

**HOUSE BILL NO. 30**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVE DAVIES**

**Introduced: 1/19/99**

**Referred: Resources, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to subsistence use of fish and game, to fish and game advisory  
2 committees, and to permits for historic or traditional uses of fish and game and  
3 harvest practices; amending the definition of 'domicile' for purposes of the Fish  
4 and Game Code; and providing for an effective date."

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

6 \* **Section 1.** AS 16.05.258 is repealed and reenacted to read:

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

8 Except in nonsubsistence areas, the Board of Fisheries and the Board of Game shall  
9 identify the fish stocks and game populations, or portions of stocks or populations, that  
10 are customarily and traditionally taken or used for subsistence. The commissioner  
11 shall provide recommendations to the boards concerning the stock and population  
12 identifications. The boards shall make identifications required under this subsection  
13 after receipt of the commissioner's recommendations.

14 (b) The appropriate board shall determine whether a portion of a fish stock or

1 game population identified under (a) of this section can be harvested consistent with  
2 sustained yield. If a portion of a stock or population can be harvested consistent with  
3 sustained yield, the board shall determine the amount of the harvestable portion that  
4 is reasonably necessary for subsistence uses, and,

5 (1) if the harvestable portion of the stock or population is sufficient to  
6 provide for all consumptive uses, the appropriate board

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

9 (B) shall adopt regulations that provide for other uses of the  
10 stock or population, subject to preferences among beneficial uses; and

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

12 (2) if the harvestable portion of the stock or population is sufficient to  
13 provide for subsistence uses and some, but not all, other consumptive uses, the  
14 appropriate board

15 (A) shall adopt regulations that provide a reasonable opportunity  
16 for subsistence uses of the stock or population;

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

19 (C) shall adopt regulations to differentiate among consumptive  
20 uses that provide for a priority for subsistence uses if regulations are adopted  
21 under (B) of this paragraph;

22 (3) if the harvestable portion of the stock or population is sufficient to  
23 provide for subsistence uses, but no other consumptive uses, the appropriate board  
24 shall adopt regulations that

25 (A) provide a reasonable opportunity for subsistence uses of the  
26 stock or population; and

27 (B) eliminate other consumptive uses in order to provide a  
28 reasonable opportunity for subsistence uses;

29 (4) if the harvestable portion of the stock or population is sufficient to  
30 provide a reasonable opportunity for subsistence uses by subsistence users who reside  
31 in a subsistence area, but not to all subsistence users of the stock or population, the

1 appropriate board

2 (A) shall adopt regulations eliminating consumptive uses other  
3 than subsistence uses;

4 (B) shall adopt regulations that provide a reasonable opportunity  
5 for subsistence uses of the stock or population by subsistence users who reside  
6 in a subsistence area;

7 (C) may adopt regulations that provide for subsistence uses of  
8 the stock or population by subsistence users who do not reside in a subsistence  
9 area; and

10 (D) shall adopt regulations to differentiate between subsistence  
11 users that provide a priority to subsistence users who reside in a subsistence  
12 area if regulations are adopted under (C) of this paragraph;

13 (5) if the harvestable portion of the stock or population is sufficient to  
14 provide a reasonable opportunity for subsistence uses by subsistence users who reside  
15 in the subsistence area where the stock or population is located, but not to all  
16 subsistence users who reside in a subsistence area, the appropriate board

17 (A) shall adopt regulations eliminating consumptive uses other  
18 than subsistence uses;

19 (B) shall adopt regulations that provide a reasonable opportunity  
20 for subsistence uses of the stock or population by subsistence users who reside  
21 in the subsistence area where the stock or population is located;

22 (C) may adopt regulations that provide for subsistence uses of  
23 the stock or population by subsistence users who do not reside in the  
24 subsistence area where the stock or population is located; and

25 (D) shall adopt regulations to differentiate between subsistence  
26 users that provide a priority to subsistence users who reside in the subsistence  
27 area where the stock or population is located if regulations are adopted under  
28 (C) of this paragraph; and

29 (6) if the harvestable portion of the stock or population is not sufficient  
30 to provide a reasonable opportunity for subsistence uses by subsistence users who  
31 reside in the subsistence area where the stock or population is located, the appropriate

1 board shall

2 (A) adopt regulations eliminating consumptive uses other than  
3 subsistence uses by subsistence users who reside in the subsistence area where  
4 the stock or population is located;

5 (B) distinguish among subsistence users who reside in the  
6 subsistence area through limitations based on

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

10 (ii) the proximity of the domicile of the subsistence user  
11 to the stock or population; and

