

**Alaska Statutes**

**Title 16. Fish and Game**

**Chapter 05. Fish and Game Code and Definitions [selected portions, current 3/11/2016]**

**§ 16.05.221. Boards of fisheries and game**

...

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the board, and with a view to providing diversity of interest and points of view in the membership. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

(c) Members of the Board of Game serve staggered terms of three years. The terms of the members of the board begin on July 1. Notwithstanding AS 39.05.080(1), by April 1 of the calendar year in which the term expires, the governor shall appoint a person to fill the vacancy that will arise on the board because of the expiration of the term of a member of the board and submit the name of the person to the legislature for confirmation. If a vacancy arises on the board, the governor shall, within 30 days after the vacancy arises, appoint a person to serve the balance of the unexpired term and submit the name of the person to the legislature for confirmation. A person appointed to fill the balance of an unexpired term shall serve on the board from the date of appointment until the earlier of the expiration of the term or the failure of the legislature to confirm the person under AS 39.05.080.

...

**§ 16.05.241. Powers excluded**

The boards have regulation-making powers as set out in this chapter, but do not have administrative, budgeting, or fiscal powers.

...

**§ 16.05.255. Regulations of the Board of Game; management requirements**

(a) The Board of Game may adopt regulations it considers advisable in accordance with AS 44.62 (Administrative Procedure Act) for

(1) setting apart game reserve areas, refuges, and sanctuaries in the water or on the land of the state over which it has jurisdiction, subject to the approval of the legislature;

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

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

- (4) setting quotas, bag limits, harvest levels, and sex, age, and size limitations on the taking of game;
  - (5) classifying game as game birds, song birds, big game animals, fur bearing animals, predators, or other categories;
  - (6) methods, means, and harvest levels necessary to control predation and competition among game in the state;
  - (7) watershed and habitat improvement, and management, conservation, protection, use, disposal, propagation, and stocking of game;
  - (8) prohibiting the live capture, possession, transport, or release of native or exotic game or their eggs;
  - (9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;
  - (10) regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game;
  - (11) taking game to ensure public safety;
  - (12) regulating the activities of persons licensed to control nuisance wild birds and nuisance wild small mammals;
  - (13) promoting hunting and trapping and preserving the heritage of hunting and trapping in the state.
- (b) Repealed.
- (c) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.
- (d) Regulations adopted under (a) of this section must provide that, consistent with the provisions of AS 16.05.258, the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents.
- (e) The Board of Game shall adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals of the board in an area where the board has determined that
- (1) consumptive use of the big game prey population is a preferred use;
  - (2) depletion of the big game prey population or reduction of the productivity of the big game prey population has occurred and may result in a significant reduction in the allowable human harvest of the population; and

(3) enhancement of abundance or productivity of the big game prey population is feasibly achievable utilizing recognized and prudent active management techniques.

(f) The Board of Game may not significantly reduce the taking of an identified big game prey population by adopting regulations relating to restrictions on harvest or access to the population, or to management of the population by customary adjustments in seasons, bag limits, open and closed areas, methods and means, or by other customary means authorized under (a) of this section, unless the board has adopted regulations, or has scheduled for adoption at the next regularly scheduled meeting of the board regulations, that provide for intensive management to increase the take of the population for human harvest consistent with (e) of this section. This subsection does not apply if the board

(1) determines that intensive management would be

(A) ineffective, based on scientific information;

(B) inappropriate due to land ownership patterns; or

(C) against the best interest of subsistence uses; or

(2) declares that a biological emergency exists and takes immediate action to protect or maintain the big game prey population in conjunction with the scheduling for adoption of those regulations that are necessary to implement (e) of this section.

(g) The Board of Game shall establish population and harvest goals and seasons for intensive management of identified big game prey populations to achieve a high level of human harvest.

(h) Repealed by 2000 Ballot Measure No. 6, eff. Jan. 1, 2001.

(i) For the purpose of encouraging adults to take children hunting, the board shall establish annual hunting seasons in appropriate areas of the state for big game, other than bison and musk ox. Only a resident child accompanied by a resident adult or a child accompanied by the child's resident parent, resident grandparent, resident stepparent, or resident legal guardian may take big game in an area where a season established under this subsection is in effect. The adult, parent, grandparent, stepparent, or legal guardian who accompanies the child may only assist the child in taking big game. A big game animal taken under this subsection, except for a Sitka blacktail deer when the harvest limit for the deer is one for each person, must be counted against the bag limits of both the child and the adult, parent, grandparent, stepparent, or legal guardian who accompanies the child. In this subsection,

(1) "adult" means an individual who is 21 years of age or older;

(2) "child" means an individual who is not more than 17 years of age and not younger than eight years of age.

