

SENATE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/14/98

Referred: Resources, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing a priority for subsistence uses of fish and wildlife that is
2 based on place of residence; relating to the management and taking of fish and
3 wildlife for subsistence uses; relating to certain definitions for the fish and game
4 code; delaying the repeal of the current law regarding subsistence use of fish and
5 game; amending the effective date of secs. 3 and 5, ch. 1, SSSLA 1992; and
6 providing for an effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 16.05.258(a) is amended to read:

9 (a) In areas or communities classified as rural [EXCEPT IN
10 NONSUBSISTENCE AREAS], the Board of Fisheries and the Board of Game shall
11 identify the fish stocks and wildlife [GAME] populations, or portions of stocks or
12 populations, that are customarily and traditionally taken or used for subsistence. The
13 commissioner may [SHALL] provide recommendations to the boards concerning the

1 stock and population identifications. [THE BOARDS SHALL MAKE
2 IDENTIFICATIONS REQUIRED UNDER THIS SUBSECTION AFTER RECEIPT
3 OF THE COMMISSIONER'S RECOMMENDATIONS.]

4 * **Sec. 2.** AS 16.05.258(b) is amended to read:

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

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

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

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

17 (C) may adopt regulations to differentiate among uses;

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

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

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

25 (C) shall adopt regulations to differentiate among consumptive
26 uses that provide for a priority [PREFERENCE] for [THE] subsistence uses,
27 if regulations are adopted under (B) of this paragraph;

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

31 (A) determine the portion of the fish stocks or wildlife

1 populations that can be harvested consistent with sustained yield; and

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

4 (4) if the harvestable portion of the **fish** stock or **wildlife** population
5 is not sufficient to provide a reasonable opportunity for **human consumptive**
6 subsistence uses, the appropriate board shall

7 (A) adopt regulations eliminating consumptive uses[,] other than
8 **human consumptive** subsistence uses;

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

11 (i) the customary and direct dependence on the fish
12 stock or **wildlife** [GAME] population by the subsistence user for human
13 consumption as a mainstay of livelihood;

14 (ii) the proximity of the domicile of the subsistence user
15 to the **fish** stock or **wildlife** population; and

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

18 * **Sec. 3.** AS 16.05.258(c) is repealed and reenacted to read:

19 (c) The Board of Fisheries and the Board of Game, acting jointly, shall
20 determine by regulation whether communities or areas in the state should be classified
21 as rural and whether communities or areas classified as rural should no longer be
22 classified as rural.

23 * **Sec. 4.** AS 16.05.258(d) is amended to read:

24 (d) **The boards may permit subsistence hunting or fishing under the**
25 **priority in this section only in areas or communities classified as rural.** Fish
26 stocks and **wildlife** [GAME] populations, or portions of fish stocks and **wildlife**
27 [GAME] populations not identified under (a) of this section may be taken only under
28 nonsubsistence regulations.

29 * **Sec. 5.** AS 16.05.258(e) is amended to read:

30 (e) Takings and uses of fish and **wildlife** [GAME] authorized under this
31 section are subject to regulations regarding open and closed areas, seasons, methods

1 and means, marking and identification requirements, quotas, bag limits, harvest levels,
2 and sex, age, and size limitations. Takings and uses of resources authorized under this
3 section are subject to AS 16.05.831 and AS 16.30.

4 * **Sec. 6.** AS 16.05.258(f) is amended to read:

5 (f) For purposes of this section, "reasonable opportunity"

6 (1) means an opportunity, consistent with customary and traditional
7 uses, [AS DETERMINED BY THE APPROPRIATE BOARD, THAT ALLOWS A
8 SUBSISTENCE USER] to participate in a subsistence hunt or fishery [THAT
9 PROVIDES A NORMALLY DILIGENT PARTICIPANT] with a reasonable
10 expectation of success;

11 (2) **does not mean a guarantee** of taking of fish or wildlife [GAME].

12 * **Sec. 7.** AS 16.05.258 is amended by adding a new subsection to read:

13 (g) This section does not require the Board of Fisheries to close non-retention
14 fishing if the board has made a finding that the mortality caused by non-retention
15 fishing does not jeopardize subsistence uses or the conservation of healthy stocks.

