



# LAWS OF ALASKA

1999

**Source**  
SCS CSHB 109(RES)

**Chapter No.**  
56

## AN ACT

Relating to management of fish and game in Glacier Bay National Park and Preserve and navigable waters.

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** June 4, 1999

**Actual Effective Date:** September 2, 1999

AN ACT

1 Relating to management of fish and game in Glacier Bay National Park and Preserve and  
2 navigable waters.

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4 \* Section 1. FINDINGS. (a) The legislature finds that

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

9 (2) the State of Alaska recognizes the value of Glacier Bay National Park and  
10 Preserve, one of our nation's crown jewels;

11 (3) the State of Alaska has demonstrated competence by state managers in  
12 assuring healthy, viable populations of fish and game within the park and preserve, with no  
13 deleterious effects on the resources or the aesthetic appeal of the area, and the State of Alaska  
14 desires to continue to do so;

Chapter 56

1 (4) current uses of the park and preserve, including limited and controlled  
2 commercial and subsistence uses, constitute integral parts of the park and preserve and reflect  
3 precisely the purposes for the executive withdrawal that created the original Glacier Bay  
4 National Monument.

5 (b) The legislature further finds that

6 (1) the State of Alaska is the only entity responsible for and capable of  
7 assuring the sustained yield management of fish and game throughout the entire state;

8 (2) the multitude of federal entities that have authority to provide for the  
9 management of fish and game in Alaska have jurisdiction over only a patchwork of land and  
10 water in Alaska and operate under a variety of legal mandates regarding fish and game;

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

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

18 (5) the State of Alaska is committed to continuing its public trust responsibility  
19 for the navigable waters within Glacier Bay National Park and Preserve;

20 (6) it is not in the best interest of the State of Alaska to acquiesce in and assist  
21 in federal takeover of fisheries management in the park and preserve in the face of pending  
22 litigation challenging federal preemption of state management.

23 \* Sec. 2. AS 16.20.010 is amended to read:

24 **Sec. 16.20.010. Legislative recognition.** The legislature recognizes that

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

27 (2) the state has not assented to federal control of fish and game in

28 (A) those areas ~~that~~ [WHICH] were set apart as National Bird  
29 and Wildlife Refuges while the state was a United States territory; ~~and~~

30 (B) Glacier Bay National Park and Preserve or the navigable  
31 waters within or adjoining the park and preserve;

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

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

6 (b) In recognition of the fact that the state has not assented to federal control  
7 of fish and game in Glacier Bay National Park and Preserve or the navigable waters  
8 within or adjoining the park and preserve, that the power to control the management  
9 of fish and game within the boundaries of the state is an incident of state sovereignty,  
10 and that the federal government cannot commandeer the lawmaking processes of the  
11 states to compel the state to enact and enforce a federal regulatory program, an agency,  
12 employee, or agent of the state may not expend funds to adopt or enforce the  
13 implementation of the federal regulatory program or a part of the program for control  
14 of fish and game in the park and preserve or the navigable waters within or adjoining  
15 the park and preserve that is in conflict with a state statute or regulation regarding  
16 management of fish or game within the park or preserve. This subsection does not  
17 prohibit an agency, employee, or agent of the state from

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

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

20 (3) collecting data relating to claims of economic harm arising from the  
21 closure of the park and preserve to commercial fishing; or

22 (4) participating in or cooperating with a federal program established  
23 under 16 U.S.C. 703 - 712 (Migratory Bird Treaty Act); 16 U.S.C. 773 - 773k  
24 (Northern Pacific Halibut Act of 1982); 16 U.S.C. 1361 - 1421h (Marine Mammal  
25 Protection Act); 16 U.S.C. 1531 - 1544 (Endangered Species Act); 16 U.S.C. 1801 -  
26 1883 (Magnuson-Stevens Fishery Conservation and Management Act); 16 U.S.C.  
27 3631 - 3644 (Pacific Salmon Treaty Act of 1985).

28 \* Sec. 4. AS 38.05 is amended by adding a new section to read:

29 **Sec. 38.05.126. Navigable and public water.** (a) The people of the state  
30 have a constitutional right to free access to and use of the navigable or public water  
31 of the state.

Chapter 56

1 (b) The state has full power and control of all of the navigable or public water  
2 of the state, both meandered and unmeandered, and the state holds and controls all  
3 navigable or public water in trust for the use of the people of the state.

4 (c) Ownership of land bordering navigable or public water does not grant an  
5 exclusive right to the use of the water and a right of title to the land below the  
6 ordinary high water mark is subject to the rights of the people of the state to use and  
7 have access to the water for recreational purposes or other public purposes for which  
8 the water is used or capable of being used consistent with the public trust.

9 (d) This section may not be construed to affect or abridge valid existing rights  
10 or create a right or privilege of the public to cross or enter private land.

11 \* Sec. 5. AS 38.05.128(a) is amended to read:

12 (a) A person may not obstruct or interfere with the free passage or use by a  
13 person [MEMBER] of [THE PUBLIC ON] any navigable water [AS DEFINED IN  
14 AS 38.05.965] unless the obstruction or interference is

- 15 (1) authorized by a federal agency and a [OR] state agency;  
16 (2) authorized under a federal or state law or permit;  
17 (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);  
18 (4) caused by the normal operation of freight barging that is otherwise  
19 consistent with law; or  
20 (5) authorized by the commissioner after reasonable public notice.

21 \* Sec. 6. AS 38.05.128 is amended by adding new subsections to read:

22 (e) Free passage or use of any navigable water includes the right to use land  
23 below the ordinary high water mark to the extent reasonably necessary to use the  
24 navigable water consistent with the public trust.

25 (f) Free passage or use of any navigable water includes the right to enter  
26 adjacent land above the ordinary high water mark as necessary to portage around  
27 obstacles or obstructions to travel on the water, provided

- 28 (1) entry is made without injury or damage to the land;  
29 (2) entry is made in the least obtrusive manner possible;  
30 (3) there is no reasonable alternative available to avoid the use of the  
31 adjacent land above the ordinary high water mark; and

- 1 (4) the navigable water is reentered immediately below the obstacle or
- 2 obstruction at the nearest point where it is safe to do so.