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

14 (c) The boards, acting jointly, shall identify by regulation the boundaries of  
15 subsistence areas and nonsubsistence areas. A subsistence area is an area or  
16 community where dependence on fish and game for nutritional and other subsistence  
17 uses is a principal characteristic of the economy, culture, and way of life of the area  
18 or community. In determining whether dependence on fish and game for nutritional  
19 and other subsistence uses is a principal characteristic of the economy, culture, and  
20 way of life of an area or community under this subsection, the boards shall jointly  
21 consider the relative importance of subsistence in the context of the totality of the  
22 following socioeconomic characteristics of the area or community:

23 (1) the social and economic structure;

24 (2) the stability of the economy;

25 (3) the extent and the kinds of employment for wages, including full-  
26 time, part-time, temporary, and seasonal employment;

27 (4) the amount and distribution of cash income among those domiciled  
28 in the area or community;

29 (5) the cost and availability of goods and services to those domiciled  
30 in the area or community;

31 (6) the variety of fish and game species used by those domiciled in the

1 area or community;

2 (7) the seasonal cycle of economic activity;

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

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

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

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

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

13 (13) additional similar factors the boards establish by regulation to be  
14 relevant to their determinations under this subsection.

15 (d) A subsistence user is a resident

16 (1) who resides in the subsistence area in which the fish stock or game  
17 population to be taken for subsistence uses is located; or

18 (2) who

19 (A) resides

20 (i) in a nonsubsistence area; or

21 (ii) in a subsistence area that is outside of the  
22 subsistence area in which the stock or population to be taken for  
23 subsistence uses is located; and

24 (B) has demonstrated either

25 (i) a dependence on the stock or population for  
26 nutritional or other subsistence uses;

27 (ii) a history of customary and traditional use of the stock  
28 or population; or

29 (iii) a combination of dependence on the stock or  
30 population and history of customary and traditional use of the stock or  
31 population.

1 (e) Each board shall adopt regulations establishing criteria for identifying a  
 2 resident who qualifies as a subsistence user under (d)(2) of this section. In  
 3 establishing criteria for identifying a resident who has a dependence on a fish stock  
 4 or game population for nutritional or other subsistence uses, a board shall consider the  
 5 resident's household income, reliance on the stock or population for a significant  
 6 proportion of food consumed by the resident or the resident's household, and other  
 7 criteria the board considers relevant. In establishing criteria for identifying a resident  
 8 who has a history of customary and traditional use of a stock or population, a board  
 9 shall consider whether the resident has a history of long-term and consistent taking and  
 10 use of the stock or population in accordance with patterns of taking or use of the stock  
 11 or population that have been established over a reasonable period of time, taking into  
 12 consideration the availability of the stock or population.

13 (f) Subsistence hunting or fishing may occur only in subsistence areas. Fish  
 14 stocks and game populations, or portions of stocks and populations, not identified  
 15 under (a) of this section may be taken only under nonsubsistence regulations.

16 (g) The taking and use of fish and game authorized under this section are  
 17 subject to regulations regarding open and closed areas, seasons, methods and means,  
 18 marking and identification requirements, quotas, bag limits, harvest levels, and sex,  
 19 age, and size limitations. The taking and use of fish and game authorized under this  
 20 section are subject to AS 16.05.831 and AS 16.30.

21 (h) This section does not require the Board of Fisheries to close nonretention  
 22 fishing if the board finds that the mortality caused by nonretention fishing does not  
 23 jeopardize subsistence uses or the conservation of healthy stocks.

24 (i) For purposes of this section, "reasonable opportunity"

25 (1) means an opportunity, consistent with customary and traditional  
 26 uses, to participate in subsistence hunting or subsistence fishing with a reasonable  
 27 expectation of success;

28 (2) does not mean a guarantee of taking of fish or game.

29 \* **Sec. 2.** AS 16.05.260 is repealed and reenacted to read:

30 **Sec. 16.05.260. Advisory committees.** (a) The Board of Fisheries and the  
 31 Board of Game may adopt regulations the boards consider advisable in accordance

1 with AS 44.62 (Administrative Procedure Act) establishing, at places in the state  
 2 designated by the individual boards, advisory committees composed of persons who  
 3 collectively represent user groups in the area and who are well informed on the fish  
 4 or game resources of the locality. The boards shall set the number and terms of the  
 5 members of the advisory committees, shall designate one member of each committee  
 6 as chair, and shall give the chair authority to hold public hearings on fish or game  
 7 matters.