16 * **Sec. 8.** AS 16.05.259 is amended to read:

17 **Sec. 16.05.259. No subsistence defense.** In a prosecution for the taking of
18 fish or wildlife [GAME] in violation of a statute or regulation, it is not a defense that
19 the taking was done for subsistence uses.

20 * **Sec. 9.** AS 16.05.260 is repealed and reenacted to read:

21 **Sec. 16.05.260. Advisory committees.** (a) The Board of Fisheries and the
22 Board of Game may adopt regulations they consider advisable in accordance with
23 AS 44.62 (Administrative Procedure Act) establishing, at places in the state designated
24 by the individual boards, advisory committees to be composed of persons who
25 collectively represent user groups in the area and who are well informed on the fish
26 or wildlife resources of the locality. The boards shall set the number and terms of
27 each of the members of the advisory committees, shall delegate one member of each
28 committee as chairperson, and shall give the chairperson authority to hold public
29 hearings on fish or wildlife matters.

30 (b) Recommendations from the advisory committees on uses other than
31 subsistence shall be forwarded to the appropriate board for its consideration but if the

1 Board of Fisheries or the Board of Game chooses not to follow the recommendations
 2 of the local advisory committee the appropriate board shall inform the appropriate
 3 advisory committee of this action and state the reasons for not following the
 4 recommendations.

5 (c) An advisory committee shall send its recommendations on subsistence uses
 6 to the appropriate regional subsistence council. If the regional subsistence council
 7 does not adopt the recommendation of the advisory committee, the council shall inform
 8 the advisory committee, shall state the reasons, and shall forward the advisory
 9 committee recommendation with the council's reasons to the appropriate board.

10 (d) The commissioner shall delegate authority to advisory committees for
 11 emergency closures during established seasons. The commissioner is empowered to
 12 set aside and make null and void only opening of seasons set by the advisory
 13 committees under this section. The appropriate board shall adopt the necessary
 14 regulations governing these closures.

15 * **Sec. 10.** AS 16.05 is amended by adding a new section to read:

16 **Sec. 16.05.262. Regional subsistence councils.** (a) The Board of Fisheries
 17 and the Board of Game jointly shall adopt regulations necessary to implement this
 18 section, including regulations establishing at least six subsistence resource regions that,
 19 taken together, cover the entire state. The number and boundaries of the regions must
 20 be sufficient to assure that regional differences in subsistence uses are adequately
 21 accommodated.

22 (b) Each subsistence resource region must be represented by a regional
 23 subsistence council with members appointed by the governor. Each regional
 24 subsistence council must have 10 members, four of whom shall be selected from
 25 nominees who reside in that region of the state submitted by tribal councils in the
 26 region, and six of whom shall be selected from nominees submitted by local
 27 governments and local advisory committees. Three of these six must be subsistence
 28 users who reside in the region of the state and three must be sport or commercial
 29 users. Sport and commercial representatives may be residents of any subsistence
 30 resource region in the state. The regulations must provide for staggered terms of
 31 council members. The maximum term is three years, with no limit on the number of

1 terms served. A quorum is a majority of the members of a council.

2 (c) Regional subsistence councils shall strive for consensus, but
3 recommendations must be decided by majority vote.

4 (d) Each regional subsistence council has the authority to

5 (1) elect officers and adopt rules of procedure;

6 (2) hold public meetings on fish and wildlife matters and solicit
7 proposals from the public on subsistence uses;

8 (3) in consultation with the local fish and game advisory committees
9 in its region and with the department, review, evaluate, and make a recommendation
10 to a board on any existing or proposed regulation, policy, or management plan, or any
11 other matter directly relating to the subsistence use of fish and wildlife within its
12 region;

13 (4) comment on sport, personal use, and commercial proposals;

14 (5) make recommendations concerning permits provided in
15 AS 16.05.330(e) and 16.05.405(g);

16 (6) submit to the boards, the department, and the secretaries of the
17 United States Departments of the Interior and Agriculture, by November 15 of each
18 year, an annual report, containing the following:

19 (A) an identification of current and anticipated subsistence uses
20 of fish and wildlife populations within the region, and other fish and wildlife
21 uses that the council identifies;

22 (B) an evaluation of current and anticipated subsistence needs
23 for use of fish and wildlife populations within the region, and of other fish and
24 wildlife needs that the council identifies;

25 (C) a recommended strategy for the management of fish and
26 wildlife populations within the region to accommodate the identified fish and
27 wildlife uses and needs; and

28 (D) recommendations concerning policies, standards, guidelines,
29 and regulations to implement the strategy; and

30 (7) perform other duties specified by a board.

