

1 IN THE HOUSE

BY STATE AFFAIRS COMMITTEE

2 SECOND COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 34

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act pertaining to the duties and powers
7 of the Alaska Department of Fish and Game;
8 prescribing the duties and powers of the
9 Commissioner and the Board; assenting to
10 provisions of the Federal Aid acts; providing
11 for enforcement authority; repealing Chapter
12 63, SLA 1957 and other inconsistent acts;
13 and providing for an effective date."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 Section 1. TITLE OF THE ACT. This Act shall be known and
16 may be cited as the "Fish and Game Code" of the State of Alaska.

17 Sec. 2. DEFINITIONS. For the purpose of this Act:

18 (1) "State" means the State of Alaska.

19 (2) "Department" means the Alaska Department of Fish
20 and Game.

21 (3) "Board" means the Board of Fish and Game.

22 (4) "Commissioner" means the Commissioner of the Depart-
23 ment of Fish and Game.

24 (5) "Person" means and includes, among others, any
25 individual, association, corporation, government agency, or group
26 of two or more persons, as defined, acting together to forward a
27 common purpose.

28 (6) "Fish" means all species of marine, anadromous, and
29 fresh water fish, amphibians, shellfish, and other invertebrates

1 found in the State of Alaska.

2 (7) "Game" means all species of birds and mammals,
3 including feral domestic animals, found or that may be introduced
4 in Alaska, except domestic birds and mammals.

5 Sec. 3. The Department of Fish and Game shall have super-
6 vision and control over the fish and game of the State and take
7 such actions as shall protect, maintain, improve and extend the
8 fish and game resources of the State. To this end the Department
9 may:

10 (1) Engage in biological research, watershed and habitat
11 improvement, fish and game management, protection, propagation
12 and stocking.

13 (2) Assist the U. S. Fish and Wildlife Service in the
14 enforcement of Federal laws and regulations pertaining to fish and
15 game.

16 (3) Acquire through cooperation with the Alaska Land
17 Board, or its successor, by gift, purchase, or lease, and by other
18 lawful means at its disposal, lands, buildings, water, rights-of-
19 way, or other necessary property for hatchery sites, eyeing
20 stations, rearing ponds, public sport fishing areas, docks, re-
21 search stations, and other facilities.

22 (4) Design and construct hatcheries, pipe lines, rearing
23 ponds, fishways, and other projects beneficial for the fish and
24 game resources of the State.

25 (5) Investigate and determine the extent and effect of
26 predation and competition among fish and game in Alaska and exercise
27 such control measures as are deemed necessary and beneficial to
28 these resources in the State.

29 (6) Enter into cooperative agreements with educational

1 institutions and State, Federal, or other agencies, to promote fish
2 and game research, predator control, management, education and
3 information, and to train men for fish and game management.

4 (7) Provide recreational facilities where necessary or
5 proper for the development or use of fish or game resources either
6 through cooperative agreement with non-profit organizations or as
7 Board projects.

8 (8) Accept money from any person under conditions
9 requiring the use of such money for specific purposes in the fur-
10 therance of the protection, rehabilitation, propagation, preserva-
11 tion or investigation of the fish and game resources of the State
12 or in settlement of any claims for damages to such fish and game
13 resources.

14 (9) Collect, classify, and disseminate such statistics,
15 data and information as in its discretion will tend to promote the
16 objects of this Act.

17 (10) Capture, propagate, transport, buy, sell, or
18 exchange any species of fish and game or eggs needed for propagating,
19 scientific or stocking purposes.

20 (11) Classify fish and game as commercial fish, sport
21 fish, game birds, songbirds, big game animals, fur bearing animals,
22 predators, vermin, or other categories as may be essential for
23 regulatory purposes.

24 (12) Prohibit the live capture, possession, transport,
25 or release of native or exotic fish and game, or eggs thereof,
26 without the approval of the Board.

27 (13) Establish the qualifications for guides, regulate
28 guide activities and maintain a guide register.

