. State, Dep't of Fish and Game*, 803 P.2d 391, 399 (Alaska 1990); *Shepherd v. State, Dep't of Fish and Game*, 897 P.2d 33, 40 (Alaska 1995).

Given the above, we think there is merit in Pullen's contention that the public trust responsibilities imposed on the state by the provisions of article VIII of our constitution compel the conclusion that fish occurring [\*\*21] in their natural state are property of the state for purposes of carrying out its trust responsibilities. [\*61] In short, we are in agreement with Pullen's position that

it is the authority to control naturally occurring fish which gives the state property-like interests in these resources. For that reason, naturally occurring salmon are, like other state natural resources, state assets belonging to the state which controls them for the benefit of all of its people.

We hold that the state's interest in salmon migrating in state and inland waters is sufficiently strong to warrant characterizing such salmon as assets of the state which may not be appropriated by initiative. Thus we conclude that the superior court correctly reasoned that salmon are public assets of the state which may not be appropriated by initiative.

2. *Does the initiative constitute an appropriation?*<sup>9</sup>

9 As we explained above,

the usual rule applied by this court is to construe voter initiatives broadly so as to preserve them whenever possible. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979). However, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution.

*Fairbanks v. Convention & Visitors Bureau*, 818 P.2d 1153, 1155 (Alaska 1991).

[\*\*22]

Article XI, section 7 of the Alaska Constitution states in part:

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts or prescribe their rules, or enact local or special legislation.<sup>10</sup>

<sup>10</sup> AS 15.45.010 provides:

The law making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation.

On four previous occasions we have construed the appropriations limitation on the initiative power.

*Thomas v. Bailey*, 595 P.2d 1 (Alaska 1979), presented in the context of a land give-away initiative, the issue of whether the prohibition on making appropriations included initiatives which required the outflow of land, or was limited to the outflow of money. *Bailey* established that not only money, [\*\*23] but also other state assets could be the subject of appropriations, and therefore that the initiative was prohibited. In reaching this holding we observed that "though most state consti-

tutions with referendum and initiative provisions have some limitation relating to appropriation, Alaska's appropriation limitation is worded more generally than that of most other states." *Id.* at 4.<sup>11</sup> Of particular significance is the emphasis given in *Bailey* on the dangers associated with direct legislation relating to appropriations.

The restrictions on permissible subjects for direct legislation represent "a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public." Stewart, *The Law of Initiative Referendum in Massachusetts*, 12 N. Engd. L. Rev. 455, 461 (1977) (footnote omitted). The danger with direct legislation relating to appropriations is that it "tempt[s] the voter to [prefer] . . . his immediate financial welfare at the expense of vital government activities." Note, *Referendum: The Appropriations Exception in Nebraska*, 54 Neb. [\*\*24] L. Rev. 393, 394 (1975). Cf. *Brown v. Ward*, 593 P.2d 247 (Alaska 1979). The lure of an immediate grant of land poses the same temptation as an immediate grant of money. Both decisions are the kind that require the reasoned deliberation characteristic of legislative actions.

595 P.2d at 8. [\*62]<sup>12</sup>

<sup>11</sup> In this regard we further stated:

Even if the initiative provision referred to appropriations "of public funds," the issue would still be whether public funds refers generally to the state's assets or only those assets in the form of money. We have concluded that by the term "appropriations," Article XI, section 7 prohibits an initiative whose primary objective is to require the outflow of state assets in the form of land as well as money.

*Bailey*, 595 P.2d at 6, 7.

<sup>12</sup> We further elaborated:

Initiatives for the purpose of requiring appropriations were thought to pose a special danger of "rash, discriminatory, and irresponsible acts." The delegates [to Alaska's Constitutional Convention] were influenced by the experience of other states whose constitutions placed no restrictions on the subject matter of initiatives. They adopted the appropriations restriction to avoid the bad experiences of those states.

The delegates wanted to prohibit the initiative process from being used to enact give-away programs which have a popular appeal, that would endanger the state treasury. A rather lengthy statement by Delegate Taylor explains the delegates' concerns:

Now in practically all the states that have initiative and referendum there are certain limitations put upon the matters that can be acted upon by those measures. Now appropriations are not subject to the initiative or the referendum. Some states made a great mistake by not restricting the initiative measures and allowed pressure groups to gather great numbers of signatures to a petition and that petition would require the expenditure of large amounts of money, perhaps a great deal more than the state could possibly afford and sometimes they would also initiate

some legislation to raise money, a revenue measure and then directed that the proceeds of that measure would be utilized for a particular purpose. In other words, it took the making of revenue measure and expenditure of the funds from the legislature and in some instances the governmental functions and governmental institutions suffered a great deal. And it was necessary within as short a time as possible to undo the damage that has been done.