31 (e) Each council shall provide a forum for, and assist its region's local fish and

1 game advisory committees in, obtaining the opinions and proposals of persons
2 interested in fish and wildlife matters so as to achieve the greatest possible local
3 participation in the decision-making process.

4 (f) Regulatory proposals submitted to a board relating primarily to subsistence
5 issues, initiated by the public or by a local fish and game advisory committee, must
6 be reviewed by the appropriate regional subsistence council before the board takes
7 action on the proposal.

8 (g) Regional subsistence councils may meet to develop recommendations on
9 inter-regional proposals and issues.

10 (h) The appropriate board shall consider the reports and recommendations of
11 the regional subsistence councils and shall give deference to their subsistence
12 recommendations. If the council recommendation is unanimous, there is a presumption
13 in favor of adoption by the board. However, the board may decide not to adopt any
14 recommendation that it determines violates the sustained yield principle, is not
15 supported by substantial evidence, is detrimental to subsistence uses, involves an
16 unresolved statewide or inter-regional subsistence management issue, or is contrary to
17 an overriding statewide fish or wildlife management interest. If a recommendation is
18 not adopted by the board, the board shall provide a written statement of the factual
19 basis and reasons for its decision and shall remand the recommendation to the regional
20 subsistence council for further consideration.

21 (i) A regional subsistence council shall give deference to proposals from local
22 governments, tribal councils, and local advisory committees that identify local
23 subsistence needs and uses and the methods, means, seasons, and other issues related
24 to local subsistence management.

25 (j) Regional subsistence councils may use a mediation process.

26 (k) When implementing the provisions of this section, the boards, the regional
27 subsistence councils, and the department shall seek data from, consult with, and make
28 use of the special knowledge of subsistence users. If appropriate to implement the
29 provisions of this section, the department may contract for services with subsistence
30 users and local groups in order to utilize their special knowledge of resources in the
31 region.

1 (l) The regional subsistence councils shall be adequately financed.

2 * **Sec. 11.** AS 16.05.330(a) is amended to read:

3 (a) Except as otherwise permitted in this chapter, without having the
4 appropriate license or tag in actual possession a person may not engage in

- 5 (1) sport fishing, including the taking of razor clams;
6 (2) hunting, trapping, or fur dealing;
7 (3) the farming of fish, fur, or **wildlife** [GAME]; or
8 (4) taxidermy.

9 * **Sec. 12.** AS 16.05.330(c) is amended to read:

10 (c) The Board of Fisheries and the Board of Game may adopt regulations
11 providing for the issuance and expiration of subsistence permits for areas, villages,
12 communities, groups, or individuals as needed for authorizing, regulating, and
13 monitoring the subsistence harvest of fish and **wildlife** [GAME]. **To be eligible to**
14 **take fish or wildlife in a rural community or area using the subsistence priority**
15 **in AS 16.05.258, a person must be a resident domiciled in that community or area**
16 [THE BOARDS SHALL ADOPT THESE REGULATIONS WHEN THE
17 SUBSISTENCE PREFERENCE REQUIRES A REDUCTION IN THE HARVEST OF
18 A FISH STOCK OR GAME POPULATION BY NONSUBSISTENCE USERS].

19 * **Sec. 13.** AS 16.05.330 is amended by adding a new subsection to read:

20 (e) The Board of Fisheries and the Board of Game shall adopt regulations
21 allowing the commissioner to issue permits for the taking of fish and wildlife in order
22 to teach and preserve historic or traditional uses and harvest practices. The permits
23 issued under the regulations adopted under this subsection do not entitle successful
24 applicants to the subsistence priority under AS 16.05.258.

