

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 182

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fish and game
7 resources."

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

9 * Section 1. AS 16.05 is amended by adding new sections to read:

10 ARTICLE 5. SUBSISTENCE FISH AND GAME ZONES.

11 Sec. 16.05.730. LEGISLATIVE FINDING AND POLICY. (a) The legis-
12 lature finds and declares that:

13 (1) many low-income residents have traditionally depended
14 upon the fish and game resources of the state for subsistence food and
15 clothing;

16 (2) this dependence upon fish and game resources for sub-
17 sistence food and clothing is most pronounced in the rural areas of
18 the state, particularly those areas known as the bush;

19 (3) increasing sport hunting and fishing pressure is a
20 threat to the continued fulfillment of traditional subsistence require-
21 ments of fish and game resources;

22 (4) the Alaska Native Claims Settlement Act (P.L. 92-203;
23 85 Stat. 688) was in part enacted to protect traditional subsistence
24 usage of the land by the Alaska Natives;

25 (5) protection of the subsistence usage of fish and game
26 resources for low-income residents is vital to the health, safety and
27 general welfare of the citizens of the state;

28 (6) the fish and game resources of the state are reasonably
29 abundant, and subsistence zones, managed properly, will not result in

1 a declining resource.

2 (b) It is the policy of the state, based on the findings in (a)
3 of this section, to place primary management emphasis of fish and game
4 on a subsistence basis in certain areas to provide the necessary assis-
5 tance for needy and low-income residents. It is declared to be in the
6 public interest to assure that the subsistence needs of the people of
7 the state are met before resources are managed on a sport or commercial
8 basis.

9 Sec. 16.05.735. ESTABLISHMENT OF SUBSISTENCE ZONES BY THE COMMIS-
10 SIONER. (a) For a period of one year after the effective date of
11 this Act, the commissioner, after examining and evaluating traditional
12 resource use and present resource needs, may establish subsistence
13 zones adjacent or in close proximity to rural communities in the
14 state. In addition, the commissioner may establish such other sub-
15 sistence zones as he considers necessary to satisfy the subsistence
16 needs of persons otherwise qualified by permit but not living adjacent
17 or in close proximity to rural communities. When establishing a zone
18 under this section, conflicts with commercial fishing areas shall
19 be minimized.

20 (b) In a subsistence zone established under this section, the
21 commissioner may limit the species of fish or game, or both, that are
22 subject to subsistence use.

23 (c) Before the classification of subsistence zones under this
24 section, but within 15 days from the effective date of this Act, the
25 commissioner shall issue statewide public notice that a subsistence
26 zone may be requested for an area as specified in (a) of this section,
27 upon petition of the local governing body in the case of a rural com-
28 munity, or upon petition of not less than 25 interested citizens in the
29 case of persons not adjacent or in close proximity to a rural community.

1 Within 30 days from the date the petition is received for the establish-
2 ment of a subsistence zone, the commissioner or his designee shall
3 hold a public hearing in the rural community or in any other appropri-
4 ate area for which a zone is requested. After determining that a classi-
5 fication of land for subsistence use is necessary and appropriate, the
6 commissioner shall establish a subsistence zone for the area. A deter-
7 mination as to whether a zone shall be established shall be made within
8 a reasonable time after the public hearing.

9 (d) A petition submitted under (c) of this section shall contain,
10 but not be limited to, the following:

11 (1) a description of the area requested for creation as a
12 subsistence zone;

13 (2) an approximate delineation of the boundary of the area
14 considered necessary to fulfill the subsistence needs of its potential
15 users; and

16 (3) a specification of the species considered necessary for
17 subsistence use.

18 (e) If the commissioner determines that within a zone established
19 under this section subsistence needs are being adequately met, he may,
20 if circumstances warrant it and no substantial conflict is presented,
21 adjust the length of seasons applicable to fish or game, or both,
22 within the zone so that persons not holding subsistence permits may
23 utilize the fish or game, or both, within the area.

24 (f) The board, at a regular or special meeting, or the commis-
25 sioner, at any time, may review and change the boundaries of a subsis-
26 tence zone, or an area within the zone, upon a finding that either
27 (1) the economic needs of the people that use it have changed; or (2)
28 that the fish and game resources within a zone have become depleted
29 by falling below a sustained yield level; or (3) that a conflict exists

1 in an area that is being commercially fished as of the effective date
2 of this Act; in determining whether a conflict exists with commercial
3 fishing in an area, the board shall consider, but is not limited to, a
4 consideration of the following factors: (A) the extent of past and
5 present participation in the fishery; (B) the degree of dependence on
6 or need of that fishery for subsistence purposes. However, no change
7 may be made under this subsection until a public hearing is conducted
8 within the zone to be affected.