(j) This section authorizes the board to regulate regarding the conservation, development, or utilization of game in a manner that addresses whether, how, when, and where the public asset of game is allocated or appropriated.

(k) In this section,

(1) “harvestable surplus” means the number of animals that is estimated to equal the number of offspring born in a game population during a year less the number of animals required for recruitment for population maintenance and enhancement, when necessary, and the number of animals in the population that die from all causes, other than predation or human harvest, during that year;

(2) “high level of human harvest” means the allocation of a sufficient portion of the harvestable surplus of a game population to achieve a high probability of success for human harvest of the game population based on biological capabilities of the population and considering hunter demand;

(3) “identified big game prey population” means a population of ungulates that is identified by the Board of Game and that is important for providing high levels of harvest for human consumptive use;

(4) “intensive management” means management of an identified big game prey population consistent with sustained yield through active management measures to enhance, extend, and develop the population to maintain high levels or provide for higher levels of human harvest, including control of predation and prescribed or planned use of fire and other habitat improvement techniques;

(5) “sustained yield” means the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis.

#### **§ 16.05.256. Nonresident and nonresident alien permits**

Whenever it is necessary to restrict the taking of big game so that the opportunity for state residents to take big game can be reasonably satisfied in accordance with sustained yield principles, the Board of Game may, through a permit system, limit the taking of big game by nonresidents and nonresident aliens to accomplish that purpose.

...

#### **§ 16.05.258. Subsistence use and allocation of fish and game**

(a) Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall identify the fish stocks and game populations, or portions of stocks or populations, that are customarily and traditionally taken or used for subsistence. The commissioner shall provide recommendations to the boards concerning the stock and population identifications. The boards shall make identifications required under this subsection after receipt of the commissioner's recommendations.

(b) The appropriate board shall determine whether a portion of a fish stock or game population identified under (a) of this section can be harvested consistent with sustained yield. If a portion of a stock or population can be harvested consistent with sustained yield, the board shall determine the amount of the harvestable portion that is reasonably necessary for subsistence uses and

(1) if the harvestable portion of the stock or population is sufficient to provide for all consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) shall adopt regulations that provide for other uses of those stocks or populations, subject to preferences among beneficial uses; and

(C) may adopt regulations to differentiate among uses;

(2) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses and some, but not all, other consumptive uses, the appropriate board

(A) shall adopt regulations that provide a reasonable opportunity for subsistence uses of those stocks or populations;

(B) may adopt regulations that provide for other consumptive uses of those stocks or populations; and

(C) shall adopt regulations to differentiate among consumptive uses that provide for a preference for the subsistence uses, if regulations are adopted under (B) of this paragraph;

(3) if the harvestable portion of the stock or population is sufficient to provide for subsistence uses, but no other consumptive uses, the appropriate board shall

(A) determine the portion of the stocks or populations that can be harvested consistent with sustained yield; and

(B) adopt regulations that eliminate other consumptive uses in order to provide a reasonable opportunity for subsistence uses; and

(4) if the harvestable portion of the stock or population is not sufficient to provide a reasonable opportunity for subsistence uses, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than subsistence uses;

(B) distinguish among subsistence users, through limitations based on

(i) the customary and direct dependence on the fish stock or game population by the subsistence user for human consumption as a mainstay of livelihood;

(ii) the proximity of the domicile of the subsistence user to the stock or population; and

(iii) the ability of the subsistence user to obtain food if subsistence use is restricted or eliminated.

(c) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether dependence upon subsistence is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, the boards shall jointly consider the relative importance of subsistence in the context of the totality of the following socio-economic characteristics of the area or community:

(1) the social and economic structure;

(2) the stability of the economy;

- (3) the extent and the kinds of employment for wages, including full-time, part-time, temporary, and seasonal employment;
  - (4) the amount and distribution of cash income among those domiciled in the area or community;
  - (5) the cost and availability of goods and services to those domiciled in the area or community;
  - (6) the variety of fish and game species used by those domiciled in the area or community;
  - (7) the seasonal cycle of economic activity;
  - (8) the percentage of those domiciled in the area or community participating in hunting and fishing activities or using wild fish and game;
  - (9) the harvest levels of fish and game by those domiciled in the area or community;
  - (10) the cultural, social, and economic values associated with the taking and use of fish and game;
  - (11) the geographic locations where those domiciled in the area or community hunt and fish;
  - (12) the extent of sharing and exchange of fish and game by those domiciled in the area or community;
  - (13) additional similar factors the boards establish by regulation to be relevant to their determinations under this subsection.
- (d) Fish stocks and game populations, or portions of fish stocks and game populations not identified under (a) of this section may be taken only under nonsubsistence regulations.
- (e) Takings and uses of fish and game authorized under this section are subject to regulations regarding open and closed areas, seasons, methods and means, marking and identification requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.
- (f) For purposes of this section, “reasonable opportunity” means an opportunity, as determined by the appropriate board, that allows a subsistence user to participate in a subsistence hunt or fishery that provides a normally diligent participant with a reasonable expectation of success of taking of fish or game.