25 * **Sec. 14.** AS 16.05.405 is repealed and reenacted to read:

26 **Sec. 16.05.405. Taking fish and wildlife by proxy.** (a) Subject to
27 regulations adopted by the Board of Fisheries or the Board of Game to implement this
28 section, including regulations relating to or restricting seasons, areas, methods and
29 means, and species, a resident may take fish or wildlife harvested primarily for food
30 on behalf of another person under this section.

31 (b) Notwithstanding AS 16.05.420(c), a resident holding a valid resident

1 hunting license may take wildlife on behalf of a person who is blind, has physical
2 disabilities, or is 65 years of age or older if the resident possesses on the resident's
3 person

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

7 (2) the person's

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

10 (B) harvest ticket, tag, stamp, or other document required by
11 law as a condition of taking the wildlife.

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

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

20 (2) the person's

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

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

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

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

29 (d) Subject to applicable regulations of the Board of Fisheries or the Board of
30 Game, a resident who takes fish or wildlife under this section on behalf of another
31 person may take the fish or wildlife only under those conditions that would apply to

1 the other person if the other person took the fish or wildlife personally.

2 (e) A resident who takes, or attempts to take, fish or wildlife under this section
3 on behalf of a person may also simultaneously engage in fishing or hunting for the
4 resident's use; however, the resident may not take or attempt to take fish or wildlife
5 by proxy for more than one person at a time. For the purposes of this subsection, a
6 resident is engaged in taking, or attempting to take, fish or wildlife by proxy while the
7 resident has possession of

8 (1) another person's

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

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

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

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

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

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

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

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

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

27 (g) In addition to the proxy hunting and fishing opportunities authorized by
28 (a) - (f) of this section, the Board of Fisheries and the Board of Game shall adopt
29 regulations to permit a resident who is (1) a member of the family of a resident
30 domiciled in a rural community or area, or (2) domiciled in a rural community or area,
31 to participate in subsistence harvest activities as a proxy for a resident eligible for the

1 subsistence priority under AS 16.05.258, regardless of the eligible resident's age or
 2 physical ability to hunt or fish. A proxy hunter or fisherman who is not part of the
 3 eligible resident's family must be domiciled in the area in which the eligible resident
 4 lives. The amount of fish or wildlife permitted to be taken for subsistence uses in a
 5 rural community or area may not be increased because of proxy hunting or fishing.
 6 Fish or wildlife taken by a proxy under this section belongs to the person on whose
 7 behalf it was taken, and the majority of the fish and wildlife taken by a proxy must
 8 remain in the rural community or area in which it was taken. A person may not give
 9 or receive cash remuneration in connection with a proxy harvest. A person who gives
 10 a proxy under this section may not participate in the hunt or fishery for which the
 11 proxy was given. The proxy hunting and fishing authorized by this section are subject
 12 to the limitations and reporting requirements of (d), (e), and (f) of this section. For
 13 purposes of this subsection, "family" has the meaning given "family" in the definition
 14 of "subsistence uses" in AS 16.05.940.

15 * **Sec. 15.** AS 16.05.940(2) is amended to read:

16 (2) "barter" means the exchange or trade of fish or wildlife [GAME],
 17 or their parts, taken for subsistence uses

18 (A) for other fish or wildlife [GAME] or their parts; or

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

21 * **Sec. 16.** AS 16.05.940(7) is amended to read:

22 (7) "customary and traditional" means the noncommercial, long-term,
 23 and consistent taking of, use of, and reliance upon fish or wildlife [GAME] in a
 24 specific area and the [USE] patterns of taking or use of that fish or wildlife [GAME]
 25 that have been established over a reasonable period of time taking into consideration
 26 the availability of the fish or wildlife [GAME];

27 * **Sec. 17.** AS 16.05.940(8) is amended to read:

28 (8) "customary trade" means the limited noncommercial exchange, for
 29 cash, of fish or wildlife or their parts in minimal quantities [AMOUNTS OF
 30 CASH], as restricted by the appropriate board[, OF FISH OR GAME RESOURCES];
 31 the terms of this paragraph do not restrict money sales of furs and furbearers;[.]

