

CS FOR HOUSE BILL NO. 406(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/6/98

Referred: Judiciary, Finance

Sponsor(s): HOUSE RESOURCES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to fish and game; and providing for an effective date."**

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

3 * **Section 1.** FINDINGS AND INTENT. (a) The legislature finds that

4 (1) the ability to take fish and game for personal and family use for sustenance
5 is a fundamental right under the Constitution of the State of Alaska;

6 (2) the common use clause of the Constitution of the State of Alaska imposes
7 on the state a trust duty to manage the fish, game, and water resources of the state for the
8 benefit of all the people;

9 (3) the harvest of fish and game for personal and family use for sustenance is
10 the highest and best use of fish and game;

11 (4) there are Alaskans, both Native and non-Native, who have a traditional,
12 social, or cultural relationship to and dependence upon the wild renewable resources produced
13 by Alaska's land and water; the harvest and use of fish and game for personal and family
14 consumption is an integral part of those relationships;

15 (5) although customs, traditions, and beliefs vary, these Alaskans share ideals

1 of respect for nature, the importance of using resources wisely, and the value and dignity of
 2 a way of life in which they use Alaska's fish and game for a substantial portion of their
 3 sustenance;

4 (6) while Alaska's fish and game are generally still plentiful, these resources
 5 are not unlimited and cannot provide for every desired use, now or in the future; competition
 6 for and the level of effort on these resources have required the legislature, the Board of
 7 Fisheries, and the Board of Game to establish a preference for sustenance among the various
 8 beneficial uses of fish and game in Alaska;

9 (7) the fish and game resources of Alaska have adequate biological and
 10 reproductive capacity to provide an abundance of fish and game for all users;

11 (8) the harvest of fish and game for personal and family use for sustenance
 12 does not constitute or affect interstate commerce and is not subject to regulation under the
 13 commerce clause of the Constitution of the United States.

14 (b) It is the intent of the legislature to provide

15 (1) a preference for personal and family use of fish and game for sustenance
 16 that parallels the Congressional intent underlying the subsistence preference under Title VIII
 17 of the Alaska National Interest Lands Conservation Act (P.L. 96-487) but does not violate the
 18 fundamental constitutional rights of Alaskans to sustenance, equal protection, and common use
 19 of fish and game under the Constitution of the State of Alaska;

20 (2) a significant role for local fish and game advisory committees and regional
 21 fish and game boards in the review of regulations governing the use of fish and game
 22 resources;

23 (3) for a greater abundance of fish and game resources to serve as a source of
 24 food for persons who are dependent on fish and game for personal and family use for
 25 sustenance.

26 * **Sec. 2.** AS 16 is amended by adding a new chapter to read:

27 **Chapter 16. Use of Fish and Game for Sustenance.**

28 **Sec. 16.16.010. Preferred use of fish and game.** (a) The harvest of fish and
 29 game for personal and family use for sustenance by residents is the highest and best
 30 use of fish and game. The Board of Fisheries, the Board of Game, and the department
 31 shall adopt regulations, policies, and management plans to implement a preference for

1 consumptive use of fish and game for personal and family use for sustenance over
2 other uses of fish and game.

3 (b) If the Board of Fisheries or the Board of Game determines that the
4 projected level of harvest of a fish stock or game population in an area would exceed
5 the sustainable level of harvest under the sustained yield principle, the appropriate
6 board shall allocate, notwithstanding AS 16.05.251(e), the harvestable portion of the
7 stock or population in that area among user groups in accordance with a ranking of
8 beneficial uses of the stock or population that assigns the highest preference to
9 consumptive use for personal and family use for sustenance.

10 **Sec. 16.16.020. Dependence on fish and game for sustenance.** (a) The
11 Board of Fisheries and the Board of Game acting jointly shall identify and define fish
12 and game dependent use areas. A fish and game dependent use area is an area where
13 dependence on fish and game for personal and family use for sustenance is the
14 principal characteristic of the economy and way of life of the area. In determining
15 whether dependence on fish and game for personal and family use for sustenance is
16 the principal characteristic of the economy and way of life of an area, the Board of
17 Fisheries and the Board of Game shall jointly consider the relative importance of
18 dependence on fish and game in the context of the totality of the following
19 socioeconomic characteristics of the area:

- 20 (1) the social and economic structure;
- 21 (2) the stability of the economy;
- 22 (3) the extent and kinds of employment for wages, including full-time,
23 part-time, temporary, and seasonal employment;
- 24 (4) the amount and distribution of cash income among those who live
25 in the area;
- 26 (5) the cost and availability of goods and services to those who live in
27 the area;
- 28 (6) the variety of fish and game species used by those who live in the
29 area;
- 30 (7) the seasonal cycle of economic activity;
- 31 (8) the percentage of those who live in the area participating in hunting

1 and fishing activities or using wild fish and game;

2 (9) the harvest levels of fish and game by those who live in the area;

3 (10) the historical, social, and economic values associated with the
4 taking and use of fish and game;

5 (11) the geographic locations where those who live in the area hunt and
6 fish;

7 (12) the extent of sharing and exchange of fish and game by those who
8 live in the area;

9 (13) the other sources of direct and indirect economic support available
10 in the area;

11 (14) additional similar factors the boards establish by regulation to be
12 relevant to a determination under this subsection.

