

CS FOR HOUSE BILL NO. 406(FIN) am(efd fld)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/21/98

Offered: 4/17/98

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the Board of Fisheries and the Board of Game to identify
2 fish and game that are taken for subsistence and to identify subsistence and
3 nonsubsistence areas; relating to the establishment of preferences for and to
4 regulation of subsistence fishing and hunting; relating to advisory committees."

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

6 * **Section 1. POLICY AND FINDINGS.** (a) It is the policy of the legislature that
7 (1) consistent with sound management principles and the conservation of
8 healthy stocks of fish and healthy populations of game, the use of fish and game resources in
9 Alaska is to the extent practicable to have no substantial adverse effects on subsistence users
10 who depend on subsistence uses of the fish and game resources;
11 (2) consistent with management of fish and game in accordance with
12 recognized scientific principles, subsistence users engaged in a subsistence way of life have
13 the opportunity to do so;
14 (3) nonwasteful subsistence uses of fish and game and other renewable

resources shall be the preferred consumptive uses of those resources on lands in Alaska; when there is a shortage of fish and game and it is necessary to restrict taking of fish and game in order to assure the continued viability of a fish stock or game population or the continuation of subsistence uses of the stock or population, the taking of the stock or population for nonwasteful subsistence uses shall be given preference over other consumptive uses;

(4) a subsistence user is a person who has demonstrated a customary and traditional dependence on a particular fish stock or game population in an area outside of nonsubsistence areas in Alaska.

(b) The legislature finds that

(1) a classification scheme employing individual characteristics is less invasive of the open access values of art. VIII of the Constitution of the State of Alaska and more apt to accomplish the purpose of this Act than a geographically based urban-rural residency criterion;

(2) Webster's New World Dictionary, Second College Edition, defines "rural" to mean "of or characteristic of the country, country life, or country people; rustic";

(3) the policy set out in (a) of this section is consistent with the policy of the Congress of the United States as expressed in Title VIII of the Alaska National Interest Lands Conservation Act (P.L. 96-487).

* **Sec. 2.** AS 16.05.258 is repealed and reenacted to read:

Sec. 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 an amount of the harvestable portion that is reasonably necessary for subsistence uses by residents, and, if the harvestable portion

1 of the stock or population

2 (1) is sufficient to provide for all consumptive uses, the appropriate
3 board

4 (A) shall adopt regulations that provide a reasonable opportunity
5 for all uses of the stock or population; and

6 (B) may adopt regulations consistent with art. VIII, sec. 4,
7 Constitution of the State of Alaska, that recognizes preference among beneficial
8 uses;

9 (2) is sufficient to provide a reasonable opportunity for subsistence uses
10 by qualified subsistence users and for some, but not all, other consumptive uses, the
11 appropriate board

12 (A) shall adopt regulations that provide a reasonable opportunity
13 for subsistence uses of the stock or population by qualified subsistence users;

14 (B) may adopt regulations that provide for other consumptive
15 uses of the stock or population;

16 (C) shall adopt regulations to differentiate among consumptive
17 uses that provide for a preference for the subsistence uses by qualified
18 subsistence users if regulations are adopted under (B) of this paragraph; and

19 (D) shall seek to reestablish stock or population levels,
20 consistent with sound biological and environmental principles, which will
21 attempt to restore a reasonable opportunity for all consumptive uses;

22 (3) is sufficient to provide a reasonable opportunity for subsistence uses
23 by qualified subsistence users, but no other consumptive uses, the appropriate board
24 shall

25 (A) adopt regulations that provide a reasonable opportunity for
26 subsistence uses of the stock or population by qualified subsistence users;

27 (B) restrict or eliminate other consumptive uses of the stock or
28 population; and

29 (C) seek to reestablish stock or population levels, consistent
30 with sound biological and environmental principles, which will attempt to
31 restore a reasonable opportunity for all consumptive uses;

(4) is not sufficient to provide a reasonable opportunity for human consumptive subsistence uses by all qualified subsistence users, the appropriate board shall

(A) adopt regulations eliminating consumptive uses, other than human consumptive subsistence uses of the stock or population by qualified subsistence users;

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

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

(ii) the ability of the subsistence user to obtain food if subsistence use of the stock or population is restricted or eliminated; and

(C) seek to reestablish stock or population levels, consistent with sound biological and environmental principles, which will attempt to restore a reasonable opportunity for all consumptive uses.

