

2d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 178

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES FATE, Coghill, Dyson

Introduced: 1/18/02

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the powers and duties of the commissioner of fish and game, the**
2 **Department of Fish and Game, and the Board of Game, to taking and use of certain**
3 **game animals, and to consideration of the budget of the Department of Fish and Game**
4 **by the legislature; and providing for an effective date."**

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

6 *** Section 1.** AS 16.05.020 is amended to read:

7 **Sec. 16.05.020. Functions of commissioner.** The commissioner shall

8 (1) supervise and control the department, and may appoint and employ
9 division heads [, ENFORCEMENT AGENTS,] and the technical, clerical, and other
10 assistants necessary for the general administration of the department;

11 (2) manage, protect, maintain, improve, and extend the fish, game, and
12 aquatic plant resources of the state

13 **(A)** in the interest of the economy and general well-being of the
14 **state; and**

1 **(B) to achieve an abundance of ungulate wildlife resources**
 2 **sufficient to provide the maximum sustained yield of those resources;**

3 (3) have necessary power to accomplish the foregoing including, but
 4 not limited to, the power to delegate authority to subordinate officers and employees
 5 of the department.

6 * **Sec. 2.** AS 16.05.050(a) is repealed and reenacted to read:

7 (a) The commissioner has, but not by way of limitation, the following powers
 8 and duties:

9 (1) to cooperate with and assist the Board of Fisheries, the Board of
 10 Game, and the advisory committees established under AS 16.05.260 in allocating the
 11 fish, game, and aquatic plant resources of the state to achieve abundance for maximum
 12 sustained yield of those resources;

13 (2) through the appropriate state agency and under the provisions of
 14 AS 36.30 (State Procurement Code), to acquire by gift, purchase, lease, or other lawful
 15 means land, buildings, water, rights-of-way, or other necessary or proper real or
 16 personal property when the acquisition is in the interest of furthering an objective or
 17 purpose of the department and the state;

18 (3) under the provisions of AS 36.30, to design and construct
 19 hatcheries, pipelines, rearing ponds, fishways, and other projects beneficial for the fish
 20 and game resources of the state;

21 (4) to accept money from any person under conditions requiring the
 22 use of the money for specific purposes in the furtherance of the protection,
 23 rehabilitation, propagation, preservation, or investigation of the fish and game
 24 resources of the state or in settlement of claims for damages to fish or game resources;

25 (5) to collect, classify, and disseminate statistics, data, and information
 26 that, according to the commissioner's discretion, will tend to promote the purposes of
 27 this title except AS 16.51 and AS 16.52;

28 (6) to take, capture, propagate, transport, buy, sell, or exchange fish,
 29 game, or eggs, or to authorize a person as agent of the commissioner to take, capture,
 30 propagate, transport, buy, sell, or exchange fish, game, or eggs, for propagating,
 31 scientific, public safety, or stocking purposes;

1 (7) under the provisions of AS 36.30, to provide public facilities where
2 necessary or proper to facilitate the taking of fish or game;

3 (8) to exercise administrative, budgeting, and fiscal powers;

4 (9) to assign the highest priority to the allocation of the fiscal,
5 personnel, and other resources of the division of game for implementation of the plans,
6 programs, and regulations adopted by the Board of Game under AS 16.05.255(e) - (g)
7 in a timely and effective manner;

8 (10) under the provisions of AS 36.30, to construct, operate, supervise,
9 and maintain vessels used by the department;

10 (11) to authorize the holder of an interim-use permit under AS 16.43 to
11 engage on an experimental basis in commercial taking of a fishery resource with a
12 vessel, gear, and techniques not presently qualifying for licensing under this chapter in
13 conformity with standards established by the Alaska Commercial Fisheries Entry
14 Commission;

15 (12) not later than January 31 of each year, to provide to the
16 commissioner of revenue the names of those fish and shellfish species that the
17 commissioner of fish and game designates as developing commercial fish species for
18 that calendar year; a fish or shellfish species is a developing commercial fish species
19 if, within a specified geographical region,

20 (A) the optimum yield from the harvest of the species has not
21 been reached;

22 (B) a substantial portion of the allowable harvest of the species
23 has been allocated to fishing vessels of a foreign nation; or

24 (C) a commercial harvest of the fish species has recently
25 developed;

26 (13) to initiate or conduct research necessary or advisable to carry out
27 the purposes of this title except AS 16.51 and AS 16.52;

28 (14) to implement an on-board observer program authorized by the
29 Board of Fisheries under AS 16.05.251(a)(13); implementation

30 (A) must be as unintrusive to vessel operations as practicable;

31 and

1 (B) must make scheduling and scope of an observer's activities
2 as predictable as practicable;

3 (15) to sell fish caught during commercial fisheries test fishing
4 operations;

