

**SENATE CS FOR CS FOR HOUSE BILL NO. 109(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/6/99

Referred: Rules

Sponsor(s): REPRESENTATIVES OGAN, Dyson, Green, Kohring, Cowdery, Austerman, Harris, Grussendorf, James, Porter, Coghill, Whitaker, Mulder, Williams, Sanders, Kookesh, Rokeberg

SENATORS Taylor, Green, Leman, Mackie, Pete Kelly, Pearce

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to management of fish and game in Glacier Bay National Park  
2 and Preserve and navigable waters."

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

4 \* **Section 1. FINDINGS.** (a) The legislature finds that

5 (1) sustained yield management of fish and game in accordance with the  
6 mandate of the Constitution of the State of Alaska assures the maintenance of healthy  
7 populations of fish and game and provides the opportunity for a wide range of uses of the fish  
8 and game resource;

9 (2) the State of Alaska recognizes the value of Glacier Bay National Park and  
10 Preserve, one of our nation's crown jewels;

11 (3) the State of Alaska has demonstrated competence by state managers in  
12 assuring healthy, viable populations of fish and game within the park and preserve, with no  
13 deleterious effects on the resources or the aesthetic appeal of the area, and the State of Alaska  
14 desires to continue to do so;

(4) current uses of the park and preserve, including limited and controlled commercial and subsistence uses, constitute integral parts of the park and preserve and reflect precisely the purposes for the executive withdrawal that created the original Glacier Bay National Monument.

(b) The legislature further finds that

(1) the State of Alaska is the only entity responsible for and capable of assuring the sustained yield management of fish and game throughout the entire state;

(2) the multitude of federal entities that have authority to provide for the management of fish and game in Alaska have jurisdiction over only a patchwork of land and water in Alaska and operate under a variety of legal mandates regarding fish and game;

(3) only the State of Alaska bears the public trust responsibility of providing a single, comprehensive scheme of sustained yield management of fish and game to compensate for diverse management objectives pursued by the many federal agencies;

(4) the State of Alaska has consistently demonstrated a greater sensitivity than the federal agencies to sound conservation principles, which, for example, resulted in a dramatic recovery of Alaska's fisheries following statehood in 1959 after a lengthy period of misguided federal management;

(5) the State of Alaska is committed to continuing its public trust responsibility for the navigable waters within Glacier Bay National Park and Preserve;

(6) it is not in the best interest of the State of Alaska to acquiesce in and assist in federal takeover of fisheries management in the park and preserve in the face of pending litigation challenging federal preemption of state management.

\* **Sec. 2.** AS 16.20.010 is amended to read:

**Sec. 16.20.010. Legislative recognition.** The legislature recognizes that

(1) the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control;

(2) the state has not assented to federal control of fish and game in (A) those areas **that** [WHICH] were set apart as National Bird and Wildlife Refuges while the state was a United States territory; **and**

**(B) Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve;**

(3) special recognition of the value to the state and the nation of areas of unspoiled habitat and the game characteristic to it will be demonstrated by designating as state game refuges those federal lands that [WHICH] were National Bird and Wildlife Refuges or Ranges at the time that Alaska achieved statehood.

\* **Sec. 3.** AS 16.20.010 is amended by adding a new subsection to read:

(b) In recognition of the fact that the state has not assented to federal control of fish and game in Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve, that the power to control the management of fish and game within the boundaries of the state is an incident of state sovereignty, and that the federal government cannot commandeer the lawmaking processes of the states to compel the state to enact and enforce a federal regulatory program, an agency, employee, or agent of the state may not expend funds to adopt or enforce the implementation of the federal regulatory program or a part of the program for control of fish and game in the park and preserve or the navigable waters within or adjoining the park and preserve that is in conflict with a state statute or regulation regarding management of fish or game within the park or preserve. This subsection does not prohibit an agency, employee, or agent of the state from

(1) taking action necessary to protect life or property;

(2) commenting on proposed federal statutes or regulations;

(3) collecting data relating to claims of economic harm arising from the closure of the park and preserve to commercial fishing; or

(4) participating in or cooperating with a federal program established under 16 U.S.C. 703 - 712 (Migratory Bird Treaty Act); 16 U.S.C. 773 - 773k (Northern Pacific Halibut Act of 1982); 16 U.S.C. 1361 - 1421h (Marine Mammal Protection Act); 16 U.S.C. 1531 - 1544 (Endangered Species Act); 16 U.S.C. 1801 - 1883 (Magnuson-Stevens Fishery Conservation and Management Act); 16 U.S.C. 3631 - 3644 (Pacific Salmon Treaty Act of 1985).

\* **Sec. 4.** AS 38.05 is amended by adding a new section to read:

**Sec. 38.05.126. Navigable and public water.** (a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.

(b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.

(c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

\* **Sec. 5.** AS 38.05.128(a) is amended to read:

(a) A person may not obstruct or interfere with the free passage or use by a person [MEMBER] of [THE PUBLIC ON] any navigable water [AS DEFINED IN AS 38.05.965] unless the obstruction or interference is

- (1) authorized by a federal agency and a [OR] state agency;
- (2) authorized under a federal or state law or permit;
- (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
- (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
- (5) authorized by the commissioner after reasonable public notice.

\* **Sec. 6.** AS 38.05.128 is amended by adding new subsections to read:

(e) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.

(f) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided

- (1) entry is made without injury or damage to the land;
- (2) entry is made in the least obtrusive manner possible;
- (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and

- 1 (4) the navigable water is reentered immediately below the obstacle or
- 2 obstruction at the nearest point where it is safe to do so.