1 * **Sec. 18.** AS 16.05.940(11) is amended to read:

2 (11) "domicile" means the true and permanent home of a person from
3 which the person has no present intention of moving and to which the person intends
4 to return whenever the person is away; [DOMICILE MAY BE PROVED BY
5 PRESENTING EVIDENCE ACCEPTABLE TO THE BOARDS OF FISHERIES AND
6 GAME;]

7 * **Sec. 19.** AS 16.05.940(27) is repealed and readopted to read:

8 (27) "rural community or area" is a community or area classified by the
9 Board of Fisheries and the Board of Game to be substantially dependent on fish and
10 wildlife for nutritional and other subsistence uses;

11 * **Sec. 20.** AS 16.05.940(30) is amended to read:

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

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

17 (31) "subsistence hunting" means the taking of, hunting for, or
18 possession of wildlife [GAME BY A RESIDENT DOMICILED IN A RURAL AREA
19 OF THE STATE] for subsistence uses by means defined by the Board of Game;

20 * **Sec. 22.** AS 16.05.940(32) is amended to read:

21 (32) "subsistence uses" means the noncommercial, customary and
22 traditional uses of wild, renewable resources [BY A RESIDENT DOMICILED IN A
23 RURAL AREA OF THE STATE] for direct personal or family consumption as food,
24 shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft
25 articles out of nonedible by-products of fish and wildlife resources taken for personal
26 or family consumption, and for the customary trade, barter, or sharing for personal or
27 family consumption; in this paragraph, "family" means persons related by blood,
28 marriage, or adoption, and a person living in the household on a permanent basis;

29 * **Sec. 23.** AS 16.05.940(33) is amended to read:

30 (33) "take" means taking, pursuing, hunting, fishing, trapping, or in any
31 manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap,

1 or in any manner capture or kill fish or **wildlife** [GAME];

2 * **Sec. 24.** AS 16.05.940 is amended by adding new paragraphs to read:

3 (37) "wildlife" has the same meaning given "game" in this section;
4 wildlife may be classified by regulation as big game, small game, fur bearers, or other
5 categories considered essential for carrying out the intention and purposes of
6 AS 16.05 - AS 16.40;

7 (38) "wildlife population" has the meaning given "game population" in
8 this section.

9 * **Sec. 25.** Section 12, ch. 1, SSSLA 1992, as amended by sec. 3, ch. 68, SLA 1995, sec.
10 3, ch. 130, SLA 1996, and sec. 1, ch. 109, SLA 1997 is amended to read:

11 **Sec. 12.** Sections 3 and 5 of this Act take effect October 1, 1999 [1998].

12 * **Sec. 26.** Sections 3 and 5, ch. 1, SSSLA 1992 are repealed.

13 * **Sec. 27.** Section 12, ch. 1, SSSLA 1992, as amended by sec. 3, ch. 68, SLA 1995, sec.
14 3, ch. 130, SLA 1996, sec. 1, ch. 109, SLA 1997, and sec. 25 of this Act, is repealed.

15 * **Sec. 28.** TRANSITION: AREAS AND COMMUNITIES CLASSIFIED AS RURAL. All
16 communities and areas outside the nonsubsistence areas established by regulations adopted by
17 the Board of Fisheries and the Board of Game and effective on May 15, 1993, are classified
18 as rural for the purpose of this Act. The classifications made under this section are subject
19 to the provisions of AS 16.05.258(c) as repealed and reenacted by sec. 3 of this Act.

20 * **Sec. 29.** TRANSITION: REGULATIONS. Notwithstanding sec. 31 of this Act, the
21 Board of Fisheries, the Board of Game, and the Department of Fish and Game may
22 immediately proceed to adopt regulations to implement this Act. The regulations take effect
23 under AS 44.62 (Administrative Procedure Act), but not before the effective date provided in
24 sec. 31 of this Act.

25 * **Sec. 30.** Sections 25 and 29 of this Act take effect immediately under AS 01.10.070(c).

26 * **Sec. 31.** Except as provided in sec. 30 of this Act, this Act takes effect on the effective
27 date of an amendment to the Constitution of the State of Alaska, approved by the voters in
28 1998, authorizing a priority for subsistence uses of renewable natural resources that is based
29 on place of residence.