#### **§ 16.05.259. No subsistence defense**

In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense that the taking was done for subsistence uses.

#### **§ 16.05.260. Advisory committees**

The Board of Fisheries and the Board of Game may adopt regulations they consider advisable in accordance with AS 44.62 (Administrative Procedure Act) establishing, at places in the state designated by the individual boards, advisory committees to be composed of persons well informed on the fish or game resources of the locality. The boards shall set the number and terms of each of the members of

the advisory committees, shall delegate one member of each committee as chairman, and shall give the chairman authority to hold public hearings on fish or game matters. Recommendations from the advisory committees shall be forwarded to the appropriate board for their consideration but if the Board of Fisheries or the Board of Game chooses not to follow the recommendations of the local advisory committee the appropriate board shall inform the appropriate advisory committee of this action and state the reasons for not following the recommendations. The commissioner shall delegate authority to advisory committees for emergency closures during established seasons. The commissioner is empowered to set aside and make null and void only opening of seasons set by the advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.

...

#### **§ 16.05.270. Delegation of authority to commissioner**

For the purpose of administering AS 16.05.251 and 16.05.255, each board may delegate authority to the commissioner to act in its behalf. If there is a conflict between the board and the commissioner on proposed regulations, public hearings shall be held concerning the issues in question. If, after the public hearings, the board and the commissioner continue to disagree, the issue shall be certified in writing by the board and the commissioner to the governor who shall make a decision. The decision of the governor is final.

#### **§ 16.05.280. Removal of board members**

The governor may only remove a board member for inefficiency, neglect of duty, or misconduct in office, or because the member while serving on the board is convicted of a misdemeanor for violating a statute or regulation related to fish or game or of a felony, and shall do so by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or through counsel at a public hearing before the governor or a designee upon at least 10 days' notice by registered mail. The member may confront and cross-examine adverse witnesses. Upon removal, the governor or a designee shall file in the proper state office the findings and a complete statement of all charges made against the member.

#### **§ 16.05.290. Compensation of board members**

Each member of a board is entitled to compensation at a rate equal to Step A, Range 20, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska, for each day going to and from and for each day in actual attendance at board meetings. For other meetings or conferences authorized by a board a member shall receive compensation at a rate equal to one-half of Step A, Range 20, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska, for each day going to and from and for each day in actual attendance. Each member of a board is also entitled to travel expenses and per diem authorized for boards and commissions under AS 39.20.180.

#### **§ 16.05.300. Board meetings**

(a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

...

#### **§ 16.05.305. Clerical assistance for boards**

The Board of Fisheries and the Board of Game are authorized to hire and set the compensation for one clerical assistant for each board.

#### **§ 16.05.310. Special board meetings**

A board may meet at any time upon the call of the commissioner or upon the request of two board members.

#### **§ 16.05.315. Joint board meetings**

The Board of Fisheries and the Board of Game may hold a joint meeting upon the call of the commissioner or a board to resolve any conflicts in regulations of the boards and to consider matters, as determined by the commissioner or a board, that require the consideration of both boards.

#### **§ 16.05.320. Quorum**

A majority of the members of a board constitutes a quorum for the transaction of business, for the performance of any duty, and for the exercise of any power. However, a majority of the full board membership is required to carry all motions, regulations, and resolutions. A majority of the members of the boards of fisheries and game constitute a quorum for the transaction of business in a joint board meeting. A majority of the membership of the boards is required to carry all joint motions, regulations, and resolutions of the boards.

#### **§ 16.05.403. Special licenses and permits**

(a) A resident hunting license, a resident sport fishing license, a resident subsistence fishing permit, or a resident personal use fishing permit indicating that the purchaser is blind may be obtained from the department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon presentation of either an affidavit of the applicant stating that the applicant cannot distinguish light from darkness or an affidavit signed by a licensed physician or a licensed optometrist stating that the applicant's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or that the applicant's widest diameter of visual field subtends an angle no greater than 20 degrees.

(b) A resident who is a person with physical disabilities may obtain from the department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon submission of satisfactory proof of physical disabilities a resident hunting license, a resident sport fishing license, a resident subsistence fishing permit, or a resident personal use fishing permit indicating that the purchaser is a person with physical disabilities.