595 P.2d at 7, 8 (footnotes omitted).

[\*\*25] The prohibition against using an initiative to make an appropriation next arose in *Alaska Conservative Political Action Committee v. Municipality of Anchorage*, 745 P.2d 936 (Alaska 1987). There we concluded that the logic of *Bailey* controlled and that "the prohibition against appropriations by initiative applies to all state and municipal assets." *Id.* at 938. We further stated:

A utility with \$ 32.7 million equity is a significant municipal asset. The initiative would require the Municipality to transfer it for the nominal sum of one dollar. This is precisely the kind of "rash, discriminatory, and irresponsible act[]" against which the state and its subdivisions are protected under Article XI, section 7.

*Id.*

The issue arose again in *McAlpine v. University of Alaska*, 762 P.2d 81 (Alaska 1988). In *McAlpine*, an initiative was proposed reestablishing the community college system in the state. This part of the initiative was not held to violate the prohibition on appropriations.

However, the initiative also provided for the transfer of certain property of the University of Alaska to the Community College System:

The University of [\*\*26] Alaska shall transfer to the Community College system of Alaska such real and personal property as is necessary to the independent operation and maintenance of the Community College System. The amount of property transferred shall be commensurate with that occupied and operated by the Community Colleges on November 1, 1989.

*Id. at 83.* Again drawing on *Bailey*, we said in *McAlpine*:

Parallel reasoning applies in the present case. Outside the context of give-away programs, the more typical appropriation involves committing certain public assets to a particular purpose. The reason for prohibiting appropriations by initiative is to ensure that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. Otherwise, the prohibition against appropriations by initiative [\*\*27] could be circumvented by initiatives changing the function of assets the State already owns. We conclude that the constitutional prohibition against appropriations by initiative applies to appropriations of state assets, regardless of whether the initiative would enact a give-away program or simply designate the use of the assets.

*Id. at 88, 89* (first emphasis in original, second emphasis added, footnote omitted). We [\*63] then went on to hold that the second sentence of the initiative constituted an impermissible appropriation.

Most recently, we upheld a challenged initiative in *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153 (Alaska 1991). In that case, the initiative in question repealed a city code section which

designated bed tax revenues for purposes of tourist and entertainment facilities and other economic development. The initiative also set aside the bed tax revenues for deposit in the city council discretionary fund. We held that the placing of revenues in the discretionary fund was not an appropriation. The test we applied was "whether the initiative would set aside a certain specified amount of money or property for a specific [\*\*28] purpose or object in such a manner that it is executable, mandatory, and reasonably definite with no further legislative action." *Id. at 1157.* "In concluding that the initiative was not violative of the prohibition against making appropriations, we observed:

A reference to the dual purposes behind the prohibition of initiatives which make appropriations is instructive. First, the initiative is not a give-away program. No particular group or person or entity is targeted to receive state money or property, nor is there any indication that by passing this initiative, the voters would be voting themselves money. Second, this initiative does not reduce the council's control over the appropriations process. Instead, the initiative allows the council greater discretion in appropriating funds than does the current law. It is axiomatic that if FGCO 5.402 does not make an appropriation, then the initiative, which affords greater legislative discretion and is not a give-away program, cannot make an appropriation.

*Id. at 1157.*

13 The test we applied in *City of Fairbanks* derives from *McAlpine*.

[\*\*29] From these decisions two core objectives of the constitutional prohibition on the use of initiatives to make appropriations can be distilled. First, the prohibition was meant to prevent an electoral majority from bestowing state assets on itself. Second, the prohibition was designed to preserve to the legislature the power to make decisions concerning the allocation of state assets. In light of these objectives, we now address the question of whether the proposed initiative violates *article XI, section 7 of the Alaska Constitution* as well as *AS 15.45.010*. We answer this question in the affirmative.

Our interpretation of the proposed initiative leads us to the conclusion that the initiative, if enacted, would violate the basic purposes underlying Alaska's constitutional restriction against making appropriations by initia-

tive. First, it is clear that the proposed initiative is designed to appeal to the self-interests of sport, personal and subsistence fishers, in that these groups are specifically targeted to receive state assets in the circumstance of harvestable shortages. <sup>14</sup> In short, it "tempt[s] the voter to [prefer] . . . his immediate financial welfare at the expense of [\*\*30] vital government activities." *Bailey*, 595 P.2d at 8. Second, the initiative significantly reduces the legislature's and Board of Fisheries' control of and discretion over allocation decisions, particularly in the event of stock-specific or region-specific shortages of salmon between the competing needs of users. See *McAlpine*, 762 P.2d at 88-89. ("The reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money.")