29 (14) Authorize the department to procure insurance, in

1 addition to workmen's compensation insurance, for its employees
2 against injury or death occasioned by special hazards in connection
3 with their duties.

4 (15) Promulgate and issue appropriate regulations to
5 implement the provisions of this Act and to cover matters not
6 expressly touched upon or anticipated but necessarily implied by
7 the provisions hereof. All such regulations shall be filed with
8 the Office of the Secretary of State or as may be otherwise pro-
9 vided by law before such regulations shall become effective, and
10 when so filed shall have the force and effect of law; provided,
11 however, that nothing in this section shall impair the power of
12 the Commissioner, or his duly authorized representative to summarily
13 open or close seasons, weekly closures, or areas on fish or game
14 under regulations which shall have the full force and effect of
15 law, upon field announcement and prior to filing with the Secretary
16 of State.

17 Sec. 4. ORGANIZATION OF DEPARTMENT. The Commissioner shall
18 establish a departmental division of commercial fisheries, a
19 departmental division of sport fisheries, a departmental division
20 of fur and game and such other departmental divisions as may be
21 necessary.

22 Sec. 5. APPOINTMENT OF BOARD MEMBERS. The Fish and Game
23 Commission shall be composed of eight persons having a general
24 knowledge of and interest in the fish and game resources and the
25 management thereof appointed as prescribed by the State Organiza-
26 tion Act of 1959.

27 Sec. 6. ESTABLISHMENT OF ADVISORY COMMITTEES. The Board
28 shall establish, at places in the State designated by the Board,
29 Advisory Committees to be composed of persons well-informed on the

1 fish and game resources of the locality. The Board shall set the
2 number and terms of the members of the Advisory Committees, shall
3 delegate one member of each committee as chairman, and shall
4 empower him, from time to time, to hold public hearings on fish
5 and game matters. Recommendations from the Advisory Committees
6 shall be forwarded to the Commissioner for his consideration. The
7 Commissioner shall delegate authority to advisory committees for
8 emergency closures during established seasons. Provided, however,
9 any authority delegated or order issued pursuant to this section
10 may be countermanded and made null and void. The Board shall
11 establish the necessary rules governing such closures.

12 Sec. 7. BOARD MEETINGS. The members of the Board shall meet
13 in Juneau during the month of April, 1959, or as soon thereafter
14 as practical, and shall organize by electing from their membership
15 a chairman and by adopting a set of by-laws to govern the conduct
16 of their business. One regular meeting shall be held annually by
17 the Board at the Capital, and one or more additional meetings at
18 such times and places within Alaska as the Board shall select for
19 the transaction of business.

20 Sec. 8. QUORUM. A majority of the members of the Board shall
21 constitute a quorum for the transaction of any business, for the
22 performance of any duty, and for the exercise of any power; provided,
23 however, it shall take a majority of the full Board membership of
24 eight members to carry all motions, regulations, resolutions and
25 policy decisions proposed.

26 Sec. 9. POWERS AND DUTIES OF THE BOARD. The fish and game of
27 Alaska wherever occurring in their natural state are the property
28 of the State of Alaska and the Board is charged with the duty of
29 managing, protecting, maintaining, improving and extending the fish

1 and game resources of Alaska in the interest of the economy and
2 general well-being of Alaska. The Board shall have jurisdiction,
3 supervision and control over the fish and game of Alaska as here-
4 inafter set forth.

5 The Fish and Game Board shall have the authority to make such
6 rules and regulations as it deems advisable to:

7 (1) set apart fish and game areas, refuges and sanctu-
8 aries with the approval of the Legislature in any of the waters or
9 on any of the lands of Alaska over which it has jurisdiction;

10 (2) establish open and closed seasons for fish and game;

11 (3) establish the means and methods employed in the
12 pursuit, capture, and transport of fish and game; and

13 (4) set quotas and bag limits on the take of fish and
14 game.

15 Sec. 10. LIMITATION OF POWER. Nothing in this Act, however,
16 shall be construed to authorize the Board or Commissioner to change
17 the amount of fees for licenses.