(c) A resident who is 65 years of age or older may obtain from the department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon submission of satisfactory proof of age a resident hunting license, a resident sport fishing license, a resident subsistence fishing permit, or a resident personal use fishing permit indicating that the purchaser is a person who is 65 years of age or older. This subsection does not limit the right of a resident person who is 65 years of age or older to claim an exemption from hunting or sport fishing license requirements under AS 16.05.400(b).

#### **§ 16.05.405. Taking fish and game by proxy**

(a) Subject to regulations adopted by the Board of Fisheries or the Board of Game to implement this section, including regulations relating to or restricting seasons, areas, methods and means, and species, a resident may take fish or game harvested primarily for food on behalf of another person under this section.

(b) Notwithstanding AS 16.05.420(c), a resident holding a valid resident hunting license may take game on behalf of a person who is blind, a person with physical disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's person

(1) a document signed by the person on whose behalf the game is taken, stating that the resident possesses the person's hunting license or permanent identification card in order to take game on behalf of that person; and

(2) the person's

(A) resident hunting license issued under AS 16.05.403 or permanent identification card issued under AS 16.05.400(b); and

(B) harvest ticket, tag, stamp, or other document required by law as a condition of taking the game being hunted.

(c) Notwithstanding AS 16.05.420(c), a resident holding a valid noncommercial fishing license may take fish on behalf of a person who is blind, a person with physical disabilities, or a person who is 65 years of age or older if the resident possesses on the resident's person

(1) a document signed by the person on whose behalf the fish is taken, stating that the resident possesses the person's sport fishing license, subsistence fishing permit, personal use fishing permit, or permanent identification card in order to take fish on behalf of that person;

(2) the person's

(A) resident sport fishing license issued under AS 16.05.403 or permanent identification card issued under AS 16.05.400(b);

(B) resident subsistence fishing permit issued under AS 16.05.403; or

(C) resident personal use fishing permit issued under AS 16.05.403; and

(3) all other documents issued to the person that are required by law as a condition of taking the fish being pursued.

(d) A resident who takes fish or game on behalf of another person under this section may, subject to applicable regulations of the Board of Fisheries or the Board of Game, take the fish or game only under those conditions that would apply to the other person if the other person took the fish or game personally.

(e) A resident who takes, or attempts to take, fish or game on behalf of a person under this section may also simultaneously engage in fishing or hunting for the resident's use; however, the resident may not

take or attempt to take fish or game by proxy for more than one person at a time. For the purposes of this subsection, a resident is engaged in taking, or attempting to take, fish or game by proxy while the resident has possession of

(1) another person's

(A) license, permit, or identification card and all other documents issued to the person that are required by law as a condition of taking the fish or game being pursued; and

(B) signed document under (b)(1) or (c)(1) of this section; or

(2) fish or game taken on behalf of another person.

(f) A resident who takes fish or game on behalf of another person under this section shall

(1) complete reports relating to the taking of the fish or game as required by the commissioner of fish and game under AS 16.05.370;

(2) deliver all parts of fish and game removed from the field to the person on whose behalf the fish or game was taken within a reasonable time after the fish or game is taken; and

(3) until the fish or game is delivered to the person on whose behalf the fish or game was taken, retain the person's

(A) license or permit and all other documents issued to the person that are required by law as a condition of taking the fish or game; and

(B) signed document required under (b)(1) or (c)(1) of this section.

**§ 16.05.407. Nonresident hunting big game animals must be accompanied**

(a) It is unlawful for a nonresident to hunt, pursue, or take brown bear, grizzly bear, mountain goat, or sheep in this state, unless personally accompanied by

(1) a person who is licensed as

(A) a registered guide-outfitter or a master guide-outfitter under AS 08.54 and who is providing big game hunting services to the nonresident under a contract with the nonresident; or

(B) a class-A assistant guide or an assistant guide under AS 08.54 and who is employed by a registered guide-outfitter or a master guide-outfitter who has a contract to provide big game hunting services to the nonresident; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) related to the nonresident, within and including the second degree of kindred, by marriage or blood.

(b) An applicant for a nonresident big game tag for the taking of an animal specified in (a) of this section shall first furnish to the state, on a form provided by the state, an affidavit showing that the applicant will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) Repealed.

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

(e) Repealed.

(f) An applicant for a nonresident hunt permit for the taking of an animal specified in (a) of this section shall, if requested by the department, first furnish to the department proof of prior authorization to use federal, state, or private land where the permit hunt will occur. The authorization shall be provided to the applicant by the registered guide-outfitter or master guide-outfitter with whom the applicant has contracted to guide the permit hunt.

