Alaska State Special Areas
Refuges, Sanctuaries & Critical Habitat Areas
Legislative Proposal Summary and Issue Statement

Introduction/Background: The State of Alaska has set aside approximately 3.3 million acres of state lands and waters in recognition of their significant fish and wildlife habitats as refuges, sanctuaries, and critical habitat areas (CHA) (collectively termed *Special Areas* and for simplicity referred herein as "refuge areas"). Consistent with Article VIII of our state constitution, the Alaska State Legislature determined the public's interest in these lands and waters is best achieved by protecting and enhancing their fish and wildlife values for the "use, enjoyment, and welfare of the people".

As the nation's largest and most diverse system of state-owned and state-managed wildlife habitat, these refuge areas offer Alaskans and visitors a wide range of activities including hunting, trapping, fishing, subsistence activities, wildlife viewing and photography, nature study, and other various recreational opportunities. With several million public visits to these areas each year, they strengthen the state's economic, cultural, and recreational opportunities.

The Alaska Department of Fish and Game (ADF&G) and the Department of Natural Resources (DNR) manage these areas by balancing the varying public uses with protecting and maintaining habitats while also accommodating compatible commercial, industrial, transportation, and utility interests. Management direction comes from statutory purpose statements, both overall and for individual areas, and is implemented through regulations including those adopted in individual area management plans.

As uses and demands on these areas have significantly increased over the decades since their establishment, management challenges have become more numerous and more complex. During the 34th Legislative session, House Bill 321 sought to clear up "housekeeping" issues and to provide additional clarity and direction for managers. The ultimate intent of this effort was to assure these areas were properly managed so that their wildlife and habitat values are maintained for future generations of Alaskans and our visitors. After passing out of the House Resources Committee, the bill's progress stalled and it was ultimately not adopted.

This document is intended to help stakeholders, members of the public, legislators, and others interested in these refuge areas better understand the management challenges these areas face. It also aims to support legislation in the 35th Legislature that protects these areas and makes their management more efficient and effective.

Proposed Refuge Area Legislation in a Nutshell:

I. **Boundary and Land Status Updates:** Adds lands and expands boundaries to incorporate lands acquired by the state for that purpose.

II. **Boundary Adjustments:** Expands or alters boundaries to incorporate important adjoining habitats.

III. **Future Additions:** Automatically place newly acquired lands within a boundary (donated or purchased inholdings) into refuge management jurisdiction (future boundary expansions still need legislative approval).

IV. **Private Land Jurisdiction:** Removes ADF&G land use oversight from private lands (primarily Native Corporation) in four refuge areas in Bristol Bay.

V. **National Wildlife Refuge and State Game Refuge Boundary Alignment:** Removes confusion and potential legal issues resulting from land conveyances of former federal refuge lands.

VI. **Target Shooting:** 1) Statutorily recognize the right of firearm use and legal hunting in refuge areas; 2) regulate target shooting (no impact to hunting or trapping) in very limited developed access areas thereby addressing a life and safety issue, and avoiding lead contamination mitigation and cleanup expenditures using public funds; and 3) assuring smooth operations of shooting ranges while maintaining public safety.

VII. **Name Conformity:** Streamline naming of refuges and sanctuaries.

VIII. **Statutory Errors:** Correct two errors in statute to fix a McNeil River State Game Sanctuary SLA delayed amendment and a typographical error in the statute creating the Palmer Hay Flats State Game Refuge.

IX. **Protecting Public Uses:** Assures that public uses including hunting, trapping, fishing, subsistence activities, wildlife viewing, and other uses are allowed and, where appropriate, managed to avoid conflicts.

X. **DNR Management Fees:** Prevents DNR from using an inefficient process of charging fees to ADF&G for conducting legislatively mandated duties in state refuge areas.