18 Sec. 11. POLITICAL ACTIVITY PROHIBITED. While retaining the
19 right to vote as he may please and to express his opinion on all
20 political subjects, no employee of the Department shall take any
21 active part in any political organization or political campaign,
22 nor shall he use his official authority directly or indirectly for
23 the purpose of influencing the results thereof, or for the purpose
24 of motivating political action by any person or body. Violation of
25 this section shall subject the employees to immediate dismissal
26 after appropriate hearing by the Board or its designee.

27 Sec. 12. INELIGIBILITY FOR BOUNTIES. It shall be unlawful
28 for any employee or special hunter of the Department to receive or
29 attempt to receive any bounty for the killing of any predator, or

1 to transfer the scalp or other part of any predator to another
2 person for the purpose of collecting any bounty.

3 Sec. 13. FISH AND GAME FUND ESTABLISHED. There is hereby
4 created a revolving "Fish and Game Fund", which shall be used
5 exclusively (1) to carry out the purposes and provisions of this
6 Act or any other duties that hereafter may be delegated by the
7 State Legislature to the Board or the Department; and (2) to carry
8 out such purposes and objectives within the scope of the Act as
9 may be directed by the donor of any such funds.

10 The "Fish and Game Fund" as created by Sec. 18, Chapter 63,
11 SLA 1957, shall be transferred to the revolving "Fish and Game Fund"
12 created by this Act.

13 All monies obtained from the following sources shall be
14 deposited in said "Fish and Game Fund" and shall be retained there-
15 in until expended as hereinafter provided.

16 (1) All monies received from fees for the sale of State
17 sport fishing, hunting, special permits, trapping, registered
18 guides, fur farming and fur dealers' licenses, etc.

19 (2) Proceeds received from the sale of furs, skins and
20 specimens taken by predator hunters and other employees whose
21 compensation is paid out of the "Fish and Game Fund".

22 (3) All monies received in settlement of any claim or
23 losses caused by damages to the fish and game resources of the
24 State.

25 (4) All monies received from the Federal, State or any
26 other governmental unit, or donor, whether public or private.

27 (5) Interest earned upon any monies in the fund,

28 (6) Monies from any other sources.

29 Upon authorization of the Board, disbursements from the fund

1 shall be paid by the Department of Administration on presentation
2 of vouchers signed by the Commissioner, or his authorized repre-
3 sentative.

4 Sec. 14. DIVERSION OF FUNDS PROHIBITED. No funds accruing
5 to the State from sport fishing, hunting, trapping license and
6 permit fees shall be diverted to any other purpose than the pro-
7 tection, propagation, investigation, and restoration of sport fish
8 and game resources and the expenses of administration of the sport
9 fish and game divisions of the Department.

10 Sec. 15. TRANSFER OF PROPERTY AND FUNDS. All appropriations,
11 property and funds under the control of the Alaska Fish and Game
12 Commission and the Alaska Department of Fish and Game shall be and
13 hereby are transferred to and placed under control of the Depart-
14 ment herein created.

15 Sec. 16. ASSENT TO PROVISIONS OF FEDERAL AID ACTS. The State
16 assents to the provisions of the Federal Aid Wildlife Restoration
17 Act of September 2, 1937, (16 USCA Sec. 669 (a)-(j), to the Federal
18 Aid in Fish Restoration Act of August 9, 1950, (16 USCA Sec. 777
19 (a)-(k), to any amendments, revisions or modifications of either
20 Federal Act, and to any other Federal Aid Act which may hereinafter
21 be enacted to benefit Alaska thereunder.

22 Sec. 17. ENFORCEMENT AUTHORITY. This Act shall be enforced
23 by the following persons, who are hereby declared peace officers
24 of the State:

25 (1) Any employee of the Department of Fish and Game
26 authorized by the Commission;

27 (2) Any Enforcement Agent of the U. S. Fish and Wildlife
28 Service;

29 (3) Any Enforcement Agent of the U. S. Forest Service;

1 (4) Any Police Officer in the State; and

2 (5) Any other person authorized by the Commission.

