

CS FOR HOUSE BILL NO. 406(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/7/98

Referred: 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. POLICY AND FINDINGS.** (a) It is the policy of the legislature that

4 (1) consistent with sound management principles and the conservation of
5 healthy stocks of fish and healthy populations of game, the use of land in Alaska is to the
6 extent practicable to have no substantial adverse effects on subsistence users who depend on
7 subsistence uses of the resources of the land;

8 (2) consistent with management of fish and game in accordance with
9 recognized scientific principles, subsistence users engaged in a subsistence way of life have
10 the opportunity to do so;

11 (3) nonwasteful subsistence uses of fish and game and other renewable
12 resources shall be the preferred consumptive uses of those resources on lands in Alaska; when
13 there is a shortage of fish and game and it is necessary to restrict taking of fish and game in
14 order to assure the continued viability of a fish stock or game population or the continuation
15 of subsistence uses of the stock or population, the taking of the stock or population for

1 nonwasteful subsistence uses shall be given preference over other consumptive uses;

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

5 (b) The legislature finds that

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

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

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

15 * **Sec. 2.** AS 16.05.258 is repealed and reenacted to read:

16 **Sec. 16.05.258. Subsistence use and allocation of fish and game.** (a)

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

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

29 (1) is sufficient to provide for all consumptive uses, the appropriate
30 board

31 (A) shall adopt regulations that provide a reasonable opportunity

1 for all uses of the stock or population; and

2 (B) may adopt regulations to differentiate among uses;

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

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

8 (B) may adopt regulations that provide for other consumptive
9 uses of the stock or population; and

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

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

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

18 (B) restrict or eliminate other consumptive uses of the stock or
19 population; and

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

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

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

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

31 (ii) the ability of the subsistence user to obtain food if

1 subsistence use of the stock or population is restricted or eliminated.

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

9 (1) past use of the stock or population;

10 (2) lack of alternative resources;

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

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

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

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

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

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

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

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

29 (f) The Board of Fisheries shall identify by regulation the boundaries of
30 nonsubsistence fishing areas. The Board of Game shall identify by regulations the
31 boundaries of nonsubsistence hunting areas. The boards may act jointly in identifying

1 the boundaries of nonsubsistence fishing and hunting areas. A nonsubsistence fishing
2 area or a nonsubsistence hunting area is an area or community where a cash-based
3 economy is a principal characteristic of the economy, culture, and way of life of the
4 area or community. In determining whether a cash-based economy is a principal
5 characteristic of the economy, culture, and way of life of an area or community under
6 this subsection, each board shall consider the relative importance of a cash-based
7 economy to the area or community in the context of the totality of the following
8 socioeconomic characteristics of the area or community:

- 9 (1) the social and economic structure;
- 10 (2) the stability of the economy;
- 11 (3) the extent and kinds of employment for wages, including full-time,
12 part-time, temporary, and seasonal employment;
- 13 (4) the amount and distribution of cash income among those domiciled
14 in the area or community;
- 15 (5) the cost and availability of goods and services to those domiciled
16 in the area or community;
- 17 (6) the variety of fish and game species used by those domiciled in the
18 area or community;
- 19 (7) the seasonal cycle of economic activity;
- 20 (8) the percentage of those domiciled in the area or community
21 participating in hunting and fishing activities or using wild fish and game;
- 22 (9) the harvest levels of fish and game by those domiciled in the area
23 or community;
- 24 (10) the cultural, social, and economic values associated with the taking
25 and use of fish and game;
- 26 (11) the geographic locations where those domiciled in the area or
27 community hunt and fish;
- 28 (12) the extent of sharing and exchange of fish and game by those
29 domiciled in the area or community;
- 30 (13) the other sources of direct and indirect economic support available
31 to those domiciled in the area or community;

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

3 (g) Fishing under subsistence regulations may not occur in a nonsubsistence
4 fishing area identified under this section. Hunting under subsistence regulations may
5 not occur in a nonsubsistence hunting area identified under this section. Fish stocks
6 and game populations, or portions of fish stocks and game populations, not identified
7 under (a) of this section may be taken only under nonsubsistence regulations.

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

10 (1) AS 16.05.831 and AS 16.30; and

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

14 (i) A person may not knowingly provide false information to the department
15 or a board regarding the taking or use of fish or game for subsistence uses or regarding
16 the person's or another person's eligibility to engage in subsistence uses of fish or
17 game. Notwithstanding other provisions of this chapter, a person who violates this
18 subsection is guilty of a class A misdemeanor. In addition to the imposition of other
19 penalties provided by law under AS 12.55, if a person is convicted of violating this
20 subsection, the court shall suspend the person's hunting and fishing privileges for not
21 less than one year. In this subsection, "knowingly" has the meaning given in
22 AS 11.81.900.

