

SENATE BILL NO. 262

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY SENATORS MILLER, Sharp, Pearce, Halford, Green, Frank

Introduced: 2/2/96

Referred: RES, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to management of game populations for maximum sustained yield
2 for human harvest and providing for the replacement of areas closed to
3 consumptive uses of game; relating to management of fish and game areas; and
4 amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil Procedure."

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

6 * **Section 1.** AS 16.05 is amended by adding a new section to read:

7 Sec. 16.05.005. MANAGEMENT OF GAME. (a) Notwithstanding any other
8 law to the contrary, game populations shall be managed solely on a biological basis
9 for maximum sustained yield by human harvest. Consumptive use of game is the
10 highest and best use of game. This section does not apply on land designated as a
11 park or a state game sanctuary where consumptive use of game is prohibited.

12 (b) If the department, the Board of Game, or other agency of the state, closes
13 an area to the taking of a game species for consumptive use for subsistence or sport
14 uses, or closes an area to the taking of a game species for consumptive use by a

1 method, manner, or means that was permitted in the area before the closure, the Board
2 of Game at its next regularly scheduled meeting after the closure shall open a new area
3 or areas where the consumptive uses that were prohibited can occur and where healthy
4 populations of the affected game species are present. The new area or areas opened
5 by the board shall be at least five times larger than the area that was closed. This
6 subsection does not apply to a temporary closure based upon a biological emergency.

7 (c) A person may bring a civil action in a court of competent jurisdiction
8 against a state agency or a public official for an injunction to compel compliance with
9 this section or to compel remedial action to correct a violation of this section. A
10 public official is not immune from suit under this section.

11 (d) A person who brings an action to enforce this section and who prevails in
12 the action is entitled to recover the full, true, and actual costs of litigation, including
13 100 percent of actual attorney fees.

14 (e) In this section,

15 (1) "harvestable surplus" means the estimated number of animals that
16 is equal to the number of offspring born in a game population during a year less the
17 number of animals in the population that die during the year from all causes other than
18 predation or human harvest;

19 (2) "high level of human harvest" means the harvest of one-third or
20 more of the harvestable surplus of a game population by humans;

21 (3) "maximum sustained yield" means the achievement and
22 maintenance in perpetuity of a high level of human harvest on an annual basis of
23 game, other than mammalian predators.

24 * **Sec. 2.** AS 16.05 is amended by adding a new section to read:

25 Sec. 16.05.145. PUBLIC TRUST FOR SPECIAL FISH AND GAME
26 MANAGEMENT AREAS. (a) The state has created a public trust by the use of
27 revenue generated from taxes, license fees, and other fees paid by sportsmen, by the
28 acceptance and use of funds received from federal aid in sport fish and wildlife
29 restoration programs, and by the establishment of state game refuges, range areas,
30 special management areas, critical habitat areas, and similar areas established by law.

31 (b) This public trust would be breached by

1 (1) restricting public access to state game refuges, range areas,
2 sanctuaries, special management areas, critical habitat areas, and similar areas
3 established by law;

4 (2) restricting sport fishing, hunting, and trapping activities and
5 opportunities on state game refuges, range areas, special management areas, critical
6 habitat areas, and similar areas established by law in a manner that is inconsistent with
7 maximum sustained yield of fish and game; or

8 (3) utilization of the revenue generated from taxes, license fees, and
9 other fees paid by sportsmen or funds received from federal aid in sport fish and
10 wildlife restoration programs

11 (A) in an area where consumptive use of fish and game is not
12 permitted;

13 (B) in an area, or in regard to a fish stock or game population,
14 that is subject to preferences among consumptive uses that are not valid under
15 the state constitution or state law; or

16 (C) for management of nongame species.

17 (c) If the state breaches this public trust, the state shall either acquire an area
18 of land or designate an area of state land equal to five times the acreage of land on
19 which the public trust was breached in order to provide a location in the same
20 geographic area where unrestricted sport fishing, hunting, or trapping activities can
21 occur.

22 (d) A person may bring a civil action in a court of competent jurisdiction
23 against a state agency or a public official for an injunction to compel compliance with
24 this section or to compel remedial action to correct a violation of this section. A
25 public official is not immune from suit under this section.

