

**SENATE BILL NO. 39**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY SENATOR OGAN**

**Introduced: 1/22/03**

**Referred: State Affairs, Resources**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to management of fish and game in and on the navigable waters and**  
2 **submerged lands in Alaska."**

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 FINDINGS. (a) The legislature finds that

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

11 (2) the State of Alaska has demonstrated the competence of state managers in  
12 assuring healthy, viable populations of fish and game in and on the navigable waters and  
13 submerged lands of the state, and the State of Alaska desires to continue to do so.

14 (b) The legislature further finds that

1 (1) the State of Alaska is the only entity responsible for and capable of  
 2 assuring the sustained yield management of fish and game throughout the entire state,  
 3 including the navigable waters and submerged lands;

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

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

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

14 (5) the State of Alaska is committed to continuing its public trust  
 15 responsibility for fish and game in and on the navigable waters and submerged lands of the  
 16 state.

17 \* **Sec. 2.** AS 16.20.010(a) is amended to read:

18 (a) The legislature recognizes that

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

21 (2) the state has not assented to federal control of fish and game [IN]

22 (A) in those areas that were set apart as National Bird and  
 23 Wildlife Refuges while the state was a United States territory; [AND]

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

26 **(C) in and on the navigable waters and submerged lands in**  
 27 **the state;**

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

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

2 (c) In recognition of the fact that the state has not assented to federal control  
3 of fish and game in or on the navigable waters and submerged lands in the state, that  
4 the power to control the management of fish and game within the boundaries of the  
5 state is an incident of state sovereignty, and that the federal government cannot  
6 commandeer the lawmaking processes of the states to compel the state to enact and  
7 enforce a federal regulatory program, an agency, employee, or agent of the state may  
8 not expend funds to adopt or enforce the implementation of a federal regulatory  
9 program, or a part of a program, for control of fish and game in or on the navigable  
10 waters and submerged lands in the state that is in conflict with a state statute or  
11 regulation regarding management of fish or game. This subsection does not prohibit  
12 an agency, employee, or agent of the state from

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

14 (2) commenting on proposed federal statutes or regulations;

15 (3) participating in or cooperating with a federal program established  
16 under 16 U.S.C. 703 - 712 (Migratory Bird Treaty Act); 16 U.S.C. 773 - 773k  
17 (Northern Pacific Halibut Act of 1982); 16 U.S.C. 1361 - 1421h (Marine Mammal  
18 Protection Act); or 16 U.S.C. 1531 - 1544 (Endangered Species Act); 16 U.S.C. 1801 -  
19 1883 (Magnuson-Stevens Fishery Conservation and Management Act); or 16 U.S.C.  
20 3631 - 3644 (Pacific Salmon Treaty Act of 1985); or

21 (4) participating in or cooperating with a joint state-federal program  
22 relating to the identification of navigable waters in the state.