(c) For purposes of (b) of this section, a qualified subsistence user is a resident, without regard to the location of the resident's domicile in the state, who has demonstrated a customary and traditional dependence on a particular fish stock or game population identified under (a) of this section. To determine whether a resident is a qualified subsistence user, the Board of Fisheries or the Board of Game, as appropriate, shall establish criteria for determining if a resident has demonstrated a customary and traditional dependence on the stock or population based on

(1) past use of the stock or population;

(2) lack of alternative resources;

(3) the proportion of diet made up of subsistence resources;

(4) the variety of fish and game species consumed;

(5) the importance of sharing and exchange of fish and game resources;

(6) the number of days engaged in harvesting fish and game resources.

(d) Notwithstanding (c) of this section, a resident who is domiciled

(1) in an area that is determined by the appropriate board to be customarily and traditionally dependent on the stock or population that is described in (b)(2) - (4) of this section is presumed to be a qualified subsistence user;

(2) outside of an area that is determined by the appropriate board to be customarily and traditionally dependent on the stock or population that is described in (b)(2) - (4) of this section is presumed not to be a qualified subsistence user.

(e) A presumption established under (d) of this section is rebuttable by a preponderance of the evidence presented at a hearing before the Board of Fisheries or Board of Game, as appropriate. Each board shall adopt procedures by which the board shall determine the qualifications of a person who challenges a presumption established under (d) of this section or whose eligibility to engage in subsistence fishing or hunting for a specific stock or population is challenged. The procedure established by a board must include AS 44.62.330 - 44.62.630.

(f) The Board of Fisheries shall identify by regulation the boundaries of nonsubsistence fishing areas. The Board of Game shall identify by regulations the boundaries of nonsubsistence hunting areas. The boards may act jointly in identifying the boundaries of nonsubsistence fishing and hunting areas. A nonsubsistence fishing area or a nonsubsistence hunting area is an area or community where a cash-based economy is a principal characteristic of the economy, culture, and way of life of the area or community. In determining whether a cash-based economy is a principal characteristic of the economy, culture, and way of life of an area or community under this subsection, each board shall consider the relative importance of a cash-based economy to the area or community in the context of the totality of the following socioeconomic characteristics of the area or community:

- (1) the social and economic structure;
- (2) the stability of the economy;
- (3) the extent and 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

1 in the area or community;

2 (6) the variety of fish and game species used by those domiciled in the
3 area or community;

4 (7) the seasonal cycle of economic activity;

5 (8) the percentage of those domiciled in the area or community
6 participating in hunting and fishing activities or using wild fish and game;

7 (9) the harvest levels of fish and game by those domiciled in the area
8 or community;

9 (10) the cultural, social, and economic values associated with the taking
10 and use of fish and game;

11 (11) the geographic locations where those domiciled in the area or
12 community hunt and fish;

13 (12) the extent of sharing and exchange of fish and game by those
14 domiciled in the area or community;

15 (13) the other sources of direct and indirect economic support available
16 to those domiciled in the area or community;

17 (14) additional similar factors a board establishes by regulation to be
18 relevant to its determinations under this subsection.

19 (g) Fishing under subsistence regulations may not occur in a nonsubsistence
20 fishing area identified under this section. Hunting under subsistence regulations may
21 not occur in a nonsubsistence hunting area identified under this section. Fish stocks
22 and game populations, or portions of fish stocks and game populations, not identified
23 under (a) of this section may be taken only under nonsubsistence regulations.

24 (h) The taking and use of fish and game authorized under this section are
25 subject to

26 (1) AS 16.05.831 and AS 16.30; and

27 (2) regulations adopted by the appropriate board regarding open and
28 closed areas, seasons, methods and means, marking and identification requirements,
29 quotas, bag limits, harvest levels, and sex, age, and size limitations.

30 (i) A person may not knowingly provide false information to the department
31 or a board regarding the taking or use of fish or game for subsistence uses or regarding

the person's or another person's eligibility to engage in subsistence uses of fish or game. Notwithstanding other provisions of this chapter, a person who violates this subsection is guilty of a class A misdemeanor. In addition to the imposition of other penalties provided by law under AS 12.55, if a person is convicted of violating this subsection, the court shall suspend the person's hunting and fishing privileges for not less than one year. In this subsection, "knowingly" has the meaning given in AS 11.81.900.