#### **§ 16.05.408. Nonresident alien hunter to be accompanied by guide**

(a) It is a class A misdemeanor for a nonresident alien to hunt, pursue, or take a big game animal as defined by the Board of Game unless personally accompanied by

(1) a registered guide-outfitter or a master guide-outfitter licensed under AS 08.54 who is providing big game hunting services to the nonresident alien under a contract with the nonresident alien; or

(2) a class-A assistant guide or an assistant guide licensed under AS 08.54 who is employed by a registered guide-outfitter or a master guide-outfitter who has a contract to provide big game hunting services to the nonresident alien.

(b) A nonresident alien, when purchasing a big game tag for the taking of an animal specified in (a) of this section, shall first furnish to the state, on a form provided by the state, an affidavit showing that the nonresident alien will be accompanied in the hunt by a person who is qualified under the terms of (a) of this section. A nonresident alien shall have a copy of the affidavit in possession while in the field hunting. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) Before obtaining a nonresident hunt permit for the taking of an animal specified in (a) of this section, a nonresident alien shall, if requested by the department, first furnish to the department proof of prior authorization to use federal or private land where the permit hunt will occur. The authorization shall be provided to the nonresident alien by the registered guide-outfitter or master guide-outfitter with whom the nonresident alien has contracted to guide the permit hunt.

#### **§ 16.05.410. Revocation of license**

(a) Upon conviction of a person of a first violation of AS 16.05.330 - 16.05.430 or of a federal or state law or regulation for the protection of the sport fish and game of the state, the court may, in addition to the penalty imposed by law, revoke the person's license.

(b) Upon subsequent conviction of a person for a violation of AS 16.05.330 - 16.05.430 or of a federal or state law or regulation for the protection of the sport fish and game of the state, the court shall revoke the person's license.

(c) A person whose license has been revoked as provided in (b) of this section may not purchase another license of the same type for a period of not less than two years nor more than three years from the date of revocation as determined by the court.

(d), (e) Repealed.

(f) Except as provided in (g) of this section, the provisions of (a) - (c) of this section do not apply when the offense for which the person is convicted is a misdemeanor for which a forfeitable bail amount has been set under AS 16.05.165.

(g) When a person has been convicted during a two-year period of two or more misdemeanor offenses for which a forfeitable bail amount has been set under AS 16.05.165, a peace officer may file a civil action in the district court to revoke the person's license. Once an action has been filed, the court shall set a time and date for a hearing on the proposed license revocation, and shall send notice of the hearing to the person. The hearing shall be before the court without a jury. At the hearing the court shall hear evidence regarding the nature and seriousness of the offenses for which the person was convicted, the time period involved, the potential effect of the person's actions upon the preservation of the resource, and other relevant circumstances. If the court finds by a preponderance of the evidence that the person's actions demonstrate a disregard for the preservation of the state's fish or wildlife resources, the court may revoke the person's license for a period of not less than one year nor more than three years from the date of revocation.

(h) For purposes of enforcement of the provisions of the Wildlife Violator Compact entered into under AS 16.05.332, upon the receipt of a report that a violator has failed to comply with the terms of a citation for a wildlife violation issued by an issuing state other than this state or of the violator's conviction of a wildlife violation in an issuing state other than this state, a peace officer may file a civil action in the district court to revoke the comparable license or licenses that the violator holds in this state. Once an action has been filed, the court shall set a time and date for a hearing on the proposed license revocation or revocations and shall send notice of the hearing to the violator. The hearing shall be before the court without a jury. At the hearing, the court shall hear evidence regarding the nature and seriousness of the offense for which the violator was convicted or the nature and seriousness of the failure to comply with the citation, the time period involved, the potential effect of the violator's actions on the preservation of the resource, and other relevant circumstances. If the court finds by a preponderance of the evidence that the violator's actions demonstrate a disregard for the preservation of wildlife resources, the court may revoke the violator's license or licenses for a period of not less than one year or more than three years from the date of revocation. In this subsection, the terms "issuing state," "wildlife," and "wildlife violation" have the meanings given in AS 16.05.332.

#### **§ 16.05.415. Determination of residency**

(a) In AS 16.05.330-16.05.430, a person, except as provided in (c)-(f) of this section, is a resident if the person

(1) is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state;

(2) has maintained the person's domicile in the state for the 12 consecutive months immediately preceding the application for a license;

(3) is not claiming residency in another state, territory, or country; and

(4) is not obtaining benefits under a claim of residency in another state, territory, or country.