13 (b) If the Board of Fisheries or the Board of Game, as appropriate, with the
14 concurrence of the department, determines that a shortage of a fish stock or game
15 population available for harvest in a fish and game dependent use area exists, the
16 board may establish a preference for fish or game dependent uses of the stock or
17 population and, consistent with sustained yield, reserve a sufficient portion of the stock
18 or population to provide a reasonable opportunity to satisfy the need for fish and game
19 dependent uses of the stock or population. A board shall make its determination of
20 whether sufficient fish or game resources exist in an area to provide a reasonable
21 opportunity to satisfy fish and game dependent uses of a stock or population based on
22 the recommendations of the regional fish and game board for the area and the local
23 fish and game advisory committees for the area. The preference established under this
24 subsection shall be extended to a person who is determined to be dependent on fish
25 and game for personal and family use for sustenance under (c) - (f) of this section.
26 In a time of shortage of fish or game resources, the appropriate board may adopt a
27 preference among beneficial uses of fish and game in a region or area.

28 (c) A person is dependent on fish and game for personal and family use for
29 sustenance if the person

30 (1) possesses a \$5 resident hunting, trapping, and sport fishing license
31 issued under AS 16.05.340(a)(6); and

1 (2) submits to the regional fish and game board for the region in which
2 the person lives a signed written statement that the person

3 (A) is dependent on fish and game for personal and family use
4 for sustenance; or

5 (B) has no alternate means of sustenance as the result of
6 (i) the absence of a cash-based economy in the area
7 where the person lives; or

8 (ii) the person's decision to adopt a fish and game
9 dependent life style.

10 (d) Each regional fish and game board shall review the written statements
11 submitted by persons asserting a dependence on fish and game for personal and family
12 use for sustenance and make recommendations as to whether the person is entitled to
13 a preference under (b) of this section. A regional board may hold a hearing to gather
14 additional information regarding whether a person is dependent on fish and game for
15 personal and family use for sustenance. Each regional board shall forward
16 recommendations made by the regional board under this subsection and additional
17 information collected by the regional board to the Board of Fisheries and the Board
18 of Game.

19 (e) The Board of Fisheries and the Board of Game, acting jointly, shall make
20 the final determination as to who is entitled to the preference authorized under (b) of
21 this section. The statewide boards shall defer to the recommendations of the regional
22 fish and game boards unless a person disputes the recommendation made by a regional
23 board. The statewide boards shall hold a hearing subject to AS 44.62.330 - 44.62.630
24 to make a final determination of whether the person is dependent on fish and game for
25 personal and family use for sustenance.

26 (f) A person who is determined by the Board of Fisheries and the Board of
27 Game to be dependent on fish and game for personal and family use for sustenance
28 may take fish and game in any location in the state where a preference for the harvest
29 of fish or game for personal and family use for sustenance has been established under
30 (b) of this section.

31 (g) The Board of Fisheries and the Board of Game shall adopt regulations

1 governing the allowable level of noncommercial barter and sharing of fish and game
 2 resources taken for personal and family use for sustenance. The boards shall set the
 3 level of allowable noncommercial barter at a documented historical level that does not
 4 subject barter of fish and game taken for personal and family use for sustenance to
 5 federal regulation under the commerce clause of the Constitution of the United States.

6 **Sec. 16.16.095. Definitions.** In this chapter,

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

11 (2) "principal" means more than 50 percent;

12 (3) "reasonable opportunity" means an opportunity, as determined by
 13 the Board of Fisheries or the Board of Game, as appropriate, that allows a person to
 14 participate in a fishery or hunt that provides a normally diligent participant with a
 15 reasonable expectation of success of taking of fish or game; "reasonable opportunity"
 16 does not mean a guarantee of taking fish or game;

17 (4) "shortage" means the amount of a specific fish stock or game
 18 population available for harvest is not sufficient to provide a reasonable opportunity
 19 to take the stock or population for the sustenance needs of persons who are found to
 20 be dependent on the fish and game for personal and family use for sustenance;

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

24 * **Sec. 3.** AS 16.05.090(c) is amended to read:

25 (c) There is established in the department a section of **fish and game**
 26 **dependent use** [SUBSISTENCE HUNTING AND FISHING].

27 * **Sec. 4.** AS 16.05.094 is amended to read:

28 **Sec. 16.05.094. Duties of section of fish and game dependent use**
 29 **[SUBSISTENCE HUNTING AND FISHING].** The section of **fish and game**
 30 **dependent use** [SUBSISTENCE HUNTING AND FISHING] shall

31 (1) compile existing data and conduct studies to gather information,

1 including data from **persons dependent on fish and game for personal and family**
 2 **use for sustenance** [SUBSISTENCE USERS], on all aspects of the role of
 3 [SUBSISTENCE] hunting and fishing **for fish and game dependent use** in the lives
 4 of the residents of the state;

5 (2) quantify the amount, nutritional value, and extent of dependence on
 6 food acquired through [SUBSISTENCE] hunting and fishing **for fish and game**
 7 **dependent use**;

8 (3) make information gathered available to the public, appropriate
 9 agencies, and other organized bodies;

10 (4) assist the department, the Board of Fisheries, and the Board of
 11 Game in determining what uses of fish and game, as well as which users and what
 12 methods, should be termed **fish and game dependent** [SUBSISTENCE] uses, users,
 13 and methods;

14 (5) evaluate the impact of state and federal laws and regulations on
 15 [SUBSISTENCE] hunting and fishing **for fish and game dependent use** and, when
 16 corrective action is indicated, make recommendations to the department;

17 (6) make recommendations to the Board of Game and the Board of
 18 Fisheries regarding adoption, amendment, and repeal of regulations affecting
 19 [SUBSISTENCE] hunting and fishing **for fish and game dependent use**;

20 (7) participate with other divisions in the preparation of statewide and
 21 regional management plans so that those plans recognize and incorporate the needs of
 22 [SUBSISTENCE] users of fish and game **for fish and game dependent use**.