3 It shall be the duty of any of the named persons to arrest
4 without warrant any person committing a violation of this Act or
5 any rule or regulation made under authority of this Act, in his
6 presence or view, and to take such person immediately for examina-
7 tion or trial before an officer or court of competent jurisdiction.

8 He shall have power to execute any warrant or other process
9 issued by an officer or court of competent jurisdiction for the
10 enforcement of the provisions of this Act; and he shall have
11 authority, with a search warrant, to search any place at any time.
12 The several judges of the courts having jurisdiction may upon
13 proper oath or affirmation showing probable cause, issue warrants
14 in all such cases.

15 Sec. 18. POWER TO SEARCH WITHOUT WARRANT. Any of the named
16 persons may search without warrant any conveyance, vehicle, boat,
17 aircraft, market, store or other building, except dwellings, or
18 any receptacle, box, tent, camp, or similar place, which he has
19 reason to believe contains evidence of violations of law or rules
20 and regulations of the Board; provided, however, before any such
21 search is made a signed written statement by the person making such
22 search shall be submitted to the person in control of the property
23 or objects to be searched, and the reason such search is being
24 conducted. A written receipt shall be given by the person conduct-
25 ing the search for any property which is taken as a result of the
26 search. The enumeration of specific things shall not limit the
27 meaning of words of a general nature in this section.

28 Sec. 19. SEIZURE WITHOUT WARRANT AND CONFISCATION BY COURT.

29 All guns, traps, nets, fishing tackle, boats, aircraft, automobiles,

1 or other vehicles, dogs, sleds, and other paraphernalia used in or
2 in aid of violation of this Act, or rule or regulation of the
3 Board, may be seized without warrant, and all fish and game, or
4 parts thereof, or nests or eggs of birds, taken, transported, or
5 possessed contrary to the provisions of this Act, or rule or regu-
6 lation of the Board shall be seized by any person authorized to
7 enforce this Act. Upon conviction of the offender or upon judgment
8 of the court having jurisdiction that the same were taken, trans-
9 ported, or possessed in violation of this Act or rule or regulation
10 of the Board, all fish and game, or parts thereof, shall be for-
11 feited to the State and disposed of as directed by such court, and
12 if sold, the proceeds of the sale shall be transmitted to the
13 Treasurer of Alaska for deposit in the General Fund. All guns,
14 traps, nets, fishing tackle, boats, aircraft, or other vehicles,
15 dogs, sleds, and other paraphernalia seized under provisions of
16 this Act, or rule or regulation of the Board, unless forfeited by
17 order of the court, shall be returned, after completion of the
18 case and the fines, if any, have been paid.

19 Sec. 20. POWER TO ADMINISTER OATHS, ETC. Persons authorized
20 to enforce this Act are hereby authorized and empowered to administer
21 to or take from any person, an oath, affirmation, or affidavit when
22 such oath, affirmation, or affidavit is for use in any prosecution
23 or proceeding under or in the enforcement of this Act.

24 Sec. 21. PUBLIC NUISANCES. All nets, seines, lanterns,
25 snares, devices, contrivances and materials while in use, or had
26 and maintained for the purpose of catching, taking, killing,
27 attracting or decoying any fish and game, contrary to law or rule
28 or regulation of the Board, are public nuisances. Persons author-
29 ized to enforce this Act shall, without warrant or process, take,

1 seize, abate, and when necessary, destroy such nets, seines,
2 lanterns, snares, devices, contrivances and materials while being
3 used, had or maintained for such purpose.

4 Sec. 22. BURDEN OF PROOF. The possession of any fish or
5 game or parts thereof, or any nest or egg of any bird during the
6 time the taking of it is prohibited, shall, in any action, consti-
7 tute prima facie evidence that it was taken, possessed, bought,
8 sold or transported in violation of the provisions of this Act,
9 except as regulations to be issued by the Department, as provided
10 herein, shall allow possession of fish for personal use, and the
11 burden of proof shall be upon the possessor or claimant of it to
12 overcome the presumption of illegal possession and to establish
13 the fact that it was obtained and is possessed lawfully; provided,
14 however, that the burden of proof and the rule of prima facie
15 evidence set forth in the first part of this section shall not
16 obtain

17 (1) during the first full seven days after the time
18 when any taking is prohibited or

19 (2) if the fish or game or parts thereof are found to
20 be in a preserved condition, whether frozen, smoked, canned,
21 salted, pickled or otherwise.