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I. Boundary and Land Status Updates: The first state managed area for the protection of wildlife was established in 1960 with the creation of the Walrus Islands State Game Sanctuary in Bristol Bay. Since that time, 31 additional areas have been established to recognize and protect lands and waters with significant fish and wildlife values. Several areas encompassed private lands that were excluded from state management jurisdiction but have since been acquired from willing sellers. Likewise, private lands external yet contiguous to some legislatively established boundaries have been acquired by the state. Many of these parcels were acquired with high community support and with the assistance of private conservation organizations. These lands often contain conservation easements, deed restrictions, federal grant requirements, and other legal obligations which require the parcels be managed consistent with the conservation and protection purposes of the refuge area. Had these parcels remained in private ownership, public access and use of fish and wildlife resources upon them would not be assured.

While ADF&G holds a DNR-issued "management right" for many of these parcels, ADF&G cannot statutorily manage the land as part of the refuge without legislative authorization, thereby limiting the department's efficiency and effectiveness in managing these lands. **Attachment A** lists the parcels requiring legislative approval for these state-owned lands to be incorporated into refuge jurisdiction.

II. Boundary Adjustments: These items would address boundaries (or areas of jurisdiction) involving state-owned land and water that do not currently contain legal obligations for the state to manage them for conservation purposes, yet which contain valuable habitats contiguous to an established refuge area. These areas are listed in **Attachment B**.

III. Future Additions: This provision would automatically place newly acquired lands within the external boundary of a refuge area into refuge management status. This specific provision already exists in the statutes for four refuges and by default, 14 CHAs. It's unclear if this provision was purposely omitted from the statutes of the remaining refuge areas but its absence has created continual management issues. This is primarily an issue in the Anchorage Coastal, Mendenhall Wetlands, Minto Flats, and Palmer Hay Flats refuges; and the Anchor River-Fritz Creek CHA which all have numerous private holdings within their boundaries.

When the Legislature created a refuge area, it identified an area with high value fish and wildlife habitats. Some of these areas contain privately owned parcels that, in recognition of the private landowner's rights, are generally excluded from refuge jurisdiction. Since most of these areas contain wetlands, they are largely undeveloped and continue providing valuable habitats. Working with conservation organizations and private parties, the ADF&G has acquired many of these private parcels from willing sellers and is obligated to manage them as if part of the refuge, assuring they are available for public use rather than being restricted by the private landowner. However, to statutorily manage these newly acquired lands as part of the refuge area, the Legislature must pass legislation adding them to refuge area, despite their location already within the refuge boundary. While some legal interpretations may question whether

they automatically fall under refuge management jurisdiction once acquired by the state, this provision will definitively clarify the land status. If left in question, it creates a management challenge and confusion to public users.

It's important to highlight that any future additions to refuge areas located external to the legislatively approved boundary would still require approval by the legislature.

IV. Private Land Jurisdiction: Removal of ADF&G land management jurisdiction on private lands within four refuge areas in Bristol Bay. Due to overlapping land selections at the time of the legislative creation of the Port Moller, Port Heiden, Egegik, and Pilot Point CHAs, there are significant private land holdings within their boundaries; primarily lands owned by Native Corporations and private Native allotments. Since these private lands are not excluded from refuge jurisdiction, the ADF&G maintain land management and permitting authority over these private lands creating management challenges for the agency and potentially hinder the use of these lands by the private property owners. This provision would retain the established boundary of these refuge areas but would remove refuge jurisdiction on those lands, something ADF&G and the private landowners have long sought.

V. National Wildlife Refuge/State Game Refuge Boundary Alignment: Just after gaining statehood, the Legislature acknowledged the importance of National Wildlife Refuges to the state and the nation by co-designating federal refuges as State Game Refuges. Since the federal refuges contained little or no state land, there are essentially no state management implications or responsibilities through these designations. However, in the subsequent decades, the boundaries of two federal refuges (Kenai and Kodiak National Wildlife Refuges) were significantly altered through administrative actions and ANILCA, leaving the state game refuge boundary tied to the prior federal boundary. This has created management confusion and potentially legal issues involving clouded titles since lands within the old federal refuge boundary (but now outside the altered federal boundary) have come into state ownership with some having been transferred into private ownership. This bill provision will amend the statute so that the State Game Refuge boundary is tied to its associated current or future federal refuge boundary; thereby alleviating any concern over the status of those lands.