23 * **Sec. 5.** AS 16.05 is amended by adding a new section to read:

24 **Sec. 16.05.245. Review of regulatory proposals.** (a) Notwithstanding
 25 AS 44.62, each proposal for a regulation to be adopted by the Board of Fisheries or
 26 the Board of Game shall be submitted to local fish and game advisory committees and
 27 regional fish and game boards that may be affected by the proposal. Each advisory
 28 committee and regional board may review the proposed regulation and submit
 29 comments and recommendations regarding the proposal to the Board of Fisheries or
 30 the Board of Game, as appropriate. This subsection does not apply to emergency
 31 regulations considered by either the Board of Fisheries or the Board of Game.

1 (b) The Board of Fisheries and the Board of Game shall carefully review each
 2 recommendation made by a regional fish and game board and may defer to the
 3 recommendation of the regional board, provided the recommendation is consistent with
 4 the conservation of the fish or game resource and with the sustained yield principle.

5 (c) If the Board of Fisheries or the Board of Game chooses not to follow the
 6 recommendation of an advisory committee or a regional board, the appropriate
 7 statewide board shall inform the advisory committee or regional board of the action
 8 and state the reasons for not following the recommendation.

9 (d) Subject to (a) and (b) of this section, the Board of Fisheries and the Board
 10 of Game may consider and adopt any proposal for a regulation that is submitted for
 11 adoption, even if comments or recommendations regarding the proposal are not
 12 received from an advisory committee or a regional board.

13 * **Sec. 6.** AS 16.05.251(a) is amended to read:

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

16 (1) setting apart fish reserve areas, refuges, and sanctuaries in the
 17 waters of the state over which it has jurisdiction, subject to the approval of the
 18 legislature;

19 (2) establishing open and closed seasons and areas for the taking of
 20 fish; if consistent with resource conservation and development goals, the board may
 21 adopt regulations establishing restricted seasons and areas necessary for persons 60
 22 years of age and older to participate in sport **fishing**, personal use **fishing**, or
 23 [SUBSISTENCE] fishing **for personal and family use for sustenance**;

24 (3) setting quotas, bag limits, harvest levels, and sex and size
 25 limitations on the taking of fish;

26 (4) establishing the means and methods employed in the pursuit,
 27 capture, and transport of fish;

28 (5) establishing marking and identification requirements for means used
 29 in pursuit, capture, and transport of fish;

30 (6) classifying as commercial fish, sport fish, guided sport fish,
 31 personal use fish, [SUBSISTENCE FISH,] or predators or other categories essential

1 for regulatory purposes;

2 (7) watershed and habitat improvement, and management, conservation,
3 protection, use, disposal, propagation, and stocking of fish;

4 (8) investigating and determining the extent and effect of disease,
5 predation, and competition among fish in the state, exercising control measures
6 considered necessary to the resources of the state;

7 (9) prohibiting and regulating the live capture, possession, transport, or
8 release of native or exotic fish or their eggs;

9 (10) establishing seasons, areas, quotas, and methods of harvest for
10 aquatic plants;

11 (11) establishing the times and dates during which the issuance of
12 fishing licenses, permits, and registrations and the transfer of permits and registrations
13 between registration areas is allowed; however, this paragraph does not apply to
14 permits issued or transferred under AS 16.43;

15 (12) regulating commercial **fishing**, sport **fishing**, guided sport **fishing**,
16 **fishing for personal and family use for sustenance** [SUBSISTENCE], and personal
17 use fishing as needed for the conservation, development, and utilization of fisheries;

18 (13) requiring, in a fishery, observers on board fishing vessels, as
19 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined
20 in AS 16.05.475(c), after making a written determination that an on-board observer
21 program

22 (A) is the only practical data-gathering or enforcement
23 mechanism for that fishery;

24 (B) will not unduly disrupt the fishery;

25 (C) can be conducted at a reasonable cost; and

26 (D) can be coordinated with observer programs of other
27 agencies, including the National Marine Fisheries Service, North Pacific
28 Fishery Management Council, and the International Pacific Halibut
29 Commission;

30 (14) establishing nonexclusive, exclusive, and superexclusive
31 registration and use areas for regulating commercial fishing;

1 (15) regulating resident or nonresident sport fishermen as needed for
2 the conservation, development, and utilization of fishery resources;

3 (16) requiring unlicensed fishing vessels present in or transiting the
4 waters of the state to report to the department the quantity, species, and origin of fish
5 on board; in this paragraph, "unlicensed fishing vessel" means a fishing vessel that is
6 not licensed under AS 16.05.490 - 16.05.530.

7 * **Sec. 7.** AS 16.05.251(d) is amended to read:

8 (d) Regulations adopted under (a) of this section must, consistent with
9 sustained yield and the provisions of AS 16.16.020 [AS 16.05.258], provide a fair and
10 reasonable opportunity for the taking of fishery resources by personal use, sport, and
11 commercial fishermen.