14 It should be noted that subsistence fisheries are already accorded a preference which is not affected by our determination that the proposed initiative is violative of *article XI, section 7 of the Alaska Constitution* as well as *AS 15.45.010*.

The overriding purpose of the proposed initiative is to require the Board of Fisheries, after providing for [\*\*31] the biological escapement needs of Alaska's salmon stocks, to reserve a priority for the harvest needs for each particular salmon stock of personal use, sport, and subsistence fisheries prior to allocating any portion of the harvestable surplus to commercial [\*64] fisheries. <sup>15</sup> The State comes close to conceding that if the proposed initiative is approved by the electorate it could result in the closure of some commercial fisheries. In this regard, the State notes:

Pink salmon, and to some respects sockeye salmon, are the largest producers in numbers of fish. . . . However, most of the sport fishermen in Southeast and the A-Y-K regions target kings and cohos. . . . *Since the priority is stock directed and allocation is not, one could argue that the initiative requires allocations of kings and cohos to sport and personal users in these regions. If so, this arguably requires closing some commercial fisheries also targeting kings and cohos.* <sup>16</sup>

(Emphasis added, citations omitted.)

15 We need not disavow the *McAlpine* "whether the initiative would set aside a certain specific amount of money or property for a specific pur-

pose or object in such a manner that is executable, mandatory, and reasonably definitive with no further legislative action" language in concluding that the current initiative makes an appropriation. The initiative, if passed, would suffice without further action of the legislature to direct the Board of Fisheries to allocate salmon in accordance with its terms. Further, the point of the quoted language is that where the legislature retains a broad range of freedom to make allocation decisions, an appropriation will not be found. Under the current initiative, in cases of shortage - which is when the initiative operates -- such freedom is not retained.

[\*\*32]

16 In regard to potential conflicts between different users, F.I.S.H. states:

There are no conflicts at all over pink salmon, the most numerous of all salmon in Alaska. In most areas, chum salmon and red salmon are only exploited for commercial purposes. There are real conflicts on the Kenai Peninsula over king salmon and to a much lesser extent red salmon; there are conflicts in Southeastern Alaska over king and silver salmon, and there are some conflicts between subsistence users and commercial fishermen on the river systems in western Alaska.

We cannot interpret the proposed initiative as simply amending "a series of general legislative criteria to add more specific ones to guide the Board of Fisheries in its future allocation decisions" as F.I.S.H. contends. We think it is clear that the proposed initiative calls for an actual allocation, in the event of a shortage of a given salmon species in a given geographical region, to sport, personal use, and subsistence fisheries. <sup>17</sup> In such circumstances there exists the very real possibility that the commercial fishers will be excluded [\*\*33] from such fisheries. Thus, the initiative cannot be viewed as merely protecting the relative positions of sport, personal use, and subsistence fisheries as against commercial fisheries. Nor can this initiative be construed as not impinging upon the legislature's and Board of Fisheries' discretion to make allocation decisions among the competing needs of users. See *McAlpine*, 762 P.2d at 89, 91. The proposed initiative does not purport to maintain the existing relative positions between sport, personal use, and commercial fisheries. Further, the proposed initiative does re-

move the Board of Fisheries' discretion to make allocation decisions in times of shortages, and there is a very realistic danger that such shortages will occur.

17 The Fish and Game statutes define "subsistence use" as the "noncommercial, customary and traditional uses of wild, renewable resources . . . for direct personal or family consumption . . ." AS 16.05.940(32). "Personal use fishing means the taking, fishing for, or possession of fin fish . . . by Alaska residents for personal use and not for sale or barter with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries." AS 16.05.940(24). "Sport fishing means the taking of or attempting to take for personal use, and not for sale or barter, any . . . anadromous fish by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries." AS 16.05.940(29).

[\*\*34] For these reasons, we hold that the F.I.S.H. initiative violates *article XI, section 7 of the Alaska Constitution*, as well as AS 15.45.010. "

18 Our holding makes it unnecessary to address Pullen's argument that the management of Alaska's salmon resources falls exclusively within the power of the state legislature as trustee of Alaska's wildlife, and therefore is not a proper subject of an initiative.

#### IV. CONCLUSION

The judgment of the superior court is REVERSED insofar as it holds that the proposed F.I.S.H. initiative does not make an appropriation of state assets in violation of the provisions of *article XI, section 7 of the [\*\*65] Alaska Constitution*. The case is REMANDED to the superior court with directions to amend its judgment to provide that the Lieutenant Governor is permanently enjoined from placing the proposed F.I.S.H. initiative on the 1996 general election ballot.