5 (16) to establish and charge fees equal to the cost of services provided
6 by the department, including provision of public shooting ranges, broodstock and eggs
7 for private nonprofit hatcheries, department publications, and other direct services, and
8 reasonable fees for the use of state facilities managed by the department; fees
9 established under this paragraph for tours of hatchery facilities, commercial use of
10 sport fishing access sites, and operation of state hatchery facilities by private
11 aquaculture associations are not subject to the cost limit under AS 37.10.050(a);

12 (17) to permit and regulate aquatic farming in the state in a manner
13 that ensures the protection of the state's fish and game resources and improves the
14 economy, health, and well-being of the citizens of the state;

15 (18) to operate state housing and facilities for employees, contractors,
16 and others in support of the department's responsibilities and to charge rent that is
17 consistent with applicable collective bargaining agreements or, if a collective
18 bargaining agreement is not applicable, competitive with market conditions; rent
19 received from tenants shall be deposited in the general fund;

20 (19) to petition the Alaska Commercial Fisheries Entry Commission,
21 unless the Board of Fisheries disapproves the petition under AS 16.05.251(g), to
22 establish a moratorium on new entrants into commercial fisheries

23 (A) that have experienced recent increases in fishing effort that
24 are beyond a low, sporadic level of effort;

25 (B) that have achieved a level of harvest that may be
26 approaching or exceeding the maximum sustainable level for the fishery; and

27 (C) for which there is insufficient biological and resource
28 management information necessary to promote the conservation and sustained
29 yield management of the fishery.

30 * **Sec. 3.** AS 16.05.080 is amended to read:

31 **Sec. 16.05.080. Limitation of power.** (a) Nothing in this chapter authorizes

1 the department or a board to change the amount of fees or licenses or to expend,
 2 transfer, or reallocate funds appropriated to the department unless the
 3 expenditure, transfer, or reallocation is consistent with legislative intent
 4 underlying the appropriation.

5 (b) Before entering into a cooperative agreement with any entity for the
 6 management of fish or game resources in the state, the department shall provide
 7 the public with notice of the proposed agreement and a reasonable opportunity to
 8 comment on the agreement. The department shall provide a copy of the
 9 proposed agreement to the presiding officers of each house of the legislature.

10 (c) The department may not expend more than 10 percent of the money
 11 appropriated to the department from any source for administration and
 12 administrative services expenses of the department and its agencies in a fiscal
 13 year.

14 * Sec. 4. AS 16.05.130(d) is amended to read:

15 (d) Revenue from the sale of general hunting, trapping, and fishing licenses,
 16 [AND] tags, and permits and from application fees for tags and permits together
 17 with the federal matching funds from Pittman - Robertson, Dingell - Johnson/Wallop -
 18 Breaux programs shall be allocated by the department to programs that [INTENDED
 19 TO] directly benefit license purchasers of general hunting, trapping, and fishing
 20 licenses. The department shall prepare an annual report by project of expenditures
 21 from the fish and game fund that describes the anticipated results and benefits of
 22 each project in regard to fish stock and game population abundance goals and
 23 harvest goals set by the department and the boards and notify the legislature that
 24 the report is available.

25 * Sec. 5. AS 16.05.255(a) is amended to read:

26 (a) The Board of Game, as it considers necessary to manage, protect,
 27 maintain, improve, and extend the game resources of the state to achieve
 28 abundance for maximum sustained yield of game and for other purposes, may
 29 adopt regulations [IT CONSIDERS ADVISABLE] in accordance with AS 44.62
 30 (Administrative Procedure Act) for

31 (1) setting apart game reserve areas, refuges, and sanctuaries in the

1 water or on the land of the state over which it has jurisdiction, subject to the approval
2 of the legislature;

3 (2) establishing open and closed seasons and areas for the taking of
4 game;

5 (3) establishing the means and methods employed in the pursuit,
6 capture, taking, and transport of game, including regulations, consistent with resource
7 conservation and development goals, establishing means and methods that may be
8 employed by persons with physical disabilities;

9 (4) setting quotas, bag limits, harvest levels, and sex, age, and size
10 limitations on the taking of game;

11 (5) classifying game as game birds, song birds, big game animals, fur
12 bearing animals, predators, or other categories;

13 (6) methods, means, and harvest levels necessary to control predation
14 and competition among game in the state;

15 (7) watershed and habitat improvement, and management,
16 conservation, protection, use, disposal, propagation, and stocking of game;

17 (8) prohibiting the live capture, possession, transport, or release of
18 native or exotic game or their eggs;

19 (9) establishing the times and dates during which the issuance of game
20 licenses, permits, and registrations and the transfer of permits and registrations
21 between registration areas and game management units or subunits is allowed;

22 (10) regulating [SPORT] hunting [AND SUBSISTENCE HUNTING
23 AS NEEDED FOR THE CONSERVATION, DEVELOPMENT, AND
24 UTILIZATION OF GAME];

25 (11) taking game to ensure public safety.