12 * **Sec. 8.** AS 16.05.255(a) is amended to read:

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

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

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

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

24 (4) setting quotas, bag limits, harvest levels, and sex, age, and size
25 limitations on the taking of game;

26 (5) classifying game as game birds, song birds, big game animals, fur
27 bearing animals, predators, or other categories;

28 (6) methods, means, and harvest levels necessary to control predation
29 and competition among game in the state;

30 (7) watershed and habitat improvement, and management, conservation,
31 protection, use, disposal, propagation, and stocking of game;

1 (8) prohibiting the live capture, possession, transport, or release of
2 native or exotic game or their eggs;

3 (9) establishing the times and dates during which the issuance of game
4 licenses, permits, and registrations and the transfer of permits and registrations between
5 registration areas and game management units or subunits is allowed;

6 (10) regulating sport hunting and [SUBSISTENCE] hunting **for**
7 **personal and family use for sustenance** as needed for the conservation, development,
8 and utilization of game;

9 (11) taking game to ensure public safety.

10 * **Sec. 9.** AS 16.05.255(d) is amended to read:

11 (d) Regulations adopted under (a) of this section must provide that, consistent
12 with the provisions of **AS 16.16.020** [AS 16.05.258], the taking of moose, deer, elk,
13 and caribou by residents for personal or family consumption has preference over taking
14 by nonresidents.

15 * **Sec. 10.** AS 16.05.255(f) is amended to read:

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

25 (1) determines that intensive management would be

26 (A) ineffective, based on scientific information;

27 (B) inappropriate due to land ownership patterns; or

28 (C) against the best interest of **persons who take game for**
29 **personal and family use for sustenance** [SUBSISTENCE USES]; or

30 (2) declares that a biological emergency exists and takes immediate
31 action to protect or maintain the big game prey population in conjunction with the

1 scheduling for adoption of those regulations that are necessary to implement (e) of this
2 section.

3 * **Sec. 11.** AS 16.05.259 is amended to read:

4 **Sec. 16.05.259. No personal and family use [SUBSISTENCE] defense.** In
5 a prosecution for the taking of fish or game in violation of a statute or regulation, it
6 is not a defense that the taking was done for **personal and family use for sustenance**
7 **[SUBSISTENCE USES]**.

8 * **Sec. 12.** AS 16.05.260 is repealed and reenacted to read:

9 **Sec. 16.05.260. Local advisory committees and regional boards.** (a) The
10 Board of Fisheries and the Board of Game, acting jointly, shall establish a maximum
11 of five fish and game management regions in the state.

12 (b) The Board of Fisheries and the Board of Game, acting jointly, shall adopt
13 regulations establishing a maximum of nine fish and game areas in each fish and game
14 management region established under (a) of this section that together comprise the
15 whole of the region and shall establish a local fish and game advisory committee for
16 each area. The advisory committees shall be composed of persons well informed on
17 the fish or game resources of the area. The boards shall set the number of members
18 and the terms of each of the members of the advisory committees and shall designate
19 one member of each committee as chair.

20 (c) A local fish and game advisory committee may

21 (1) hold public hearings on fish or game matters;

22 (2) make recommendations regarding fish and game matters and fish
23 and game regulatory proposals to the regional fish and game board for the region in
24 which the committee is located and to the Board of Fisheries, the Board of Game, and
25 the department;

26 (3) advise the Board of Fisheries and the Board of Game as to the
27 appropriate criteria for determining whether a person is dependent on fish and game
28 for personal and family use for sustenance under AS 16.16.020.

29 (d) Recommendations from the local fish and game advisory committees on
30 regulatory proposals and other fish and game matters shall be forwarded to the
31 appropriate regional and statewide boards for consideration.

1 (e) For each fish and game management region established under (a) of this
2 section, there is established a regional fish and game board. Each board consists of
3 nine members appointed by the governor. The local fish and game advisory
4 committees may submit the names of persons whom the committees recommend for
5 appointment to the regional boards. The governor shall appoint each member on the
6 basis of interest in public affairs, good judgment, knowledge, and ability, and with a
7 view to providing diversity of interest and points of view in the membership. The
8 members shall be residents of the state and shall be appointed without regard to
9 political affiliation or geographical location of residence. The members of the boards
10 appointed by the governor are subject to confirmation by the legislature in joint
11 session. The members of the boards serve staggered terms of three years. The terms
12 of members of the boards begin on July 1. Notwithstanding AS 39.05.080(1), by
13 April 1 of the calendar year in which the term expires, the governor shall appoint a
14 person to fill the vacancy that will arise on a board due to expiration of the term of
15 a member of the board and submit the name of the person to the legislature for
16 confirmation. If a vacancy arises on the board, the governor shall, within 30 days after
17 the vacancy arises, appoint a person to serve the balance of the unexpired term and
18 submit the name of the person to the legislature for confirmation. A person appointed
19 to fill the balance of an unexpired term shall serve on the board from the date of
20 appointment until the earlier of the expiration of the term or the failure of the
21 legislature to confirm the person under AS 39.05.080. Members of a regional fish and
22 game board serve without compensation but are entitled to per diem and travel
23 expenses authorized for boards and commissions under AS 39.20.180.

