

Submitted by Paul A. Shadura II 02.10.20

Purpose: To offer relative references to the fisheries management mandate of the term "Maximum Sustained Yield".

Constitution of the State of Alaska

Article VIII – Natural Resources

§ 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.

§ 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.

§ 3. Common Use

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

§ 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.

§ 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.

§ 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.

§ 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. *[Amended 1972]*

§ 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.

§ 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.

Sec. 38.04.910. Definitions.

(12) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use;

Fish and Wildlife Act of 1956

Section 7(a) of the Act (16 U.S.C. 742f; 70 Stat. 1122) requires the Secretary of the Interior to: 1) develop measures for "maximum sustainable production of fish"; 2) make economic studies of the industry and recommend measures to insure stability of the domestic fisheries;

CFEC Report-Bristol Bay Drift Optimization Report

Chapter 5 Management Optimum Number

There is evidence that the framers of the Alaska constitution favored full utilization and development of the state's resources, supporting this concept of avoiding waste of fishery resources. In discussing the framers' desire for development, Gordon Harrison, states:

*"The constitution clearly establishes a presumption in favor of the development and utilization of Alaska's resources. That is, development is considered desirable except when it is wasteful, destroys the ability of living resources to regenerate, violates the rights of others, is narrowly selfish and exploitive, or otherwise outrageous and offensive to the public interest. The constitution says, in effect, that there should be development but not development at any cost."*¹

In discussing Article VIII, Section 2, Harrison indicates that the authors of the section understood conservation in the traditional sense of "wise use".² The wise use of resources adds yet more emphasis to the Department's direction to manage for maximum sustained yield. To avoid putting excess escapement into a salmon system beyond that of a biological escapement goal constitutes wise use of the resource and is consistent with not only sound fishery management techniques, but also harvesting in an orderly (non-wasteful) and efficient manner.

Avoiding waste and harvesting in an orderly and efficient manner may also be consistent with the Alaska Legislature's intent when they crafted the constitutional amendment to allow limited entry into Alaska's fisheries. Moreover, there is evidence that the legislature took an even broader approach to waste as it applies to harvesting natural resources. Former Assistant Attorney General (AG) Steven A. Daugherty carefully examined background documents on the limited entry amendment to Alaska's constitution. In 1995 Daugherty wrote a letter for Attorney General Bruce M. Bothelo to then-Representative Alan Austerman of the Alaska State Legislature, where he addressed the legality and constitutionality of individual fishing quota programs in Alaska.³

¹ See Gordon S. Harrison, *Alaska's Constitution: A Citizen's Guide*, 1986. Second Edition. Institute of Social and Economic Research, University of Alaska, Anchorage, page 69.

² *ibid.*, page 71.

³ See: *Legality and Constitutionality of IFQ Programs*, A.G. file 223-95-0472, Alaska Department of Law, Attorney General's Office.

Only one applicant for ADFG chief

By: Elizabeth Earl For the Journal Post date: Wed, 12/19/2018 - 10:42am

Doug Vincent-Lang, whom Dunleavy appointed as Acting Commissioner on Dec. 4, was the only person to submit an application to be the commissioner of the Alaska Department of Fish and Game

"I would exert the authorities of the Commissioner and recognize and work within the authorities of publicly appointed Boards and Commissions," he wrote. "I believe that sustained yield can have different targets depending upon the population. Many, if not most of, Alaska's fish and wildlife populations should be managed for their maximum sustained yield, including many of our salmon and ungulate populations

Alaska's Constitution: A Citizen's Guide is published by the Legislative Affairs Agency,

Gordon S. Harrison, Ph.D. Juneau April 2018

Section 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. This section bolsters the commitment to conservation found in Section 2. The principle of sustained yield management is a basic tenet of conservation: the annual harvest of a biological resource should not exceed the annual regeneration of that resource. Maximum sustained yield is the largest harvest that can be maintained year after year. State law defines maximum sustained yield as "the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the state land consistent with multiple use" (AS 38.04.910). At the time of the constitutional convention, stocks of Alaska's salmon had been reduced to a sad remnant of their past bounty by neglect of the sustained yield maxim. The qualifying phrase "subject to preferences among beneficial uses" signals recognition by the delegates that not all the demands made upon resources can be satisfied, and that prudent resource management based on modern conservation principles necessarily involves prioritizing competing uses.

5 AAC 39.222 Policy for the management of sustainable salmon fisheries

(e)(2)(B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;

(f)(22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;

FY 2021 Fish and Game Budget

Component: Central Region Fisheries Management Contribution to Department's Mission

The Central Region contributes to the department's mission by 1) ensuring the conservation of natural stocks of fish, shellfish, and aquatic plants based on scientifically sound assessments; 2) sustaining fisheries based on the control and regulation of harvests through responsive management systems; 3) increasing fishery harvests and harvest opportunities of fish, shellfish, and aquatic plants through the investigation of maximum sustained yield for individual and aggregate populations; 4) expanding fishery potential through identification of underutilized species/stocks of fish, shellfish, and aquatic plants; 5) maintaining and enhancing opportunities for public participation in the development of fishery management plans and harvest regulations; 6) developing and maintaining comprehensive databases on commercial, subsistence, and personal use harvests, and associated processing of fish, shellfish, and aquatic plants; 7) promoting public education on the conservation, production, and economic and social benefits of yields from fish, shellfish, and aquatic plants; and 8) providing data, expertise, and written and oral comment in the public regulatory process through the Alaska Board of Fisheries (BOF).