22 Sec. 23. WANTON WASTE. It shall be unlawful for any person
23 wantonly to waste or unnecessarily destroy any fish or game taken
24 or caught in the waters or on the land of the State; provided,
25 however, that this shall not apply to fish or game which the Board
26 declared by regulation or emergency announcement to be of a
27 destructive, noxious or nuisance character.

28 Sec. 24. CERTAIN UNLAWFUL ACTS. It is unlawful to take,
29 possess, buy, sell or transport any fish or game or parts thereof

1 or any nest or egg of any bird, except as provided by rules or
2 regulations of the Commission made pursuant to this Act; provided,
3 however, that nothing in this Act shall be construed to prevent
4 the collection or exportation of such fish and game, parts thereof
5 or nests or eggs of birds for scientific or educational purposes,
6 or of like fish and game, eggs of birds for propagation or
7 exhibition purposes under a permit which the Board is hereby
8 authorized to issue and prescribe the terms thereof.

9 Sec. 25. RESEARCH BY THE FEDERAL GOVERNMENT. The Secretary
10 of the Interior of the United States and his duly authorized agents
11 may conduct fish cultural operations and scientific investigations
12 in this State in such manner and at such times as may be jointly
13 considered necessary or proper by the Commission and the Board.

14 Sec. 26. FISHWAYS OR HATCHERIES REQUIRED. Every dam or
15 other obstruction built by any person across any stream frequented
16 by salmon or other fish shall be provided by such person with
17 durable and efficient fishway and a device for efficient passage
18 for downstream migrants if deemed necessary by the Board, which
19 fishway or device or both shall be maintained in a practical and
20 effective condition in such place, form and capacity as the Board
21 may approve, for which plans and specifications shall be approved
22 by the Department upon application to it, and which shall be kept
23 open, unobstructed, and supplied with a sufficient quantity of
24 water to freely admit the passage of fish through same.

25 In the event that a fishway over any dam or obstruction is
26 considered by the Board to be impractical because of cost, then
27 the owner of such dam or obstruction, in order to compensate for
28 the loss resulting from such dam or obstruction shall, at his
29 option:

1 (1) Pay a lump sum acceptable to the Board to the State
2 Fish and Game Fund;

3 (2) Convey to the State a site of a size satisfactory
4 to the Board at such place as may be mutually satisfactory to both
5 parties, and erect thereon a fish hatchery, rearing ponds, necessary
6 buildings and other facilities according to plans and specifications
7 to be furnished by the Board, secured by good and sufficient bond
8 to furnish all water and light and necessary sums of money to
9 operate and maintain said hatchery and rearing ponds; or

10 (3) Enter into an agreement with the Board, secured
11 by good and sufficient bond, to pay to the Alaska Fish and Game
12 Fund such initial money and make such annual payments of additional
13 money as the Board may determine are necessary to expand, maintain,
14 and operate additional facilities at existing hatcheries within
15 a reasonable distance of such dam or obstruction.

16 The owner of any dam or obstruction who shall fail to comply
17 with the provisions of this section within a reasonable time as
18 specified by written notice from the Board shall be guilty of a
19 misdemeanor, punishable by a fine not to exceed \$1,000.00, and
20 each day that the owner fails to comply shall constitute a separate
21 offense.

22 In addition to the penalty above provided, if any such person
23 be convicted of violating any of the provisions of this section,
24 the dam or other obstruction managed, controlled or owned by such
25 person is hereby declared a public nuisance and shall be subject
26 to abatement as such.