CONCUR BY: COMPTON

CONCUR

COMPTON, Chief Justice, concurring.

I concur with the court in holding that the judgment of the superior [\*\*35] court should be amended to provide that the Lieutenant Governor be permanently enjoined from placing the F.I.S.H. initiative on the 1996 general election ballot. However, I do not agree that the initiative violates *article XI, section 7 of the Alaska Constitution*. Rather, I conclude that the initiative violates

*article XII, section 11 of the Alaska Constitution*, and for this reason it cannot be placed on the ballot.

The court holds that "insofar as loss, use, or exploitation of wildlife directly affects Alaska's fish, it is a state 'asset.'" Op. at 14. The state's interest in migrating salmon is sufficiently strong "to warrant characterizing such salmon in their natural state as *assets of the state* which may not be appropriated by initiative." Op. at 17 (emphasis added). I cannot accept the conclusion that fish, or other wildlife, are "assets of the state."

It is correct to observe, as does the court, that wildlife is of significant value to the state. Unquestionably a "precipitous decline" in wildlife population would affect the state's finances for reasons identified by the court. Yet fish and wildlife occurring in their natural state are not remotely like the forests found [\*\*36] on state owned lands, or hydrocarbons and minerals found on or under state owned lands. These are assets of the state in a sense of the term that readily can be understood. However, it is counter-intuitive to suggest that migratory wildlife is "an asset of the state." It is an asset to the State, not of the State.

In addition to the court's conclusion being counter-intuitive, there is virtually no case support for the proposition. The court quotes from *Owsichek v. State, Guide Licensing and Control Board*, 763 P.2d 488, 495 (Alaska 1988), which cited to and quoted from *Mellakatta Indian Community, Annette Island Reserve v. Egan* 362 P.2d 901 (Alaska 1961), *aff'd* 369 U.S. 45, 7 L. Ed. 2d 562, 82 S. Ct. 552 (1962). In *Mellakatta*, the court stated that "these migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the state. . . ." 362 P.2d at 915 (emphasis added). The court notes candidly that the state ownership doctrine, given the blessing of the United States Supreme Court in *Geer v. Connecticut*, 161 U.S. 519, 40 L. Ed. 793, 16 S. Ct. 600 (1896), was overruled by the Court in *Hughes v. Oklahoma*, [\*\*37] 441 U.S. 322, 60 L. Ed. 2d 250, 99 S. Ct. 1727 (1979). The Court termed the state ownership doctrine a legal fiction that did not conform to practical realities.

The court also correctly notes that *Hughes* did not dictate a retreat from the trust doctrine advanced in *Geer*. It is this trust relationship, repeatedly articulated and embraced by this court, that lies at the core of the present dispute. This relationship between migratory fish and game, the State of Alaska, and the people of the State of Alaska is not an "asset of the state" in any sense of the term.

The trust relationship derives generally from article VIII of the Alaska Constitution, and in this case specifically from article VIII, section 3, which provides that "wherever occurring in their natural state, fish, wildlife,

and waters are reserved to the people for common use." This section, generally referred to as the "common use clause," can be amended by the people of the State, for that right is guaranteed them by *article XIII, section 1 of the Alaska Constitution*. However, it cannot be amended by the legislature, only implemented within the narrow confines of the limitations of the common use clause, which [\*\*38] has created the trust relationship between the State and its people.

*Article XII, section 11 of the Alaska Constitution* provides in part that "unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI." Since *article VIII, section 2 of the Alaska Constitution* grants the legislature law-making powers [\*66] over natural resources, the question becomes whether law-making powers through initiative are "clearly inapplicable" to implementation of the trust relationship established by *article VIII, section 3*. In my view, it is precisely because of the trust relationship that law-making powers through initiative are "clearly inapplicable."

Although the constitutional debate is not particularly informative, what does become clear from Delegate V. Fischer's and Delegate McLaughlin's remarks, *see 4 Proceedings of the Alaska Constitutional Convention*, at 2828 and 2847-51 (1955), is that "unless clearly inapplicable" does not mean "unless specifically excluded." The term "unless clearly inapplicable" became part of the constitution, the term "unless specifically excluded" did [\*\*39] not. Undefined, "unless clearly inapplicable" thus becomes subject to interpretation.

In my view an initiated law is "clearly inapplicable" to the allocation of a resource reserved to the people for their common use. This is particularly so when the State holds the resource in trust for all the people of the State. The people, as beneficiaries of this trust, cannot dictate to the trustee the manner in which the trust is to be administered.