26 * **Sec. 6.** AS 16.05.255(e) is amended to read:

27 (e) The Board of Game shall adopt regulations to provide for intensive
28 management programs to restore the abundance or productivity of identified big game
29 prey populations as necessary to achieve human consumptive use goals of the board in
30 an area where the board **has limited the harvest of the population to persons who**
31 **receive a drawing permit and** has determined that

- 1 (1) consumptive use of the big game prey population is a preferred use;
- 2 (2) depletion of the big game prey population or reduction of the
- 3 productivity of the big game prey population has occurred and may result in a
- 4 significant reduction in the allowable human harvest of the population; and
- 5 (3) enhancement of abundance or productivity of the big game prey
- 6 population is feasibly achievable utilizing recognized and prudent active management
- 7 techniques.

8 * **Sec. 7.** AS 16.05.255(f) is amended to read:

9 (f) The Board of Game may not significantly reduce the taking of an identified

10 big game prey population by adopting regulations relating to restrictions on harvest or

11 access to the population, or to management of the population by customary

12 adjustments in seasons, bag limits, open and closed areas, methods and means, or by

13 other customary means authorized under (a) of this section, unless the board has

14 **determined that the human harvest of the population is the primary factor**

15 **contributing to the depletion of the population and has** adopted regulations [, OR

16 HAS SCHEDULED FOR ADOPTION AT THE NEXT REGULARLY

17 SCHEDULED MEETING OF THE BOARD REGULATIONS,] that provide for

18 intensive management to increase the take of the population for human harvest

19 consistent with (e) of this section. This subsection does not apply if the board

20 (1) determines that intensive management would be

- 21 (A) ineffective, based on scientific information;
- 22 (B) inappropriate due to land ownership patterns; or
- 23 (C) against the best interest of subsistence uses; or

24 (2) declares that a biological emergency exists and takes immediate

25 action to protect or maintain the big game prey population in conjunction with the

26 scheduling for adoption of those regulations that are necessary to implement (e) of this

27 section.

28 * **Sec. 8.** AS 16.05.255(g) is amended to read:

29 (g) The Board of Game shall establish population **goals based on estimated**

30 **historic high population levels consistent with the estimated maximum carrying**

31 **capacity of the habitat of the population, high** [AND] harvest goals **to provide for**

1 **high levels of human harvest, and regulations, including seasons and methods and**
 2 **means** for intensive management of identified big game prey populations to achieve a
 3 high level of human harvest. **The board shall annually review the effectiveness of**
 4 **intensive management programs established under (e) of this section to**
 5 **determine whether planned progress toward established goals has been achieved.**
 6 **The board shall adjust the intensive management programs as necessary to**
 7 **achieve interim management goals.**

8 * **Sec. 9.** AS 16.05.255(j)(2) is amended to read:

9 (2) "high level of human harvest" means the **harvest of at least 15**
 10 **percent but not more than 33 percent, based on human demand** [ALLOCATION
 11 OF A SUFFICIENT PORTION] of the harvestable surplus of **an identified** [A] **big**
 12 game **prey** population **over a five-year period** [TO ACHIEVE A HIGH
 13 PROBABILITY OF SUCCESS FOR HUMAN HARVEST OF THE GAME
 14 POPULATION BASED ON BIOLOGICAL CAPABILITIES OF THE
 15 POPULATION AND CONSIDERING HUNTER DEMAND];

16 * **Sec. 10.** AS 16.05.940 is amended by adding a new paragraph to read:

17 (37) "maximum sustained yield" means the highest number of a
 18 population that can be removed for human use without reducing the ability of the
 19 population to replenish its numbers.

20 * **Sec. 11.** AS 16.30 is amended by adding a new section to read:

21 **Article 2. Nuisance and Other Game.**

22 **Sec. 16.30.050. Taking and use of certain game animals.** The
 23 commissioner of fish and game or the commissioner of public safety or a
 24 representative of either commissioner may

25 (1) take or may authorize another person to take a game animal if the
 26 animal poses a danger or a nuisance to a person, property, or the public and the taking
 27 of the animal is consistent with sound game management principles; or

28 (2) authorize a person to use a game animal that is accidentally killed.

29 * **Sec. 12.** AS 16.43.210(c) is amended to read:

30 (c) To the extent that the commissioner of fish and game authorizes it under
 31 **AS 16.05.050(a)(11)** [AS 16.05.050(a)(10)], the commission may grant an interim-use

1 permit to a person to engage in the commercial taking from a fishery on an
2 experimental basis.

3 * **Sec. 13.** AS 43.75.290(3) is amended to read:

4 (3) "developing commercial fish species" means those species of fish
5 and shellfish annually designated by the commissioner of fish and game under
6 AS 16.05.050(a)(12) [AS 16.05.050(a)(11)];

7 * **Sec. 14.** AS 44.39 is amended by adding a new section to read:

8 **Sec. 44.39.060. Budget.** In reviewing the proposed annual operating budget
9 of the department and in making appropriations for the operations of the department,
10 the legislature shall consider increases and decreases in the abundance and the human
11 harvest of the fish and game resources of the state.

12 * **Sec. 15.** This Act takes effect July 1, 2002.