(b) A person who establishes residency in the state under (a) of this section remains a resident during an absence from the state unless during the absence the person

(1) establishes or claims residency in another state, territory, or country; or

(2) performs an act, or is absent under circumstances, that are inconsistent with the intent required under (a) of this section.

(c) A person who is a member of the military service or the United States Coast Guard is a resident for the purposes of AS 16.05.330-16.05.430 if the person has been stationed in the state for the 12 consecutive months immediately preceding the application for a license. This subsection does not apply to a person who establishes and maintains residency in the state under (a) and (b) of this section.

(d) A person who is the dependent of a resident member of the military service or the United States Coast Guard under (a) or (c) of this section is a resident for the purposes of AS 16.05.330-16.05.430 if the person has lived in the state for the 12 consecutive months immediately preceding the application for a license. This subsection does not apply to a person who establishes and maintains residency in the state under (a) and (b) of this section.

(e) A person who is an alien is a resident for the purposes of AS 16.05.330-16.05.430 if the person

(1) is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state;

(2) has maintained the person's domicile in the state for the 12 consecutive months immediately preceding the application for a license;

(3) is not claiming residency in another state, territory, or country; and

(4) is not obtaining benefits under a claim of residency in another state, territory, or country.

(f) In AS 16.05.330-16.05.430, a person who is not a natural person, other than a sole proprietorship, establishes residency by maintaining its main office or headquarters in the state and providing proof, satisfactory to the commissioner, of that fact to the department or an agent of the department upon demand. A sole proprietorship has the same residency as the person, whether natural or otherwise, who is the proprietor of the entity. The commissioner may adopt regulations as necessary to implement this subsection.

(g) A natural person who does not qualify as a resident under (a)-(e) of this section does not qualify as a resident by virtue of an interest in a resident business entity under (f) of this section.

(h) In AS 16.05.330-16.05.430, a nonresident

(1) person is a person who does not qualify as a resident under (a)-(f) of this section; and

(2) alien is an alien person who does not qualify as a resident under (e) of this section.

(i) In this section, "license" means a license, tag, permit, stamp, identification card, or other indicia of permission to engage in an activity subject to AS 16.05.330-16.05.430.

#### **§ 16.05.420. License, tag, permit, and registration violations**

(a) A false statement of a material fact in an application for a license, tag, permit, and sport fishing vessel registration issued under AS 16.05.330--16.05.430 voids the license, tag, permit, or registration for which the application is made.

(b) A person may not make a false statement, or omit a material fact, in an application for a license, tag, permit, or sport fishing vessel registration issued under AS 16.05.330--16.05.430. A person who without any culpable mental state makes a false statement as to the person's identity or residency in an application for a license, tag, permit, or sport fishing vessel registration issued under AS 16.05.330--16.05.430 is guilty of a violation and upon conviction is punishable by a fine of not more than \$300. A person who knowingly violates this subsection is guilty of a class A misdemeanor.

(c) A person to whom a license, tag, or sport fishing vessel registration has been issued under this chapter may not alter, change, loan, or transfer the license, tag, or sport fishing vessel registration. A person may not use a license, tag, or sport fishing vessel registration that has been issued under this chapter to another person.

#### **§ 16.05.430. Penalties**

(a) Except as provided in AS 16.05.407(b) and (d), 16.05.408(b), and 16.05.420(b), a person who violates AS 16.05.330-16.05.420 or a regulation adopted under AS 16.05.330-16.05.420 is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both.

(b) The proceeds of all fines shall be transmitted by the court to the proper state officer for deposit in the general fund of the state.

#### **§ 16.05.780. Taking of antlerless moose prohibited**

(a) The taking of antlerless moose in any game management unit or subunit or a portion of a unit or subunit is prohibited except that antlerless moose may be taken only under regulations adopted under (b) of this section after

(1) the department recommends the season be opened in that year, based on biological evidence, and

(2) a majority of active local advisory committees for that unit or subunit have recommended an opening for that year, after each has taken a vote and a majority of the members of those committees have voted in the affirmative.

(b) Pursuant to (a) of this section the board, in its regularly scheduled annual game board meeting, may adopt regulations for the taking of antlerless moose in any game management unit or subunit in any year.

**§ 16.05.782. Taking of brown or grizzly bear near solid waste disposal facility prohibited**

(a) Except as provided in (d) of this section, a person who with criminal negligence takes a brown or grizzly bear within one-half mile of a solid waste disposal facility is guilty of a class A misdemeanor.

(b) In addition to the penalty imposed by law under (a) of this section, the court shall order forfeiture of the hide and skull of the bear, but if the hide and skull are not salvaged and delivered to the department then the court shall impose an additional fine of up to \$10,000.