VI. Target Shooting: First and foremost, these provisions affirm the public's right to carry and use firearms for legal purposes in state refuge areas. To address the rampant and unsafe discharge of firearms at access sites involving haphazard target shooting, this provision will provide ADF&G a new authority to adopt (through a public process) regulations to prohibit target shooting to protect public safety and prevent environmental damage within limited areas at trailheads, parking lots, and access points. This new authority will in no way influence otherwise legal hunting or trapping activities. In recent years, legitimate refuge users including hunters have been displaced by target shooting and even injured by indiscriminate target shooting. In addition, approximately $2.5 million in public funds have been expended cleaning up lead contamination at just one access site in the Palmer Hay Flats refuge and several

hundred thousand dollars have been diverted to address lead contamination from target shooting at other refuge sites.

A related provision will provide ADF&G the authority to adopt regulations (through a public process) to restrict public access in certain limited areas within a refuge area to protect public safety and assure the smooth operation of a public facility. The primary issue concerns refuge users venturing downrange of the Rabbit Creek Shooting Park in the Anchorage Coastal refuge while the shooting range is in operation. This requires a cessation of range operations and creates a significant life issue for those members of the public venturing downrange. While many of these incursions are accidental, some are deliberate by individuals that are critical of ADF&G's management of the shooting range. It is envisioned that the adopted regulations will accommodate continued use of the downrange area during closed periods to accommodate waterfowl hunters and others that venture into this area when safe to do so.

VII. Name Conformity: This bill provision will bring naming consistency to these refuge areas. There are six different terms used including: game refuge, wildlife refuge, migratory waterfowl refuge, game sanctuary, wildlife sanctuary, and critical habitat area (CHA). The bill proposes to consolidate these names into two designations: "wildlife refuge" and "wildlife sanctuary" (with three slight variations including Creamer's Field State Migratory Waterfowl Refuge, Kachemak Bay State Marine Refuge, and Clam Gulch State Marine Refuge). By bringing consistency and conformity to these naming terms, it provides for more public recognition and support for a consolidated program. In addition, eliminating the "critical habitat area" designation will avoid confusion with "critical habitat" as defined in the federal Endangered Species Act. At the time this federal act and the first state CHA was created in the 1970s, there were similar efforts afoot to draft federal and state legislation using similar terminology which now leads to confusion. Eliminating the CHA designation will more clearly emphasize that state wildlife refuges do not unduly restrict public access and uses which is often assumed by members of the public.

VIII. Statutory Errors: Two errors in statutory language have been identified and need correction. The first addresses a McNeil River State Game Sanctuary repeal of a delayed amendment. In 1991, the Legislature passed House Bill 306, Chapter 56 (SLA 1991), which created the McNeil River State Game Refuge and enlarged the McNeil River State Game Sanctuary, expanding protections and defining new management priorities. The legislation contained a "delayed amendment" where the bill provisions would not be effective until a future date when a fish ladder on the Paint River was constructed and certified operational. The commissioner of ADF&G certified the fish ladder as operational on January 1, 1993. The delayed amendment is contained in the sanctuary statutes (AS 16.20.160) and it appears to contain errors in the referenced legal land descriptions. Since the delayed amendment is now irrelevant, the best course of action is simply to delete the delayed amendment from the session law.

The second error occurs in the statutes creating the Palmer Hay Flats State Game Refuge (AS 16.20.032). Subsection (d) prohibits the state from acquiring private lands within the refuge by eminent domain but references an incorrect subsection (c) which addresses Matanuska-Susitna Borough lands and should have referenced subsection (a) which establishes the refuge boundary.

IX. Protecting Public Uses: While phrased slightly differently, the overarching statutory purposes of refuges (AS 16.20.020) and critical habitat areas (CHA) (AS 16.20.500) are to protect and preserve habitats and fish & wildlife populations. These directives provide ADF&G the authority to manage refuges and CHAs including by restricting or limiting certain uses that would otherwise impact habitats, or fish or wildlife populations. Other than this management direction, current statutes do not explicitly direct the ADF&G to allow or manage public uses. Although some individual refuge and CHA statutes have specific allowances for particular uses, there is no broad provisions allowing for public use.