The uniqueness of this trust relationship in our government distinguishes it from most other relationships created by the Alaska Constitution. Additionally, the

structure of the Department of Fish and Game belies the notion that fish and game management decisions may be left to initiated laws. The Commissioner of Fish and Game serves a specific term of five years, *AS 16.05.010*, unlike other commissioners. Also unlike other commissioners, who simply are appointed by the governor, subject to legislative approval, the Boards of Fisheries and Game present to the governor a list of qualified nominees for the office of Commissioner of Fish and Game. The governor makes the appointment from the list, or a supplemental list if he or she requests one. The [\*\*40] appointment is subject to legislative approval. *AS 44.39.030*. Unlike other commissioners, specific professional qualifications for Commissioner of Fish and Game are required by statute, including "knowledge of the requirements for the protection, management, conservation, and restoration of the fish and game resources of the state." *AS 16.05.010*. Also unlike other commissioners, who serve at the pleasure of the governor, a proceeding for removal of the Commissioner must be initiated by a resolution by either the Board of Fisheries or Board of Game, who request the Commissioner's removal. Only then can the governor make a final decision to remove the Commissioner. *AS 44.39.050*.

The trust relationship, the structure of the Department of Fish and Game, the agency responsible for implementing the State's trust responsibilities for the benefit of all the people of the State, and the detailed professional requirements that must be possessed by the Commissioner of Fish and Game, the executive who directs that agency, persuasively demonstrate the clear inapplicability of initiated laws which dictate policies regarding the "protection, management, conservation, and restoration of the fish [\*\*41] and game resources of the state."

Long ago we set upon a course that defined the State's responsibility under the common use clause as that of a trustee for its people, the beneficiaries of that trust. I am persuaded that the characterization of that relationship was, and is, correct. I am persuaded similarly that the constitutional grant of the right of initiative is clearly inapplicable to alter such a relationship.

## Stealth bills take aim at your right to vote on game issues

**COMPASS: Other points of view**

By NICK JANS

(03/24/08 04:01:40)

HB 348 seems an innocuous little bill -- several lines that merely redefine Alaska's wildlife as an "asset." The Department of Law has argued that it and related bills, SB 176/HB 256, simply clarify existing statutes governing wildlife management.

However, the intent of these bills is far-ranging, and hardly innocuous. These pieces of stealth legislation are designed to subvert the right of Alaska's people to vote in this August election on the issue of shooting wolves and bears from private aircraft, and to prevent all future ballot initiatives regarding wildlife management. All three bills are backed by well-connected special interest groups, notably the Alaska Outdoor Council -- which receives heavy financial backing from Outside organizations such as the Safari Club International and the National Rifle Association.

It is not the viewpoint behind these bills you should resent -- it's the disingenuous attempt to slip them past the people without openly acknowledging the clear intent: to silence Alaska's voters.

In the case of HB 348, the designation of Alaska's wildlife as an "asset" is meant to put decisions regarding wildlife management solely in the hands of a Legislature that has routinely flouted the wishes of its constituents. In a 1996 ballot initiative, 36 of Alaska's 40 districts rejected aerial predator control. In 2000, 29 of 40 districts did the same. Yet both times, the Legislature overturned that mandate.

In 2000, 63 percent of Alaskans rejected a referendum that would have made unconstitutional all wildlife ballot initiatives. Now, 56,000 Alaska voters are once again demanding that their voices be heard on the issue of aerial predator control, in a ballot measure that has already been certified.

These were and are Alaskans speaking out, not Outsiders. And contrary to Alaska Outdoor Council rhetoric, thousands of rural Alaskans voted against it -- people who truly do depend on subsistence. Shishmaref, Klawock, Sleetmute, Kivalina, Pedro Bay, Shageluk, Buckland, Anaktuvuk Pass, White Mountain, Koyuk, Chignik Lagoon, New Stuyahok, Kotzebue, and more -- many Native Bush communities voted against aerial predator control in 2000. To say that these people don't understand the nature of subsistence or wolves is an insult to Native traditions and cultures.

Likewise, thousands of active non-Native hunters, including myself, feel insulted when we're told by the Board of Game or the Alaska Outdoor Council that we just don't understand the issue. Many of us have far more experience and knowledge regarding wolves than those who claim we know so little.

In any case, the opposition's rhetoric distorts the issue. Aerial predator control is not a matter of science, but of ballot-box policy, directed by political appointees. It is the constitutional right of Alaska's people to decide how this management tool will be wielded. The wildlife of Alaska belongs to us all, not to just a well-connected few who exert influence behind closed doors, contrary to the democratic process.