23 (j) For purposes of this section,

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

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

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

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

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

6 The Board of Fisheries and the Board of Game may adopt regulations they consider
 7 advisable in accordance with AS 44.62 (Administrative Procedure Act) establishing,
 8 at places in the state designated by the individual boards, **local** advisory committees
 9 to be composed of persons well informed on the fish or game resources of the locality.
 10 The boards shall set the number and terms of each of the members of the **local**
 11 advisory committees, shall **designate** [DELEGATE] one member of each committee
 12 as **chair** [CHAIRMAN], and shall give the **chair** [CHAIRMAN] authority to hold
 13 public hearings on fish or game matters. Recommendations from the **local** advisory
 14 committees shall be forwarded to **regional advisory committees and to** the
 15 appropriate board for their consideration. **If** [BUT IF] the Board of Fisheries or the
 16 Board of Game chooses not to follow the recommendations of the local advisory
 17 committee, the appropriate board shall inform the appropriate **local** advisory committee
 18 of this action and state the reasons for not following the recommendations.

19 **(b) The Board of Fisheries and the Board of Game, acting jointly, shall**
 20 **establish six fish and game regulatory regions that together comprise the whole**
 21 **of the state and shall establish a regional advisory committee for each region.**
 22 **The regional advisory committees shall be composed of persons well informed on**
 23 **the fish or game resources of the region. The boards shall set the number and**
 24 **terms of each of the members of the regional advisory committees, shall designate**
 25 **one member of each committee as chair, and shall give the chair authority to hold**
 26 **public hearings on fish or game matters. Recommendations from the regional**
 27 **advisory committees shall be forwarded to the appropriate board for the board's**
 28 **consideration. A board may choose not to follow the recommendations of a**
 29 **regional advisory committee that the board determines are not supported by**
 30 **substantial evidence presented to the board, violate recognized principles of fish**
 31 **or game conservation, are detrimental to the satisfaction of subsistence needs, or**

1 are inconsistent with sound public policy. If a board chooses not to follow a
 2 recommendation of a regional advisory committee, the appropriate board shall
 3 inform the regional advisory committee of this action and state the reasons for not
 4 following the recommendation.

5 (c) The commissioner shall delegate authority to **local** advisory committees for
 6 emergency closures during established seasons. The commissioner is empowered to
 7 set aside and make null and void only opening of seasons set by the **local** advisory
 8 committees under this section. The appropriate board shall adopt the necessary
 9 regulations governing these closures.

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

11 (7) "customary and traditional" means the noncommercial, long-term,
 12 and consistent taking of, use of, and reliance upon fish or game in a specific area and
 13 the [USE] patterns of **taking or use of** that fish or game that have been established
 14 over a reasonable period of time taking into consideration the availability of the fish
 15 or game;

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

17 (30) "subsistence fishing" means the taking of, fishing for, or
 18 possession of fish, shellfish, or other fisheries resources [BY A RESIDENT
 19 DOMICILED IN A RURAL AREA OF THE STATE] for subsistence uses with gill
 20 net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

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

22 (31) "subsistence hunting" means the taking of, hunting for, or
 23 possession of game [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE
 24 STATE] for subsistence uses by means defined by the Board of Game;

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

26 (32) "subsistence uses" means the noncommercial, customary and
 27 traditional uses of wild, renewable resources [BY A RESIDENT DOMICILED IN A
 28 RURAL AREA OF THE STATE] for direct personal or family consumption as food,
 29 shelter, fuel, clothing, tools, or transportation, for the making and selling of handcraft
 30 articles out of nonedible by-products of fish and wildlife resources taken for personal
 31 or family consumption, and for the customary trade, barter, or sharing for personal or

1 family consumption; in this paragraph, "family" means persons related by blood,
2 marriage, or adoption, and a person living in the household on a permanent basis;

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

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

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

8 (2) coastal resource service areas organized under AS 46.40.110 -
9 46.40.210.

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

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

12 * **Sec. 11.** TRANSITION: SUBSISTENCE AREAS. (a) Notwithstanding AS 16.05.258,
13 as repealed and reenacted by sec. 2 of this Act, an area located outside of a nonsubsistence
14 area established by the Board of Fisheries and the Board of Game as of May 15, 1993, is a
15 subsistence fishing and hunting area for the purposes of AS 16.05.258, as repealed and
16 reenacted by sec. 2 of this Act. Subsistence fishing and hunting areas established by this
17 subsection are superseded by the taking effect of regulations identifying and delineating
18 nonsubsistence fishing areas and nonsubsistence hunting areas under AS 16.05.258, as repealed
19 and reenacted by sec. 2 of this Act, and (b) and (c) of this section.

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

24 (c) The Board of Fisheries and the Board of Game shall review the nonsubsistence
25 areas established by the boards as of May 15, 1993, and substantially increase the portion of
26 the state that is identified as nonsubsistence fishing areas and nonsubsistence hunting areas
27 in order to implement the purpose of this Act.

28 * **Sec. 12.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).