(c) It is an affirmative defense to a prosecution under (a) of this section that the person took the bear in defense of life or property if the person who took the bear shows by a preponderance of the evidence that

(1) the necessity for the taking was not brought about by harassment or provocation of the bear by the person who took the bear;

(2) the necessity for the taking was not brought about by the negligent disposal of garbage or the creation of a similar attractive nuisance by the person who took the bear; and

(3) the person exhausted all other practicable means to protect life and property before the bear was taken.

(d) Notwithstanding (a) - (c) of this section, the department may authorize the taking of a problem brown or grizzly bear within one-half mile of a solid waste disposal facility at any time, if the taking of the bear is necessary to protect the public and is consistent with sound game management principles.

(e) In this section

(1) “criminal negligence” has the meaning given in AS 11.81.900(a);

(2) “property” means

(A) a dwelling, permanent or temporary;

(B) an aircraft, boat, automobile, or other conveyance;

(C) a domestic animal;

(D) other property of substantial value necessary for the livelihood or survival of the owner;

(3) “solid waste disposal facility” means a facility for the disposal of solid waste, other than sewage, for which a prior authorization has been issued under AS 46.03.100.

**§ 16.05.783. Same day airborne hunting**

(a) A person may not shoot or assist in shooting a free-ranging wolf or wolverine the same day that a person has been airborne. However, the Board of Game may authorize a predator control program as part of a game management plan that involves airborne or same day airborne shooting if the board has determined based on information provided by the department

(1) in regard to an identified big game prey population under AS 16.05.255(g) that objectives set by the board for the population have not been achieved and that predation is an important cause for the failure to achieve the objectives set by the board, and that a reduction of predation can reasonably be expected to aid in the achievement of the objectives; or

(2) that a disease or parasite of a predator population

(A) is threatening the normal biological condition of the predator population; or

(B) if left untreated, would spread to other populations.

(b) This section does not apply to

(1) a person who was airborne the same day if that person was airborne only on a regularly scheduled commercial flight; or

(2) an employee of the department who, as part of a game management program, is authorized to shoot or to assist in shooting wolf, wolverine, fox, or lynx on the same day that the employee has been airborne.

(c) A person who violates this section is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. In addition, the court may order the aircraft and equipment used in or in aid of a violation of this section to be forfeited to the state.

(d) When the Board of Game authorizes a predator control program that includes airborne or same day airborne shooting, the board shall have the prerogative to establish predator reduction objectives and limits, methods and means to be employed, who is authorized to participate in the program, and the conditions for participation of individuals in the program.

(e) The use of state employees or state owned or chartered equipment, including helicopters, in a predator control program is prohibited without the approval of the commissioner.

(f) In this section,

(1) “free-ranging” means that the animal is wild and not caught in a trap or snare; and

(2) “game management program” means a program authorized by the Board of Game or the commissioner to achieve identified game management objectives in a designated geographic area.

#### **§ 16.05.925. Penalty for violations**

(a) Except as provided in AS 16.05.430, 16.05.665, 16.05.722, 16.05.723, 16.05.783, 16.05.831, 16.05.861, and 16.05.905, a person who violates AS 16.05.920 or 16.05.921, or a regulation adopted under this chapter or AS 16.20, is guilty of a class A misdemeanor.

(b) In addition to a penalty imposed under (a) of this section or any other penalty for violation of this title or a regulation adopted under this title, a person who is convicted of unlawfully taking an animal

listed in this subsection may be ordered by the court to pay restitution to the state in the amount set out in this subsection for each animal unlawfully taken:

(1) Bear, black .....	\$600
(2) Bear, brown or grizzly .....	1,300
(3) Bison .....	1,300
(4) Caribou .....	850
(5) Deer .....	400
(6) Elk .....	800
(7) Goat .....	800
(8) Moose .....	1,000
(9) Musk oxen .....	3,000
(10) Sheep .....	1,100
(11) Wolf .....	500
(12) Wolverine .....	500.