**The Alaska Outdoor Council proudly claims roughly 3,000 paying members. Since when do the desires of 3,000 trump those of 56,000-plus?**

**The answer's simple: when a special interest group (which includes Gov. Palin, who requested the introduction of SB 176/HB 256, and is herself an Alaska Outdoor Council member) attempts to exert its will, and the majority stand by and allow their rights to be stolen.**

**You don't have to agree with me on the issue of airborne predator control to agree that we do indeed live in a democratic society, where the majority rules. Alaska's citizens have a constitutional right to vote on matters of wildlife management policy, and to raise a ballot initiative when our collective will is ignored by those sworn to represent us.**

**The issue of aerial wolf and bear shooting pales in comparison to the real issue at stake: the democratic process. We must insist that the Legislature and Gov. Palin protect and nurture that process.**

**Alaskans, raise your voices and call for the striking down of HB 348 and SB 176/HB 256, not because of your convictions regarding aerial predator control, but because of your convictions in a government of the people, by the people, and for the people.**

---

**Nick Jans is with Alaskans for Wildlife and is the author of several books about Alaska.**

**Print Page** | **Close Window**

**Copyright © Mon Mar 24 08:22:53 UTC-0800 20081900 The Anchorage Daily News (www.adn.com)**

Ruth McHenry  
HC60 Box 306T  
Copper Center, Alaska 99573  
Phone & Fax 907-822-3644  
cca@coppervalleyak.net

March 21, 2008

Senate Judiciary Committee  
Senator Hollis French, Chair

by fax to 907-465-6595

Re: SB 176

Dear Committee Members:

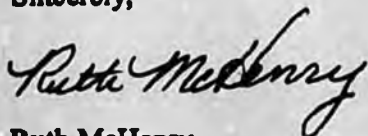
I am a long-time (62-year) resident of Alaska, and I am writing to ask you to remove from SB 176 language relating to airborne shooting or same day airborne shooting of wolverine.

The Alaska Department of Fish and Game has done some research on wolverines in Alaska. I will cite some of that work as I make some key points about why airborne taking of wolverine does not belong in SB 176:

- **Wolverines are not a threat to big game populations in Alaska.** ADFG's Ken Taylor stated, "Snowshoe hares and carrion are the principal foods for wolverines....Wolverines are capable of bringing down some of Alaska's hoofed mammals," but he concludes, "Wolverine predation on large mammals, however, is presently considered to be an uncommon occurrence in Alaska."<sup>1</sup>
- **Wolverines do not exist in large numbers in Alaska.** "They are generally not present at high densities anywhere within their range," according to ADFG's Howard Golden.<sup>2</sup>
- **It's difficult to know when we have removed or displaced too many wolverine for the continued survival of a population.** Two quotes on this topic:
  - The wolverine occupies remote areas, is solitary and secretive, and occurs at relatively low densities, which makes field study difficult and expensive.<sup>3</sup>
  - Wolverines require more attentive management because they occur at naturally low densities, have low reproduction rates, are sensitive to human development and harvest, and have been eliminated from vast areas of their former range.<sup>4</sup>

Given that information, I hope you will decide that it is unnecessary to include the wolverine in a predator management program.

Sincerely,



Ruth McHenry

<sup>1</sup> Taylor, Ken, "Wolverine (*Gulo gulo*)", *Wildlife Notebook Series*, ADFG, 1989.

<sup>2</sup> Golden, Howard, *Wolverine Survey Plan for Upper Turnagin Arm and Kenai Mountains, Alaska, Interagency Collaborative Project Progress Report*, ADFG, May 2004.

<sup>3</sup> Magoun, Audrey J. (ADFG) and Copeland, Jeffrey P. (Idaho DFG), "Characteristics of Wolverine Reproductive Den Sites", *Journal of Wildlife Management* 62 (4):1313-1320.

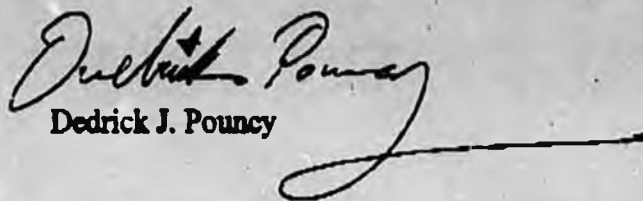
<sup>4</sup> Golden, Howard N., Routs, William T., and Becker, Earl F., *Wolverine Demography and Ecology in Southcentral Alaska: Project Outline and Phase I Project Report*, February 1993, ADFG, USF&WS, NPS, USFS.