The overall habitat-protection directives would remain unchanged in this bill; however, the statutory purpose would be expanded to allow, as appropriate, for the continued public uses of refuge resources as a primary purpose, provided they do not significantly impact habitats, or fish or wildlife populations. These uses include hunting, trapping, fishing, subsistence activities, wildlife viewing, and other public uses. The bill will authorize the ADF&G, Board of Game, and Board of Fish to adopt regulations, as appropriate, to better manage public access and uses, maintain compatible public uses, assure equitable public opportunities, and to address public safety by including the management of public access points and facilities, public uses, public recreational and other authorized facilities (such as state cabins) in ADF&G's management authorities.

This section of the bill will provide one uniform management guidance statement making management more consistent and better understood by the public.

The individual area purpose statements, and the sanctuary purpose statements, would remain unchanged to preserve the previously identified specific important uses of the areas.

X. DNR Management Fees: This bill provision exempts ADF&G from DNR land use management fees for managing sites within state refuge areas. The dual statutory authorities with ADF&G and DNR in these areas will remain unchanged except that DNR's land use management fees will not be levied upon ADF&G for their management actions including the development, construction, and management of public use and administrative facilities. It is inefficient for a state government agency to place fees on another state agency while conducting their statutorily mandated duties.

Attachment A
I. Boundary and Land Status Updates

Anchorage Coastal Wildlife Refuge, Potter Marsh (AS 16.20.031):

1. Municipality of Anchorage (MOA) parcel #01832221000 located along the access road to the Potter Marsh north boardwalk and contiguous with the refuge boundary, 2.1 acres; acquired with funds from federal Pittman-Robertson (PR) program, The Conservation Fund, ADF&G's Outdoor Heritage Foundation, and private donations.
2. MOA parcel #01832231000; a portion of the original Rabbit Creek Rifle Range parcel that was bisected and isolated by the construction of the New Seward Highway in the 1970s and external to refuge boundary, 1.0 acre.
3. MOA parcel #02009102000; located along the Old Seward Highway and within the external boundary of the refuge, 5.0 acres; donated by the MOA after a municipal foreclosure.
4. MOA parcel #02020114000 and 02020115000 ; located at the southern end of Potter Marsh (site of former commercial vehicle weigh station), owned by the Alaska Department of Transportation (DOT), and contiguous with the refuge boundary, 2.1 acres. The parcel is managed by ADF&G under agreement with DOT and is the site of recent refuge access improvements (restrooms, parking area, wildlife viewing boardwalk, etc). DOT would retain use of parcel for future transportation purposes.

Palmer Hay Flats State Game Refuge (AS 16.20.032):

1. Matanuska Susitna Borough (MSB) parcel #17N01E33B001 located along Wasilla Creek (aka Rabbit Slough) and within the external refuge boundary, 236 acres; acquired through the Great Land Trust with funds provided by the federal Pacific Coastal Salmon Recovery Fund/Alaska Sustainable Salmon Fund.
2. MSB parcels #17N01E32B003, 17N01E32B002, and 17N01E29C001 located along Wasilla Creek (aka Rabbit Slough) and within the external refuge boundary, 195.07 acre; acquired through the Great Land Trust with funds provided by the federal Pacific Coastal Salmon Recovery Fund/Alaska Sustainable Salmon Fund.
3. MSB parcels #6210B18L001, 6210B18L002, 6210B32L002, 6210B32L001, 6210B290000, 6210B190000, 6210B340000, and 17N01E26A001 located within the Old Matanuska Townsite and contiguous with the refuge boundary; 73.0 acres; MSB owned parcels classified as "Resource Management Lands due to high water table and inclusion within the Palmer Hay Flats Recreation Area Special Land Use District" or identified as "it will benefit the protection and enhancement of the game refuge." The MSB may consider donating these parcels to the state for inclusion in the refuge; addition to the refuge is contingent on this transfer.
4. MSB parcel #17N01E22C002 (eastern half – approximately 40 acres) and 17N01E22B018 (eastern half – approximately 20 acres) located within the external refuge boundary but