8 (b) Recommendations from the advisory committees on uses other than  
 9 subsistence shall be forwarded to the appropriate board for its consideration. If the  
 10 Board of Fisheries or the Board of Game chooses not to follow the recommendations  
 11 of the local advisory committee, the appropriate board shall inform the appropriate  
 12 advisory committee of this action and state the reasons for not following the  
 13 recommendations.

14 (c) An advisory committee shall send its recommendations on subsistence uses  
 15 of fish and game to the appropriate regional subsistence council. If the regional  
 16 subsistence council does not adopt the recommendation of the advisory committee, the  
 17 council shall

18 (1) inform the advisory committee in writing the reasons for not  
 19 adopting the recommendation; and

20 (2) forward the advisory committee's recommendation to the  
 21 appropriate board with the council's reasons for not adopting the recommendation.

22 (d) The commissioner shall delegate authority to advisory committees for  
 23 emergency closures during established seasons. The commissioner may not set aside  
 24 an emergency closure of a season set by advisory committees under this subsection.

25 The appropriate board shall adopt the necessary regulations governing these closures.

26 \* **Sec. 3.** AS 16.05 is amended by adding a new section to read:

27 **Sec. 16.05.262. Regional subsistence councils.** (a) The Board of Fisheries  
 28 and the Board of Game shall jointly adopt regulations necessary to implement this  
 29 section, including regulations establishing at least six subsistence resource regions that,  
 30 taken together, cover the entire state. The number and boundaries of the regions must  
 31 be sufficient to ensure that regional differences in subsistence uses are adequately

1 accommodated.

2 (b) Each subsistence resource region must be represented by a regional  
3 subsistence council with 10 members appointed by the governor. Four members of  
4 each council may be selected from nominees who reside in that region of the state  
5 submitted by tribal councils in the region. Six members of each council may be  
6 selected from nominees submitted by local governments and local advisory  
7 committees. Seven members of each council must be subsistence users of fish and  
8 game and three members must be sport or commercial users of fish and game. The  
9 members of each council shall be residents and shall serve staggered terms of not more  
10 than three years. A person may be reappointed to serve on a council, with no limit on  
11 the number of terms served. A quorum is six members of a council. Members of a  
12 council serve without compensation but are entitled to per diem and travel expenses  
13 authorized for members of boards and commissions under AS 39.20.180.

14 (c) Regional subsistence councils shall strive for consensus, but  
15 recommendations shall be decided by majority vote.

16 (d) Each regional subsistence council may

17 (1) elect officers and adopt rules of procedure to govern meetings;

18 (2) hold public meetings on fish and game matters and solicit proposals  
19 from the public on subsistence uses;

20 (3) review, evaluate, and make a recommendation, in consultation with  
21 the local fish and game advisory committees in its region and with the department, to  
22 a board on an existing or proposed regulation, policy, or management plan, or any  
23 other matter directly relating to the subsistence use of fish and game in the region;

24 (4) comment on proposed regulations on hunting and sport, personal  
25 use, and commercial fishing;

26 (5) make recommendations concerning permits provided in  
27 AS 16.05.330(f);

28 (6) submit to the boards, the department, the Secretary of the United  
29 States Department of the Interior, and the Secretary of the United States Department  
30 of Agriculture, by November 15 of each year, an annual report, containing the  
31 following:

1 (A) an identification of current and anticipated subsistence uses  
2 of fish and game populations in the region, and other fish and game uses that  
3 the council identifies;

4 (B) an evaluation of current and anticipated subsistence needs  
5 for use of fish and game populations in the region and of other fish and game  
6 needs that the council identifies;

7 (C) a recommended strategy for the management of fish and  
8 game populations in the region to accommodate the identified fish and game  
9 uses and needs; and

10 (D) recommendations concerning policies, standards, guidelines,  
11 and regulations to implement the suggested strategy;

12 (7) meet with other regional subsistence councils to develop  
13 recommendations on interregional proposals and issues;

14 (8) use a mediation process; and

15 (9) perform other duties specified by a board.

16 (e) Each regional subsistence council shall provide a forum for and assist local  
17 fish and game advisory committees in the region in obtaining the opinions and  
18 proposals of persons interested in fish and game matters so as to achieve the greatest  
19 possible local participation in the decision-making process.

20 (f) Regulatory proposals relating primarily to subsistence issues that are  
21 initiated by the public or by a local fish and game advisory committee must be  
22 reviewed by the appropriate regional subsistence council before the appropriate board  
23 takes action on the proposal.