Dedrick J. Pouncy  
635 W45th Ave. #1  
Anchorage, AK 99503

March 22<sup>nd</sup> 2008

To: Representative Mike Doogan, Senator Hollis French

My name is Dedrick J. Pouncy.  
I stayed at the Safe Harbor Inn located at 1905 E 4th Ave. Anchorage, AK 99501. Safe Harbor is purchasing the Ramada Inn on Muldoon St. As a former resident I support them in this because they supported my family and I in our time of need with shelter, transportation, supplies and many other valuable resources. Currently I am employed and they continue to support me on our way to self-sufficiency.

  
Dedrick J. Pouncy

Page 1 of 1  
**Cindy Smith**

---

**From:** Peter and Sarah Carter [luckyenterprizes@gmail.com]

**Sent:** Tuesday, March 18, 2008 4:21 PM

**To:** Cindy Smith; Sen. Hollis French; Sen. Charlie Huggins; Sen. Lesil McGuire; Sen. Bill Wielechowski; Sen. Gene Therriault

**Subject:** Please oppose SB 176

I Dear Senators and those concerned for the welfare of our state's wildlife and natural resources:

I oppose SB 176 on aerial predator control.

SB 176 is attempting to remove all the language requiring the Board of Game to develop aerial predator control programs based on science. The bill removes the words "based on science" and replaces science with the following language:

**" the Board of Game may authorize a predator control program that involves airborne or same day airborne shooting of wolves, wolverines, or brown bears if the board determines that the program would be conducive to achieving the objectives established for human harvest"**

What does " conducive to achieving the objectives" mean? Nothing more than the "**opinion**" of the Board of Game. The board will no longer be required to show what factors may be keeping big game populations at low numbers. Is it predators or other environmental factors such as lack of food? No longer will the board be required to use science to determine which predator may be contributing to low big game populations. Is it wolf, brown bear or wolverine? The board can choose which ever predator they "think" is responsible. No longer will the board be responsible for showing whether intensive predator control programs are even effective!

If SB 176 is adopted the board can simply have an opinion, based on anything they want, that a particular predator needs to be included in an aerial predator control program – including brown bears! For the first time the board could simply shrug its shoulders at any concerns about intensive predator control programs and state they are mandated to initiate these programs, it is not up to them, the legislature has told them to do it! With no other mandates in statute other than the opinion of the Board of Game, **the citizens would have no recourse in the courts to oppose predator control.**

I strongly urge you to listen to the will of your constituents. Please oppose Senate Bill 176.

Sincerely,  
Sarah Carter  
Valdez, Alaska  
907.835.4488

3/18/2008

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 485-4100  
FAX: (907) 485-2332

#### MEMORANDUM

TO: Senator Hollis French  
Chairman, Senate Judiciary Committee

FROM: Denby S. Lloyd, Commissioner  
Alaska Department of Fish and Game

DATE: April 6, 2008

SUBJECT: Hearing Request, House Bill 256

---

I am writing to request that, at your earliest convenience, you schedule a hearing in the Judiciary Committee of House Bill 256, "Active Game Management/Airborne Shooting". I have earlier provided you with the following:

- A copy of the current version of Committee Substitute for House Bill 256(JUD)
- The two previous versions of the bill: CSHB 256(RES) and HB 256
- The Governor's Transmittal Letter for the bill
- A copy of ADF&G's zero fiscal note for the bill
- A "Draft Transmittal Letter", which amounts to a sectional analysis by Senior Assistant Attorney General Kevin Saxby
- "Answers to Commonly Asked Questions about HB 256/SB 176" by Mr. Saxby and Division of Wildlife Conservation Director Doug Larsen
- "Talking Points on HB 256" prepared by Mr. Saxby and Mr. Larsen
- The current statutes that would be amended by passage of HB 256

When a hearing has been scheduled, we can provide you with a list of witnesses to testify on behalf of the legislation.

Please feel free to contact my legislative liaison, Tim Barry, with questions or for more information. Thank you for your attention to this matter.

\* \* \*

# STATE OF ALASKA

**SARAH PALIN,  
GOVERNOR**

## DEPARTMENT OF FISH AND GAME

### BOARD of GAME

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 465-4110  
FAX: (907) 465-6094

March 10, 2008

Senator Hollis French, Chairman  
Senate Judiciary Committee  
State Capitol, Room 417  
Juneau, AK 99801

Dear Senator French:

The Alaska Board of Game (Board) supports Senate Bill 176 and House Bill 256 ("An Act relating to active game management and to the airborne or same day airborne taking of certain game animals...") and urges your positive action on these measures. These bills will harmonize existing law, reduce confusion, and minimize litigation.