26 (e) A person who brings an action to enforce this section and who prevails in
27 the action is entitled to recover the full, true, and actual costs of litigation, including
28 100 percent of actual attorney fees.

29 (f) In this section,

30 (1) "harvestable surplus" means the estimated number of animals that
31 is equal to the number of offspring born in a population during a year less the number

1 of animals in the population that die during the year from all causes other than
2 predation or human harvest;

3 (2) "high level of human harvest" means the harvest of one-third or
4 more of the harvestable surplus of a fish stock or game population by humans;

5 (3) "maximum sustained yield" means the achievement and
6 maintenance in perpetuity of a high level of human harvest on an annual basis of game
7 other than mammalian predators or of fish.

8 * **Sec. 3.** AS 16.20.020 is amended to read:

9 Sec. 16.20.020. PURPOSE. The purpose of AS 16.20.010 - 16.20.080 is to
10 **conserve, maintain, and develop habitat and game populations** [PROTECT AND
11 PRESERVE THE NATURAL HABITAT AND GAME POPULATION] in certain
12 designated areas of the state **and to guarantee access to and continued public sport**
13 **fishing, hunting, and trapping activities and opportunities in these areas,**
14 **consistent with maximum sustained yield.**

15 * **Sec. 4.** AS 16.20.075 is amended to read:

16 Sec. 16.20.075. REGULATIONS. The board shall, under AS 16.05, adopt
17 regulations

18 (1) governing the taking of game on state game refuges it considers
19 advisable for conservation and protection purposes;

20 (2) **guaranteeing access to and continued public sport fishing,**
21 **hunting, and trapping activities and opportunities on state game refuges,**
22 **consistent with maximum sustained yield.**

23 * **Sec. 5.** AS 16.20 is amended by adding a new section to article 4 to read:

24 Sec. 16.20.295. PURPOSE. In addition to the purposes stated in AS 16.20.300
25 - 16.20.360, state range areas are created to guarantee access to and continued public
26 sport fishing, hunting, and trapping activities and opportunities in these areas,
27 consistent with maximum sustained yield.

28 * **Sec. 6.** AS 16.20.500 is amended to read:

29 Sec. 16.20.500. PURPOSE. The purpose of AS 16.20.500 - 16.20.690 is to
30 protect and preserve habitat areas especially crucial to the perpetuation of fish and
31 wildlife, and to restrict all other uses not compatible with that primary purpose **and**

1 to guarantee access to and continued public sport fishing, hunting, and trapping
2 activities and opportunities in critical habitat areas, consistent with maximum
3 sustained yield.

4 * Sec. 7. AS 16.20.510 is amended to read:

5 Sec. 16.20.510. REGULATIONS. The Board of Fisheries and the Board of
6 Game, where appropriate, shall adopt regulations they consider advisable for

7 (1) conservation and protection purposes governing the taking of fish
8 and game in state fish and game critical habitat areas;

9 (2) guaranteeing access to and continued public sport fishing,
10 hunting, and trapping activities and opportunities in fish and game critical habitat
11 areas, consistent with maximum sustained yield.

12 * Sec. 8. AS 16.20 is amended by adding a new section to read:

13 ARTICLE 6. GENERAL PROVISIONS.

14 Sec. 16.20.990. DEFINITION. In this chapter, "maximum sustained yield" has
15 the meaning given in AS 16.05.145.

16 * Sec. 9. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by sec.
17 2 of this Act, have the effect of amending Rules 79(b) and 82(b)(2), Alaska Rules of Civil
18 Procedure, by providing that a person who prevails in an action under AS 16.05.005(c) or
19 16.05.145(d) is entitled to recover the full, true, and actual costs of bringing and prosecuting
20 the action, including 100 percent of actual attorney fees incurred to bring and prosecute the
21 action.

22 * Sec. 10. AS 16.05.005(d), added by sec. 1 of this Act, and AS 16.05.145(e), added by
23 sec. 2 of this Act, take effect only if sec. 9 of this Act receives the two-thirds majority vote
24 of each house required by art. IV, sec. 15, Constitution of the State of Alaska.