24 (f) The governor may only remove a member of a regional fish and game
25 board for inefficiency, neglect of duty, or misconduct in office, or because the
26 member, while serving on the regional board, is convicted of a misdemeanor for
27 violating a statute or regulation related to fish or game or is convicted of a felony.
28 The governor shall deliver to the member a written copy of the charges and give the
29 member an opportunity to be heard in person or through counsel at a public hearing
30 before the governor or a designee upon at least 10 days' notice by registered mail.
31 The member may confront and cross-examine adverse witnesses. Upon removal, the

1 governor or a designee shall file in the proper state office the findings and a complete
2 statement of all charges made against the member.

3 (g) A majority of the members of a regional fish and game board constitutes
4 a quorum for the transaction of business, for the performance of any duty, and for the
5 exercise of any power. A majority of the full board membership is required to carry
6 all motions, regulations, and resolutions.

7 (h) Each regional fish and game board may

8 (1) exercise authority delegated to it by the Board of Fisheries or the
9 Board of Game;

10 (2) hold public hearings on fish and game matters;

11 (3) make recommendations regarding fish and game matters and fish
12 and game regulatory proposals to the Board of Fisheries, the Board of Game, and the
13 department;

14 (4) advise the Board of Fisheries and the Board of Game as to the
15 appropriate criteria for determining whether a person is dependent on fish and game
16 for personal and family use for sustenance under AS 16.16.020.

17 (i) The regional fish and game boards shall carefully review each
18 recommendation made by a local fish and game advisory committee within its region
19 regarding regulatory proposals and other fish and game matters. If the regional board
20 does not adopt or concur in the proposal of the advisory committee, the board shall
21 inform the advisory committee of its decision and state the reasons for its action.

22 * **Sec. 13.** AS 16.05.270 is amended to read:

23 **Sec. 16.05.270. Delegation of authority to commissioner or to a regional**
24 **fish and game board.** (a) For the purpose of administering AS 16.05.251 and
25 16.05.255, each board may delegate authority to the commissioner **or to a regional**
26 **fish and game board** to act in its behalf.

27 (b) If there is a conflict between the board and the commissioner on proposed
28 regulations, public hearings shall be held concerning the issues in question. If, after
29 the public hearings, the board and the commissioner continue to disagree, the issue
30 shall be certified in writing by the board and the commissioner to the governor who
31 shall make a decision. The decision of the governor is final.

1 * **Sec. 14.** AS 16.05.403 is amended to read:

2 **Sec. 16.05.403. Special licenses and permits.** (a) A resident hunting license,
3 a resident sport fishing license, a resident [SUBSISTENCE] fishing permit **for**
4 **personal and family use for sustenance**, or a resident personal use fishing permit
5 indicating that the purchaser is blind may be obtained from the department upon
6 payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon presentation of
7 either an affidavit of the applicant stating that the applicant cannot distinguish light
8 from darkness or an affidavit signed by a licensed physician or a licensed optometrist
9 stating that the applicant's central visual acuity does not exceed 20/200 in the better
10 eye with correcting lenses or that the applicant's widest diameter of visual field
11 subtends an angle no greater than 20 degrees.

12 (b) A resident who is a person with physical disabilities may obtain from the
13 department upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon
14 submission of satisfactory proof of physical disabilities a resident hunting license, a
15 resident sport fishing license, a resident [SUBSISTENCE] fishing permit **for personal**
16 **and family use for sustenance**, or a resident personal use fishing permit indicating
17 that the purchaser is a person with physical disabilities.

18 (c) A resident who is 65 years of age or older may obtain from the department
19 upon payment of the fee prescribed in AS 16.05.330 - 16.05.430 and upon submission
20 of satisfactory proof of age a resident hunting license, a resident sport fishing license,
21 a resident [SUBSISTENCE] fishing permit **for personal and family use for**
22 **sustenance**, or a resident personal use fishing permit indicating that the purchaser is
23 a person who is 65 years of age or older. This subsection does not limit the right of
24 a resident person who is 65 years of age or older to claim an exemption from hunting
25 or sport fishing license requirements under AS 16.05.400(b).

26 * **Sec. 15.** A 16.05.405(c) is amended to read:

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

31 (1) a document signed by the person on whose behalf the fish is taken,

1 stating that the resident possesses the person's sport fishing license, [SUBSISTENCE]
 2 fishing permit **for personal and family use for sustenance**, personal use fishing
 3 permit, or permanent identification card in order to take fish on behalf of that person;

4 (2) the person's

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

7 (B) resident [SUBSISTENCE] fishing permit **for personal and**
 8 **family use for sustenance** issued under AS 16.05.403; or

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

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

13 * **Sec. 16.** AS 16.05.930(e) is amended to read:

14 (e) This chapter does not prevent the **limited noncommercial**
 15 [TRADITIONAL] barter of fish and game taken **for personal and family use for**
 16 **sustenance** [BY SUBSISTENCE HUNTING OR FISHING], except that the
 17 commissioner may prohibit the barter of [SUBSISTENCE-TAKEN] fish and game by
 18 regulation, emergency or otherwise, if a determination on the record is made that the
 19 barter is resulting in a waste of the resource, damage to fish stocks or game
 20 populations, or circumvention of fish or game management programs.