excluded from refuge jurisdiction within the DOT Glenn Highway Transportation Corridor. Parcels are now surplus to DOT needs. Former parcel acquired by donation from the MSB while the latter parcel was acquired by donation through The Conservation Fund and protected through deed restriction and U.S. Army Corp of Engineers mitigation requirements implemented during construction of Park-Glenn Highway interchange.

5. MSB parcel # 17N01E24D003 located northeast of the Old Matanuska Townsite and contiguous with the refuge boundary, 250.6 acres. This parcel is being donated by Coalaska Inc. as part of the U.S. Army Corp of Engineers approved Diamond Willow Wetlands Mitigation Bank. This refuge addition will be contingent on final acquisition.

Mendenhall Wetlands State Game Refuge (AS 16.20.034): City and Borough of Juneau parcel #4B1801070019 (i.e. Widgeon Ponds Subdivision Lot 2) located in the northeast portion of the refuge off Mendenhall Peninsula Road; 6.5 acres; acquired through the Southeast Alaska Land Trust utilizing wetland mitigation funds provided from the Juneau Airport Expansion.

Creamer's Field State Game Refuge (AS 16.20.039):

1. Fairbanks North Star Borough (FNSB) parcel #692752, 695007, 471704, 471712, and 702230 are contiguous with the western refuge boundary, 688.5 acres; acquired from University of Alaska and other private owners with funds from The Conservation Fund, ADF&G Pittman-Robertson funds, National Fish and Wildlife Foundation, and private donations.
2. FNSB parcel #0695017, 0613268, 0613258, 0701056, 199877 located southwest of the refuge adjoining the above parcels forming a contiguous block of land; 415.4 acres. These parcels are subject to ongoing acquisition negotiations with the University of Alaska and a private land owner. Acquisition funds are from The Conservation Fund, ADF&G Pittman-Robertson funds, National Fish and Wildlife Foundation, and private donations. This refuge addition will be contingent on final acquisition.
3. FNSB parcel #0246107 located along Farmers Loop Road and contiguous with the refuge boundary, 3.8 acres. Acquisition will be a donation from the Interior Land Trust and the parcel will provide an important refuge access site. This refuge addition will be contingent on final acquisition.

Port Heiden Critical Habitat Area (AS 16.20.555): Remove all statutory references to "not tide or submerged land". This area was intended to protect tidal and nearshore wetlands for the benefit of waterbirds including waterfowl, and other wildlife. This exclusion was placed primarily on sections of land containing no tidelands making it irrelevant; however, it was also placed (apparently erroneously) on two sections that do contain tidelands while it was not placed on most other sections of land that do contain tidelands.

Cinder River Critical Habitat Area (AS 16.20.560):

1. Remove all statutory references to "not tide or submerged land". This area was intended to protect tidal and nearshore wetlands for the benefit of waterbirds including waterfowl, and other wildlife. This exclusion was placed primarily on land Sections containing no tidelands making it irrelevant; however, it was also placed on several land Sections that do contain tidelands while it was not placed on most other land Sections that do contain tidelands.

Egegik Critical Habitat Area (AS 16.20.565): Remove single statutory references to "not tide or submerged land". This exclusion appears on a single land Section located entirely in uplands making it irrelevant.

Pilot Point Critical Habitat Area (AS 16.20.570): Remove all references to "protracted" as it is not necessary in these legal land descriptions.