27 Sec. 27. PROTECTION OF FISH AND GAME. In the event that any
28 person or government agency desires to construct any form of
29 hydraulic project or to use any equipment that will use, divert,

1 obstruct, pollute, or change the natural flow or bed of any river,
2 lake or stream beds, such person or government agency shall submit
3 to the Department full plans and specifications of the proposed
4 construction or work, complete plans and specifications for the
5 proper protection of fish and game in connection therewith, the
6 approximate date when such construction or work is to commence,
7 and shall secure the written approval of the Commission as to the
8 adequacy of the means outlined for the protection of fish and game
9 in connection therewith and as to the propriety of the proposed
10 construction or work and time thereof in relation to fish and game
11 in connection or work thereon. If any person commences construction
12 on any such works or projects without first providing plans and
13 specifications subject to the approval of the Commission for the
14 proper protection of fish and game in connection therewith and
15 without first having obtained written approval of the Commission
16 as to the adequacy of such plans and specifications submitted for
17 the protection of fish and game, he is guilty of a misdemeanor. If
18 any such person be convicted of violating any of the provisions of
19 this section and continues construction on any such works or
20 projects without fully complying with the provisions hereof, such
21 works or projects are hereby declared a public nuisance and shall
22 be subject to abatement as such. The cost of restoring a river,
23 lake or stream to its original condition shall be borne by the
24 violator and shall be in addition to any penalty imposed by the
25 court.

26 Provided, that in case of an emergency arising from weather
27 or stream flow conditions the Department through its authorized
28 representatives, shall issue oral permits to a riparian owner for
29 removing any obstructions or for repairing existing structures

1 without the necessity of submitting prepared plans and specifica-
2 tions.

3 Sec. 28. TRANSFER OF CONTROL TO ALASKA. Upon transfer of
4 control of the fish and game resources of Alaska from the Federal
5 Government to the State, the Board shall accept such transfer on
6 behalf of the State of Alaska. The Board shall, without limiting
7 itself to such powers, assume all the powers now and hereafter
8 vested in the United States Fish and Wildlife Service prior to
9 such transfer, all laws and regulations pertaining to, "Alaska
10 Fisheries", the "Alaska Game Law", and any other Federal laws or
11 regulations relating to the fish and game of Alaska, which may be
12 in full force and effect at the time of the transfer shall, insofar
13 as they can be applied, be incorporated herein and shall govern
14 the management and control of the Alaska fish and game resources
15 during any transitional period required to place the provisions of
16 this Act in operation and shall be effective until such time as
17 they may be superseded by laws passed by the Alaska Legislature or
18 rules or regulations promulgated by the Board.

19 Sec. 29. VIOLATIONS: MISDEMEANOR: PENALTY. Any person
20 violating any of the provisions of this Act or any rule or regula-
21 tion promulgated thereunder shall be deemed guilty of a misdemeanor
22 and, upon conviction thereof, shall be punished by imprisonment
23 not to exceed one year or a fine not to exceed five thousand
24 dollars (\$5,000.00) or both such fine and imprisonment.

25 Sec. 30. REPEAL SCHEDULE. Chapter 63, Session Laws of Alaska
26 1957, and all acts and parts of acts in conflict with the provisions
27 of this Act, are hereby repealed.

28 Sec. 31. SAVINGS CLAUSE: If any provision hereof or the
29 application thereof to any person or circumstance is held invalid,

1 such invalidity shall not affect other provisions or applications
2 of this Act which can be given effect without the invalid provision
3 or application, and to this end the provisions of this Act are
4 declared to be severable.

5 Sec. 32. Nothing herein shall be construed to repeal or
6 amend the State Organization Act of 1959 or the Administrative
7 Procedures Act and anything herein that is inconsistent or in
8 conflict with said Acts shall have no force or effect and this Act
9 is declared to be supplementary thereto.

10 Sec. 33. EFFECTIVE DATE. This Act shall take effect immedi-
11 ately upon its passage and approval or upon its becoming law with-
12 out such approval; provided, however, that any part or parts thereof
13 which conflict with Federal control shall take effect upon cessation
14 of such Federal control.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29