21 * **Sec. 17.** AS 16.05.940(2) is amended to read:

22 (2) "barter" means the exchange or trade of fish or game, or their parts,
 23 taken for **personal and family use for sustenance** [SUBSISTENCE USES]

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

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

27 * **Sec. 18.** AS 16.05.940(5) is amended to read:

28 (5) "commercial fishing" means the taking, fishing for, or possession
 29 of fish, shellfish, or other fishery resources with the intent of disposing of them for
 30 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid
 31 **fishing** [SUBSISTENCE] permit **for personal and family use for sustenance** in

1 possession, if required by statute or regulation, is considered prima facie evidence of
2 commercial fishing if commercial fishing gear as specified by regulation is involved
3 in the taking, fishing for, or possession of fish, shellfish, or other fish resources;

4 * **Sec. 19.** AS 16.05.940 is amended by adding a new paragraph to read:

5 (37) "fish and game dependent uses" means the noncommercial,
6 historical uses of fish and game by a resident for direct personal or family
7 consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and
8 selling of handicraft articles out of nonedible by-products of fish and game resources
9 taken for personal or family consumption, and for the limited noncommercial barter
10 or sharing for personal or family use for sustenance; in this paragraph, "family" means
11 persons related by blood, marriage, or adoption, and a person living in the household
12 on a permanent basis.

13 * **Sec. 20.** AS 16.10.380(b) is amended to read:

14 (b) In this section "user group" includes [, BUT IS NOT LIMITED TO,] sport
15 fishermen, processors, commercial fishermen, **persons who fish for personal and**
16 **family use for sustenance** [SUBSISTENCE FISHERMEN], and representatives of
17 local communities.

18 * **Sec. 21.** AS 16.10.750(a) is amended to read:

19 (a) The legislature finds that

20 (1) the salmon fishing industry is among the state's largest industries
21 and generates hundreds of millions of dollars and thousands of jobs each year; the
22 salmon fishery is vitally important to commercial, [SUBSISTENCE,] personal use, and
23 sport fishing interests, **to persons who fish for personal and family use for**
24 **sustenance**, and to the state's developing tourist industry;

25 (2) the state is committed to maintaining and enhancing its wild stocks
26 of salmon by careful management, by initiating a 20-year rebuilding program, and by
27 investing in the fishing industry;

28 (3) millions of Alaska salmon are being caught and injured by high
29 seas fisheries that intercept salmon contrary to state, federal, or international law; the
30 high seas interception of Alaska salmon defeats the state's management and rebuilding
31 programs, deprives the state of a return on its investment in the fishing industry, and

1 detrimentally affects **personal and family uses of Alaska salmon for sustenance**
 2 [SUBSISTENCE] and sport fishing uses of Alaska salmon;

3 (4) vessels that engage in the high seas interception of salmon can
 4 move relatively freely and undetected from region to region in the North Pacific and
 5 thus are able to harvest whatever species is most readily available or most valuable;
 6 by moving farther westward, a greater proportion of the take is Asian salmon; moving
 7 eastward results in a greater proportion of the take being Alaska salmon; although
 8 there is intermixing of Asian and North American salmon stocks, scientific evidence
 9 proves that even a minimal harvest of salmon within the migratory range of each
 10 species will contain Alaska salmon;

11 (5) the illegal taking of salmon detrimentally affects the Alaska fishing
 12 industry; the illegal taking of Alaska salmon is of primary concern because of the
 13 direct and immediate effect on the state; in addition, the illegal taking of Asian salmon
 14 is also of concern because depletion of those stocks will ultimately result in a shifting
 15 of high seas fishing efforts, both legal and illegal, to Alaska salmon;

16 (6) high seas interception of salmon occurs beyond the exclusive
 17 economic zone of the United States, or through incursion within the exclusive
 18 economic zone and the state's territorial sea, by vessels that are usually not registered
 19 in this state; moreover, these vessels are not based in Alaska and can thus avoid
 20 detection more easily than Alaska-based vessels; as a practical matter, it is extremely
 21 difficult to directly or indirectly regulate the vessels themselves; it is therefore
 22 necessary to prohibit activities within the state that give aid, comfort, and financial
 23 incentives to high seas interception of salmon.

24 * **Sec. 22.** AS 16.10.800(1) is amended to read:

25 (1) "high seas interception," "interception," or a similar term means the
 26 unauthorized catching, taking, or harvesting of salmon for other than sport, **personal**
 27 **and family use for sustenance** [SUBSISTENCE], or personal use purposes [.]

28 (A) throughout the migratory range of each species, by a vessel
 29 not registered under the laws of this state; or

30 (B) beyond the territorial sea of the state by a vessel registered
 31 under the laws of the state;

1 * **Sec. 23.** AS 16.20.033(b) is amended to read:

2 (b) The Yakataga State Game Refuge is established to protect the

3 (1) fish and wildlife habitat and populations, including salmon
4 spawning and rearing habitat and critical goat and moose winter habitat;

5 (2) public uses of fish and wildlife and their habitat, particularly
6 commercial **fishing, fishing for personal and family use for sustenance, and** [,] sport
7 [, AND SUBSISTENCE] fishing, hunting, viewing, photography, and general public
8 recreation in a high quality environment; and

9 (3) the use and disposition of other resources when the activities are
10 not inconsistent with (1) and (2) of this subsection.