24 (g) The appropriate board shall consider the reports and recommendations of  
25 the regional subsistence councils. A board may not adopt any recommendation by a  
26 council that the board determines (1) violates the sustained yield principle, (2) is not  
27 supported by substantial evidence, (3) is detrimental to subsistence uses, (4) involves  
28 an unresolved statewide or interregional subsistence management issue, or (5) is  
29 contrary to an overriding statewide fish or game management interest. If a  
30 recommendation by a council is not adopted by a board, the board shall provide a  
31 written statement of the factual basis and reasons for its decision and may return the

1 recommendation to the regional subsistence council for further consideration.

2 (h) A regional subsistence council shall consider proposals from local  
3 governments, tribal councils, and local advisory committees that identify local  
4 subsistence needs and uses, methods, means, seasons, and other issues related to local  
5 subsistence management.

6 (i) When implementing the provisions of this section, the boards, the regional  
7 subsistence councils, and the department shall seek data from, consult with, and make  
8 use of the special knowledge of subsistence users. If appropriate to implement the  
9 provisions of this section, the department may contract for services with subsistence  
10 users and local groups in order to use special knowledge of resources in the region.

11 \* **Sec. 4.** AS 16.05.330(c) is amended to read:

12 (c) The Board of Fisheries and the Board of Game may adopt regulations  
13 providing for the issuance and expiration of subsistence permits for areas, villages,  
14 communities, groups, or individuals as needed for authorizing, regulating, and  
15 monitoring the subsistence harvest of fish and game. [THE BOARDS SHALL  
16 ADOPT THESE REGULATIONS WHEN THE SUBSISTENCE PREFERENCE  
17 REQUIRES A REDUCTION IN THE HARVEST OF A FISH STOCK OR GAME  
18 POPULATION BY NONSUBSISTENCE USERS.]

19 \* **Sec. 5.** AS 16.05.330 is amended by adding a new subsection to read:

20 (f) The Board of Fisheries and the Board of Game shall adopt regulations  
21 authorizing the commissioner to issue permits for the taking of fish and game 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. 6.** AS 16.05.940(7) is amended to read:

26 (7) "customary and traditional" means the noncommercial, long-term,  
27 and consistent taking of, use of, and reliance upon fish or game in a specific area and  
28 the [USE] patterns of taking or use of that fish or game that have been established  
29 over a reasonable period of time taking into consideration the availability of the fish  
30 or game;

31 \* **Sec. 7.** AS 16.05.940(8) is amended to read:

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

5 \* **Sec. 8.** AS 16.05.940(11) is amended to read:

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

11 \* **Sec. 9.** 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 [DOMICILED  
 14 IN A RURAL AREA OF THE STATE] for subsistence uses with gill net, seine, fish  
 15 wheel, long line, or other means defined by the Board of Fisheries;

16 \* **Sec. 10.** AS 16.05.940(31) is amended to read:

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

20 \* **Sec. 11.** 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 game [WILDLIFE] resources taken  
 26 for personal or family consumption, and for the customary trade, barter, or sharing for  
 27 personal or family consumption; in this paragraph, "family" means persons related by  
 28 blood, marriage, or adoption, and a person living in the household on a permanent  
 29 basis;

30 \* **Sec. 12.** AS 38.05.945(d) is amended to read:

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

1 given to appropriate

2 (1) regional subsistence [FISH AND GAME] councils established  
3 under AS 16.05.262 [AS 16.05.260]; and

4 (2) coastal resource service areas organized under AS 46.40.110 -  
5 46.40.210.

6 \* **Sec. 13.** TRANSITION: AREAS AND COMMUNITIES CLASSIFIED  
7 AS SUBSISTENCE AREAS. All areas and communities outside the nonsubsistence areas  
8 established by regulations adopted by the Board of Fisheries and the Board of Game and  
9 effective on May 15, 1993, are classified as subsistence areas for the purpose of this Act. The  
10 classifications made under this section are subject to revision under AS 16.05.258(c), as  
11 repealed and reenacted in sec. 1 of this Act.

12 \* **Sec. 14.** TRANSITION: REGULATIONS. Notwithstanding sec. 16 of this Act, the  
13 Board of Fisheries, the Board of Game, and the Department of Fish and Game may  
14 immediately proceed to adopt regulations to implement this Act. The regulations take effect  
15 under AS 44.62 (Administrative Procedure Act), but not before the effective date provided in  
16 sec. 16 of this Act.

17 \* **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

18 \* **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect on the effective  
19 date of an amendment to the Constitution of the State of Alaska, approved by the voters in  
20 2000, authorizing a priority for subsistence users of fish and game that is based on place of  
21 residence, dependence on fish and game for subsistence uses, or customary and traditional use  
22 of fish and game for subsistence uses.