State predator control programs have been subjected to continuous and repetitive lawsuits, alleging that the Board failed to follow the intensive management law (AS 16.05.255(e)-(j)) and the same-day airborne law (AS 16.05.783). No court has yet held that the Board has violated either, and plans adopted by the Board as prescribed by 5 AAC 92.125 are based on scientific information currently available. We will continue to follow this practice. Critics suggest that predator control programs be curtailed until more field data can be gathered. The Board and the Alaska Department of Fish and Game (Department) welcome review of these programs and constantly strive to improve their efficacy, but suspending them will not help meet the statutory and constitutional requirements we are compelled to follow in working to meet the needs of Alaskans.

Opponents argue that the bills abandon science while conversely claiming that the Board ignores scientific input it receives from various organizations in adopting predation control plans. The Board demands and receives high quality information and applies appropriate wildlife science to its decisions. The Department acts as staff and primary science advisor to the Board, and nearly always has the best available scientific data. The bills' deletion of AS 16.05.783's unnecessary, superfluous requirement that predation control programs be "based on information provided by the department" will not change the Board's continued reliance on the Department's expertise.

The Board always considers information presented by other individuals or groups, even though critics sometimes claim otherwise. Department wildlife biologists are members of professional societies, regularly attend scientific conferences, publish information in peer-reviewed professional journals, and are participating in a Wildlife Society review of North

**American predator control programs. Department participation follows up on criticism that Alaska has not implemented the recommendations put forth in the 1997 National Academy of Science – National Research Council review of Alaska’s predator control programs. These scientific activities are critical to our decision-making process, just as legislative funding for intensive management studies is necessary both to Board deliberations and to continue and expand the solid scientific basis for managing complex predator-prey-human-ecological systems.**

**SB 176/HB 256 will clarify existing laws without changing the Board’s longstanding reliance on science. We strongly recommend they be enacted.**

**Sincerely,**

A handwritten signature in black ink that reads "Cliff Judkins" followed by a stylized monogram "KT".

**Cliff Judkins, Chairman  
Alaska Board of Game**

**cc: Original letters sent to all members of the Alaska State Legislature  
Commissioner Denby Lloyd, Alaska Department of Fish and Game  
Mike Nizich, Deputy Chief of Staff to Governor Palin**

# STATE OF ALASKA

SARAH PALIN, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

P.O. BOX 115526  
JUNEAU, AK 99811-5526  
PHONE: (907) 485-4100  
FAX: (907) 485-2332

#### MEMORANDUM

TO: Senator Hollis French  
Chairman, Senate Judiciary Committee

FROM: Denby S. Lloyd, Commissioner  
Alaska Department of Fish and Game

DATE: March 27, 2008

SUBJECT: Hearing Request, House Bill 256

---

I am writing to request that, at your earliest convenience, you schedule a hearing in the Judiciary Committee of House Bill 256, "Active Game Management/Airborne Shooting". I enclose the following:

- A copy of the current version of Committee Substitute for House Bill 256(JUD)
- The two previous versions of the bill: CSHB 256(RES) and HB 256
- The Governor's Transmittal Letter for the bill
- A copy of ADF&G's zero fiscal note for the bill
- A "Draft Transmittal Letter", which amounts to a sectional analysis by Senior Assistant Attorney General Kevin Saxby
- "Answers to Commonly Asked Questions about HB 256/SB 176" by Mr. Saxby and Division of Wildlife Conservation Director Doug Larsen
- "Talking Points on HB 256" prepared by Mr. Saxby and Mr. Larsen
- The current statutes that would be amended by passage of HB 256

When a hearing has been scheduled, we can provide you with a list of witnesses to testify on behalf of the legislation.

Please feel free to contact my legislative liaison, Tim Barry, with questions or for more information. Thank you for your attention to this matter.

\* \* \*

## **Answers to Commonly Asked Questions about HB 256/SB 176**

### **Submitted by:**

**Douglas Larsen, Director  
Division of Wildlife Conservation  
Alaska Department of Fish and Game  
P.O. Box 115526  
Juneau, AK 99811-5526**

**Kevin Saxby  
Sr. Assistant Attorney General  
Alaska Department of Law  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501**

*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? That is, 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.

**Senate Bill 176/House Bill 256**  
*Active Game Management/Airborne Shooting*

**DRAFT TRANSMITTAL LETTER/SECTIONAL ANALYSIS**

Kevin Saxby, Senior Assistant Attorney General

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 harvest by humans. 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 harvest by people 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). There has been a great deal of debate, in and out of court, about the current law's meaning in this regard, and whether active, or "intensive," management should be driven by population declines, 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 retains 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 population. In other words, by passing this bill, the Alaska State Legislature will again affirm that predator control is an appropriate tool for the state's game managers to use, so the board can authorize airborne or same day airborne predator control programs when necessary to fulfill active management requirements or to help 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 airborne 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