11 * **Sec. 24.** AS 16.20.033(f) is amended to read:

12 (f) The department shall allow commercial **fishing**, sport **fishing**, [AND
13 SUBSISTENCE] fishing **for personal and family use for sustenance**, and hunting
14 within the Yakataga State Game Refuge under regulations of the Board of Fisheries
15 and the Board of Game. The department shall also permit associated support activities
16 when necessary and consistent with AS 16.20.010 - 16.20.080 to support fishing and
17 hunting permitted under this section, including fish buying operations, aircraft support
18 including landing strips, and off-road vehicle use.

19 * **Sec. 25.** AS 16.20.090(a) is amended to read:

20 (a) The legislature recognizes that

21 (1) the Walrus Islands are the sole remaining place in the state where
22 walruses annually haul out on land and all similar "hauling grounds" in the state which
23 were formerly utilized have been abandoned by walruses due to excessive molestation
24 and slaughter;

25 (2) the Walrus Islands are uninhabited, and the walruses frequenting
26 them are not required by the state for **personal and family use for sustenance**
27 [SUBSISTENCE UTILIZATION];

28 (3) the Walrus Islands have great importance as a retreat for the Pacific
29 walrus from the standpoints of conservation, scientific value, and tourist interest;

30 (4) the Department of Natural Resources has taken appropriate action
31 to achieve transfer of title in the Walrus Islands to the state.

1 * **Sec. 26.** AS 16.20.615(d) is amended to read:

2 (d) The department shall permit **existing** [EXITING] cabins to remain,
 3 **personal and family use of fish and game for sustenance to continue,**
 4 [SUBSISTENCE AND] recreational uses to continue, and commercial uses such as
 5 seal hunting and placer mining to continue, if appropriate under the management plan
 6 adopted under (c) of this section to the extent that the activities are compatible with
 7 the establishment of the Tugidak Island Critical Habitat Area.

8 * **Sec. 27.** AS 16.20.625(e) is amended to read:

9 (e) The department shall permit uses of the Redoubt Bay Critical Habitat Area
 10 in a manner that is compatible with the purposes for which the critical habitat area is
 11 established. The department shall permit the following public uses to continue without
 12 further approval by the department unless the department determines that the use is not
 13 compatible with the purposes for which the Redoubt Bay Critical Habitat Area is
 14 established:

15 (1) hunting, including [SUBSISTENCE] hunting **for personal and**
 16 **family use for sustenance,** trapping, **fishing for personal and family use for**
 17 **sustenance** [AND SUBSISTENCE], commercial **fishing,** and sport fishing, including
 18 the continued use of cabins for the purpose of hunting, trapping, and fishing;

19 (2) hiking, backpacking, and camping, including the use of campfires;

20 (3) cross-country skiing, snowmachining, boating, and the landing of
 21 aircraft; and

22 (4) other related uses that are temporary in duration and have no
 23 foreseeable adverse effects on vegetation, drainage, soil stability, or fish and game and
 24 their habitat.

25 * **Sec. 28.** AS 16.40.120(c) is amended to read:

26 (c) The commissioner shall specify the expiration date of an acquisition permit
 27 and may attach conditions to an acquisition permit, including conditions relating to the
 28 time, place, and manner of harvest. Size, gear, place, time, licensing, and other
 29 limitations applicable to sport **harvest,** commercial **harvest,** or [SUBSISTENCE]
 30 harvest **for personal and family use for sustenance** of aquatic plants and shellfish do
 31 not apply to a harvest with a permit issued under this section. The commissioner of

1 fish and game shall issue or deny a permit within 30 days after receiving an
2 application.

3 * **Sec. 29.** AS 16.40.120(d) is amended to read:

4 (d) The commissioner shall deny or restrict a permit under this section upon
5 finding that the proposed harvest will impair sustained yield of the species or will
6 unreasonably disrupt established uses of the resources by commercial, sport, **or**
7 personal use [, OR SUBSISTENCE] users **and by persons who use the resources for**
8 **personal and family use for sustenance.** The commissioner shall inform the Board
9 of Fisheries of any action taken on permit applications for species that support
10 commercial fisheries subject to limited entry under AS 16.43 and of any permits
11 denied because of unreasonable disruption of an established use. A denial of the permit
12 by the commissioner must contain the factual basis for the findings.

13 * **Sec. 30.** AS 16.40.120(f) is amended to read:

14 (f) Except as provided in (d) of this section or in a regulation adopted under
15 (e) of this section, the commissioner shall issue a permit if

16 (1) wild stock is necessary to meet the initial needs of farm or hatchery
17 stock;

18 (2) there are technological limitations on the propagation of culture
19 stock for the species sought;

20 (3) wild stock sought is not fully utilized by commercial **fisheries,**
21 sport **fisheries,** personal use [, OR SUBSISTENCE] fisheries, **or by persons engaged**
22 **in personal and family use for sustenance;** or

23 (4) wild stock is needed to maintain the gene pool of a hatchery or
24 aquatic farm.

25 * **Sec. 31.** AS 41.21.625(b) is amended to read:

26 (b) The governor shall appoint individuals to the Alaska Chilkat Bald Eagle
27 Preserve Advisory Council representing the following interests for a two-year term:

28 (1) a resident of the Haines Borough representing a conservation
29 organization;

30 (2) a representative of the United States Fish and Wildlife Service; and

31 (3) a member of the **local** [UPPER LYNN CANAL] fish and game

1 advisory committee **for the area.**

2 * **Sec. 32.** AS 16.05.258, 16.05.330(c), 16.05.940(7), 16.05.940(8), 16.05.940(27),
3 16.05.940(30), 16.05.940(31), and 16.05.940(32) are repealed.