(j) For purposes of this section,

(1) "preference" means an advantage, but not necessarily an exclusive privilege, conferred on a use of fish and game over other uses through the adoption of seasons, areas, bag limits, methods and means, and other regulations that take into consideration the consumptive uses and harvest methods of the user groups;

(2) "reasonable opportunity" means an opportunity, as determined by the appropriate board, that allows a normally diligent hunter or fisherman to participate in a hunt or fishery with a reasonable expectation of success in taking fish or game; "reasonable opportunity" does not mean a guarantee of taking fish or game;

(3) "sustained yield" means a level of utilization of a fish or game population for consumptive uses by humans that is capable of being maintained in perpetuity.

* **Sec. 3.** AS 16.05.260 is amended to read:

Sec. 16.05.260. Local and regional advisory [ADVISORY] committees. (a)

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, **local** 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 **local** advisory committees, shall **designate** [DELEGATE] one member of each committee as **chair** [CHAIRMAN], and shall give the **chair** [CHAIRMAN] authority to hold public hearings on fish or game matters. Recommendations from the **local** advisory committees shall be forwarded to **regional advisory committees and to** the appropriate board for their consideration. **If** [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 local advisory committee of this action and state the reasons for not following the recommendations.

(b) The Board of Fisheries and the Board of Game, acting jointly, shall establish six fish and game regulatory regions that together comprise the whole of the state and shall establish a regional advisory committee for each region. Each regional advisory committee shall be composed of nine members who are appointed by the governor and who are well informed on the fish or game resources of the region in which the committee is located. At least five of the members of each regional advisory committee shall reside in the fish and game regulatory region in which the committee is located. The boards shall set the terms of each of the members of the regional advisory committees, shall designate one member of each committee as chair, and shall give the chair authority to hold public hearings on fish or game matters. Recommendations from the regional advisory committees shall be forwarded to the appropriate board for the board's consideration. A board may choose not to follow the recommendations of a regional advisory committee that the board determines are not supported by substantial evidence presented to the board, violate recognized principles of fish or game conservation, are detrimental to the satisfaction of subsistence needs, or are inconsistent with sound public policy. If a board chooses not to follow a recommendation of a regional advisory committee, the appropriate board shall inform the regional advisory committee of this action and state the reasons for not following the recommendation.

(c) The commissioner shall delegate authority to local 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 local advisory committees under this section. The appropriate board shall adopt the necessary regulations governing these closures.

* Sec. 4. AS 16.05.940(7) is amended to read:

(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 **taking or use 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;

* **Sec. 5.** AS 16.05.940(30) is amended to read:

(30) "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;

* **Sec. 6.** AS 16.05.940(31) is amended to read:

(31) "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;

* **Sec. 7.** AS 16.05.940(32) is amended to read:

(32) "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;

* **Sec. 8.** AS 38.05.945(d) is amended to read:

(d) Notice at least 30 days before action under (a)(5) of this section shall be given to appropriate

(1) regional **advisory committees** [FISH AND GAME COUNCILS] established under AS 16.05.260; and

(2) coastal resource service areas organized under AS 46.40.110 - 46.40.210.

* **Sec. 9.** AS 16.05.940(27) is repealed.

* **Sec. 10.** Sections 3 and 5, ch. 1, SSSLA 1992, are repealed.

* **Sec. 11.** TRANSITION: SUBSISTENCE AREAS. (a) Notwithstanding AS 16.05.258,

1 as repealed and reenacted by sec. 2 of this Act, an area located outside of a nonsubsistence
2 area established by the Board of Fisheries and the Board of Game as of May 15, 1993, is a
3 subsistence fishing and hunting area for the purposes of AS 16.05.258, as repealed and
4 reenacted by sec. 2 of this Act. Subsistence fishing and hunting areas established by this
5 subsection are superseded by the taking effect of regulations identifying and delineating
6 nonsubsistence fishing areas and nonsubsistence hunting areas under AS 16.05.258, as repealed
7 and reenacted by sec. 2 of this Act, and (b) of this section.

8 (b) Within two years after the effective date of this section, the Board of Fisheries and
9 the Board of Game shall identify and delineate nonsubsistence fishing areas and
10 nonsubsistence hunting areas, respectively, in accordance with AS 16.05.258, as repealed and
11 reenacted by sec. 2 of this Act.