Anchor River-Fritz Creek Critical Habitat Area (AS 16.20.605):

1. Kenai Peninsula Borough (KPB) parcel #17148015 – 17148023 (Anglers Haven Estates subdivision in entirety) located contiguous with the southwest corner of the Critical Habitat Area along the Anchor River; 50.16 acres; acquired with funds provided by the Exxon Valdez Oil Spill Trustee Council Restoration Plan.
2. KPB parcels #17103217 (portion north of North Fork Road) located along the North Fork Road and Anchor River, contiguous with the Critical Habitat Area and Anglers Haven Estates subdivision; approximately 30 acres; general state land classified in the DNR Kenai Peninsula Area Plan for habitat, harvest, public recreation/tourism.
3. KPB parcels #17107032, 17107086, and 17107085 located at the intersection of North Fork Road and Sterling Highway, contiguous with Anglers Haven Estates subdivision and encompassing a tributary to the Anchor River; 24.8 acres; acquired with funds from ADF&G's Pittman-Roberson program, Kachemak Moose Habitat Inc, and private donations.

Dude Creek Critical Habitat Area (AS 16.20.610): Two tracts of land along the Gustavus Forelands contiguous with the Critical Habitat Area; 1,439 acres; acquired with funds provided from a federal North American Wetlands Conservation Act grant, The Nature Conservancy, Ducks Unlimited, and private donations.

Attachment B
II. Boundary Adjustments

Cinder River Critical Habitat Area (AS 16.20.560): Add select land Sections to encompass the entirety of the Cinder River estuary/lagoon and tidal wetlands which are the habitats intended to be protected in this area.

Tugidak Island Critical Habitat Area Jurisdiction (AS 16.20.615 (a)): Expand CHA land management jurisdiction to include the tidelands and waters located above the level of mean lower-low water rather than above mean high tide line. This CHA protects habitats for one of Alaska's largest harbor seal haulouts used for resting and pupping with historic highs over 20,000 animals producing upwards of 4,500 pups. While the external boundary of the CHA would remain unchanged, this provision would enlarge the area of jurisdiction to include the important tidelands but would continue to exclude the submerged lands and marine waters below the mean lower-low tide line.

Anchor River-Fritz Creek Critical Habitat Area (AS 16.20.605): Approximately 140 acres of land contained within four contiguous parcels along the Anchor River are managed by the ADF&G for their fish and wildlife habitat values including riparian habitat critical for wintering moose and a world-renown steelhead trout fishery. There is also one 120.3-acre parcel containing valuable moose habitat also managed by the ADF&G located in the headwaters of the Anchor River.

These parcels were purchased through the Kachemak Heritage Land Trust using funds provided by ADF&G's Pittman-Robertson program, Kachemak Moose Habitat Inc, and private donations. While nearby, these parcels are not contiguous with the Anchor River-Fritz Creek Critical Habitat Area; however, several DNR general land parcels are contiguous with both the CHA and these ADF&G conservation parcels. Some of these DNR parcels are designated in the Kenai Area Plan as habitat, harvest, public use, public recreation, or resource management and some are proposed additions to the state parks system making them all logical additions to the CHA; however, these additions are not currently proposed in this bill. Discussion needs to occur with DNR to address the feasibility of pulling these conservation lands and DNR general lands into the CHA as a contiguous block.

Homer Airport CHA (AS 16.20.630): Expand the boundary to include conservation lands primarily on the south side of the Homer Airport which are currently owned by Kachemak Moose Habitat, Inc. who will donate those lands to the state. The expanded boundary will also include adjoining municipal lands (Kenai Peninsula Borough and City of Homer) provided a management agreement between ADF&G and the municipalities are approved by those entities.

State-owned lands containing important wetlands and contiguous with this CHA will also be incorporated into the CHA by the boundary expansion. Since these parcels are held by either Alaska DOT&PF/Division of Aviation or by Alaska DNR (with a management right issued to the Division of Aviation), aviation and airport operations will be the priority use, under law, similar to how airport operations are already protected on airport lands contained within the existing CHA. Adding these lands will improve habitat connectivity among the parcels that Kachemak Moose Habitat, Inc. has purchased and with the existing CHA.

Lastly, the name of this area will be restored to its original and appropriate name: Beluga Wetlands Critical Habitat Area (or Beluga Wetlands State Wildlife Refuge).