4 * **Sec. 33.** Sections 3 and 5, ch. 1, SSSLA 1992, are repealed.

5 * **Sec. 34.** TRANSITION. (a) Notwithstanding the repeal of AS 16.05.258, by sec. 32 of
6 this Act, the areas outside of the nonsubsistence areas established by the Board of Fisheries
7 and the Board of Game shall constitute fish and game dependent use areas under
8 AS 16.16.020, added by sec. 2 of this Act, until the earlier of either the effective date of
9 regulations adopted by the Board of Fisheries and the Board of Game acting jointly to identify
10 fish and game dependent use areas under AS 16.16.020, added by sec. 2 of this Act, or two
11 years from the effective date of this section.

12 (b) Notwithstanding the repeal and reenactment of AS 16.05.260 by sec. 12 of this
13 Act, a local fish and game advisory committee established before the effective date of sec. 12
14 of this Act that is active on the day before the effective date of sec. 12 of this Act shall
15 continue to operate under the former provisions of AS 16.05.260 until the effective date of
16 regulations adopted by the Board of Fisheries and the Board of Game, acting jointly, that
17 establish the local fish and game advisory committees described in AS 16.05.260, as repealed
18 and reenacted by sec. 12 of this Act. The Board of Fisheries and the Board of Game, acting
19 jointly, shall appoint persons to serve on the local fish and game advisory committees
20 established under AS 16.05.260, as repealed and reenacted by sec. 12 of this Act, immediately
21 upon adoption of regulations establishing the local fish and game advisory committees
22 described in AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

23 * **Sec. 35.** INITIAL APPOINTMENT OF MEMBERS TO THE REGIONAL FISH AND
24 GAME BOARDS. (a) Notwithstanding AS 16.05.260, as repealed and reenacted by sec. 12
25 of this Act, immediately upon the adoption of regulations by the Board of Fisheries and the
26 Board of Game, acting jointly, to define the boundaries of fish and game management regions
27 in the state, the governor shall solicit nominations from local fish and game advisory
28 committees in existence at that time for persons to serve on each of the regional fish and game
29 boards established under AS 16.05.260, as repealed and reenacted by sec. 12 of this Act.

30 (b) Notwithstanding AS 16.05.260(e), as repealed and reenacted by sec. 12 of this Act,
31 the governor shall appoint the initial members of each of the regional fish and game boards

1 to staggered terms in accordance with AS 39.05.055(7).

2 * **Sec. 36.** REVISOR'S BILL. The revisor of statutes shall prepare a bill for consideration
3 of the resource committees of the House of Representatives and the Senate of the Alaska State
4 Legislature that amends references to subsistence uses of fish and game outside of Title 16
5 of the Alaska Statutes to conform to the provisions of this Act. The bill shall be presented
6 to the resource committees by the 20th legislative day of the next regular session of the
7 Alaska State Legislature following the effective date of this section.

8 * **Sec. 37.** ADVISORY VOTE ON PREFERENCE FOR USE OF FISH AND GAME FOR
9 PERSONAL AND FAMILY USE FOR SUSTENANCE. The lieutenant governor shall place
10 before the qualified voters of the state at the next primary election a question advisory to the
11 legislature as to whether the legislature should establish a preference for use of fish and game
12 for personal and family use for sustenance. The question shall appear on the ballot in the
13 following form:

14 Q U E S T I O N

15 Shall a law (HB 406) passed by the legislature
16 which grants a preference in times of shortage
17 for use of fish and game for personal and family
18 use for sustenance take effect and shall the
19 federal law (Alaska National Interest Lands
20 Conservation Act) be amended to conform to
21 state law regarding use of fish and game?

22 Yes [] No []

23 * **Sec. 38.** Sections 1 - 36 of this Act are repealed upon certification by the lieutenant
24 governor that a majority of the voters voting on the proposition described in sec. 37 of this
25 Act have voted "No" in response to the question presented.

26 * **Sec. 39.** Sections 37 and 38 of this Act take effect immediately under AS 01.10.070(c).

27 * **Sec. 40.** Except as provided by sec. 39 of this Act, this Act takes effect only if the events
28 described in (1) and (2) of this section occur and if the Act takes effect, it takes effect upon
29 the later of

30 (1) the day following the date on which the lieutenant governor certifies that
31 a majority of the voters voting on the proposition described in sec. 37 of this Act have voted

1 "Yes" in response to the question presented;

2 (2) the day following the date on which the Attorney General for the State of
3 Alaska determines that Title VIII of the Alaska National Interest Lands Conservation Act (P.L.
4 96-487) has been amended in such a manner that

5 (A) the provisions of this Act are consistent with the preference for
6 subsistence uses of fish and wildlife under the Alaska National Interest Lands
7 Conservation Act;

8 (B) the State of Alaska may resume management of fish and game on
9 federal public land in the state under provisions of this Act;

10 (C) the definition of "public lands" in the Alaska National Interest
11 Lands Conservation Act is amended to exclude state and private land and water,
12 including navigable water;

13 (D) federal court oversight over state and private land and water,
14 including navigable water, is eliminated; and

15 (E) the portion of sec. 316(b)(3)(B) of P.L. 105-83 relating to the
16 management of fish and wildlife for subsistence uses on public lands in Alaska by the
17 Secretary of the Interior is repealed.