#### **§ 16.05.940. Definitions**

In AS 16.05 - AS 16.40,

(1) “aquatic plant” means any species of plant, excluding the rushes, sedges, and true grasses, growing in a marine aquatic or intertidal habitat;

(2) “barter” means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature;

(3) “a board” means either the Board of Fisheries or the Board of Game;

(4) “commercial fisherman” means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; “commercial fisherman” includes the crews of tenders or other floating craft used in transporting fish, but does not include processing workers on floating fish processing vessels who do not operate fishing gear or engage in activities related to navigation or operation of the vessel; in this paragraph “operate fishing gear” means to deploy or remove gear from state water, remove fish from gear during an open fishing season or period, or possess a gill net containing fish during an open fishing period;

(5) “commercial fishing” means the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of them for profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid subsistence permit in possession, if required by statute or regulation, is considered prima facie evidence of commercial fishing if commercial fishing gear as specified by regulation is involved in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

- (6) “commissioner” means the commissioner of fish and game unless specifically provided otherwise;
- (7) “customary and traditional” means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of the fish or game;
- (8) “customary trade” means the limited noncommercial exchange, for minimal amounts of cash, as restricted by the appropriate board, of fish or game resources; the terms of this paragraph do not restrict money sales of furs and furbearers;
- (9) “department” means the Department of Fish and Game unless specifically provided otherwise;
- (10) “domestic mammals” include musk oxen, bison, and reindeer, if they are lawfully owned;
- (11) “domicile” means the true and permanent home of a person from which the person has no present intention of moving and to which the person intends to return whenever the person is away; domicile may be proved by presenting evidence acceptable to the boards of fisheries and game;
- (12) “fish” means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;
- (13) “fish derby” means a contest in which prizes are awarded for catching fish;
- (14) “fish or game farming” means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and “captivity” means having the fish or game under positive control, as in a pen, pond, or an area of land or water that is completely enclosed by a generally escape-proof barrier; in this paragraph, “fish” does not include shellfish, as defined in AS 16.40.199;
- (15) “fish stock” means a species, subspecies, geographic grouping, or other category of fish manageable as a unit;
- (16) “fish transporter” means a natural person who holds a fish transporter permit issued under AS 16.05.671;
- (17) “fishery” means a specific administrative area in which a specific fishery resource is taken with a specific type of gear; however, the Board of Fisheries may designate a fishery to include more than one specific administrative area, type of gear, or fishery resource; in this paragraph
- (A) “gear” means the specific apparatus used in the harvest of a fishery resource; and
- (B) “type of gear” means an identifiable classification of gear and may include
- (i) classifications for which separate regulations are adopted by the Board of Fisheries or for which separate gear licenses were required by former AS 16.05.550 - 16.05.630; and

(ii) distinct subclassifications of gear such as “power” troll gear and “hand” troll gear or sport gear and guided sport gear;

(18) “fur dealing” means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person’s own use;

(19) “game” means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 - AS 16.40;

(20) “game population” means a group of game animals of a single species or subgroup manageable as a unit;

(21) “hunting” means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(22) “nonresident” means a person who is not a resident of the state;

(23) “nonresident alien” means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(24) “operator” means the individual by law made responsible for the operation of the vessel;

(25) “person with physical disabilities” means a person who presents to the department either written proof that the person receives at least 70 percent disability compensation from a government agency for a physical disability or an affidavit signed by a physician licensed to practice medicine in the state stating that the person is at least 70 percent physically disabled;

(26) “personal use fishing” means the taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(27) “resident” means

(A) a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person’s domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(B) a partnership, association, joint stock company, trust, or corporation that has its main office or headquarters in the state; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;

(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made;

(D) a person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made; or

(E) an alien who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person's domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country;

(28) "rural area" means a community or area of the state in which the noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area;

(29) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(30) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(31) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(32) "subsistence hunting" means the taking of, hunting for, or possession of game by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game;

(33) "subsistence uses" means the noncommercial, customary and traditional uses of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph, "family" means persons related by blood, marriage, or adoption, and a person living in the household on a permanent basis;

(34) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(35) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(36) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(37) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft.

## THE CONSTITUTION OF THE STATE OF ALASKA

### ARTICLE 08

#### NATURAL RESOURCES

##### **Section 8.1 - Statement of Policy.**

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

##### **Section 8.2 - General Authority.**

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

##### **Section 8.3 - Common Use.**

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

##### **Section 8.4 - Sustained Yield.**

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

##### **Section 8.5 - Facilities and Improvements.**

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

##### **Section 8.6 - State Public Domain.**

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

##### **Section 8.7 - Special Purpose Sites.**

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

##### **Section 8.8 - Leases.**

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

##### **Section 8.9 - Sales and Grants.**

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to

these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

#### **Section 8.10 - Public Notice.**

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

#### **Section 8.11 - Mineral Rights.**

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

#### **Section 8.12 - Mineral Leases and Permits.**

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

#### **Section 8.13 - Water Rights.**

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

#### **Section 8.14 - Access to Navigable Waters.**

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

#### **Section 8.15 - No Exclusive Right of Fishery.**

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

**Section 8.16 - Protection of Rights.**

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

**Section 8.17 - Uniform Application.**

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

**Section 8.18 - Private Ways of Necessity.**

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.