

**CS FOR SENATE BILL NO. 262(RES)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 3/12/96

Referred: Judiciary

Sponsor(s): SENATORS MILLER, Sharp, Pearce, Halford, Green, Frank, Taylor

**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           In areas where human harvest has been found to be an important use of game, game  
10 populations in those areas shall be managed for maximum sustained yield by human  
11 harvest. Consumptive use of game is the highest and best use of game. This section  
12 does not apply on land designated as a park or a state game sanctuary where  
13 consumptive use of game is prohibited.

14           (b) If the department, the Board of Game, or other agency of the state, closes

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

9 (c) A person may bring a civil action in a court of competent jurisdiction  
10 against a state agency or a public official, other than a member of the Board of Game,  
11 for an injunction to compel compliance with this section or to compel remedial action  
12 to correct a violation of this section. A public official, other than a member of the  
13 Board of Game, is not immune from suit under this section.

14 (d) A person who brings an action to enforce this section and who prevails in  
15 the action is entitled to recover the full, true, and actual costs of litigation, including  
16 100 percent of actual attorney fees.

17 (e) In this section,

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

22 (2) "highest levels of human harvest" means the harvest of greater than  
23 one-third or more of the harvestable surplus of a game population by humans;

24 (3) "maximum sustained yield" means the achievement and  
25 maintenance in perpetuity of the highest levels of human harvest on an annual basis  
26 of game, other than mammalian predators.

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

28 Sec. 16.05.145. PUBLIC TRUST FOR SPECIAL FISH AND GAME  
29 MANAGEMENT AREAS. (a) The state has created a public trust by the use of  
30 revenue generated from taxes, license fees, and other fees paid by sportsmen, by the  
31 acceptance and use of funds received from federal aid in sport fish and wildlife

1 restoration programs, and by the establishment of state game refuges, range areas,  
2 special management areas, critical habitat areas, and similar areas established by law.

3 (b) This public trust would be breached by

4 (1) restricting public access to state game refuges, range areas,  
5 sanctuaries, special management areas, critical habitat areas, and similar areas  
6 established by law, except when the restriction on access is necessary solely for the  
7 purpose of protecting habitat from damage due to the method of access;

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

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

15 (A) in an area where consumptive use of fish and game is not  
16 permitted; or

17 (B) for management of nongame species.

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

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

3 (2) "highest levels of human harvest" means the harvest of greater than  
4 one-third or more of the harvestable surplus of a fish stock or game population by  
5 humans;

6 (3) "maximum sustained yield" means the achievement and  
7 maintenance in perpetuity of the highest levels of human harvest on an annual basis  
8 of game, other than mammalian predators, or of fish.

9 \* **Sec. 3.** AS 16.20.020 is amended to read:

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

16 \* **Sec. 4.** AS 16.20.075 is amended to read:

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

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

21 (2) **guaranteeing access to and for continued consumptive uses.**

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

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

27 \* **Sec. 6.** AS 16.20.500 is amended to read:

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

1        activities and opportunities in critical habitat areas, consistent with maximum  
2        sustained yield.

3        \* **Sec. 7.** AS 16.20.510 is amended to read:

4                Sec. 16.20.510. REGULATIONS. The Board of Fisheries and the Board of  
5        Game, where appropriate, shall adopt regulations they consider advisable for  
6                (1) conservation and protection purposes governing the taking of fish  
7        and game in state fish and game critical habitat areas;

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

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

12                                ARTICLE 6. GENERAL PROVISIONS.

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

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

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