9 (g) No subsistence zone established under this section may be
10 larger than necessary to satisfy the food and clothing needs of the
11 persons holding permits to utilize it.

12 (h) The creation of a subsistence zone under this chapter does
13 not affect the hunting and fishing rights of a person not holding
14 a subsistence permit who owns land within the zone, provided he
15 engages in hunting and fishing within the zone only on the land which
16 he owns.

17 Sec. 16.05.737. ESTABLISHMENT OF A SUBSISTENCE ZONE BY THE BOARD.
18 After a period of one year from the effective date of this Act, the
19 authority granted by sec. 735 of this chapter is transferred to the
20 board. However, the determinations and classifications made by the
21 commissioner within the first year remain in effect unless specifically
22 modified or rejected by the board.

23 Sec. 16.05.740. ISSUANCE OF SUBSISTENCE PERMITS. (a) Except as
24 authorized in (b) of this section, a subsistence permit to engage in
25 hunting or fishing shall be issued to an applicant upon submission of
26 proof to the commissioner or his designee that

27 (1) the person is a bona fide resident of the rural community
28 for which the zone was established;

29 (2) the person holds a valid license entitling him to take

1 the fish or game, or both, that he intends to take in a subsistence
2 manner; and

3 (3) an independent determination made by the local governing
4 body in the rural community for which the zone was established, based
5 on proof submitted by the applicant, has concluded that sufficient
6 economic need warrants permit issuance; however, at the option of the
7 applicant, proof of sufficient economic need may be submitted directly
8 to the commissioner for his determination; in the case of persons in
9 or near zones or in other areas where no governing body exists, the
10 independent determination shall be made by the commissioner; for pur-
11 poses of this paragraph, "sufficient economic need" means reliance on
12 the resource to the extent that it forms a necessary and essential
13 part of the applicant's food source, contributing in a significant way
14 to his continued existence.

15 (b) In addition to persons eligible for a permit under (a) of
16 this section, a person not living adjacent or in close proximity to a
17 rural community who meets the requirements of (a)(2) and (3) of this
18 section shall be issued a subsistence permit.

19 (c) A permit may limit its holder to engaging in hunting or fish-
20 ing in the minimum number of zones necessary to fulfill his subsistence
21 needs, in the determination of the commissioner. A permit may be trans-
22 ferred by the head of a household to the dependent members of his family.

23 Sec. 16.05.748. APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT.
24 When not in conflict with the provisions of this chapter, the Adminis-
25 trative Procedure Act (AS 44.62) applies to proceedings under this
26 chapter. However, the procedure for classification and permit issuance
27 by the commissioner under secs. 735 and 740 of this chapter, when other-
28 wise consistent with due process of law, is not subject to the Adminis-
29 trative Procedure Act.

1 Sec. 16.05.750. COMPLIANCE WITH REGULATIONS MANDATORY. The
2 establishment of a subsistence zone or the issuance of a subsistence
3 permit under this chapter in no way exempts a person qualified to use
4 it from complying with applicable regulations as promulgated by the
5 commissioner or the board, as appropriate.

6 Sec. 16.05.753. PERMIT ISSUANCE AND EXPIRATION. (a) The method
7 of permit issuance shall be determined by the commissioner.

8 (b) A subsistence permit expires at the close of December 31, at
9 the end of each two-year period following issuance.

10 Sec. 16.05.756. REPORTS BY PERMITTEES. The commissioner of fish
11 and game may require a report to be made by each permittee concerning
12 the time, manner and specific area of taking fish and game, the kinds
13 and quantity taken, and other information helpful in the management of
14 fish and game resources.

15 Sec. 16.05.761. VIOLATIONS. (a) A person who engages in hunting
16 or fishing in a subsistence zone without a permit as required under
17 sec. 740 of this chapter, or takes unauthorized fish or game, or both,
18 as limited under sec. 735(b) of this chapter, or violates a regulation
19 established under this chapter, upon conviction, is guilty of a mis-
20 demeanor.

21 (b) A person who knowingly makes a false statement or knowingly
22 omits a material fact in or in relation to an application for a sub-
23 sistence permit is guilty of a misdemeanor.

24 Sec. 16.05.763. REGULATIONS. Within their respective periods of
25 authority as specified in secs. 735 - 737 of this chapter, the commis-
26 sioner or the board may establish regulations necessary for the imple-
27 mentation of this chapter.

28 Sec. 16.05.767. REPORT TO THE LEGISLATURE. The commissioner shall
29 submit a report to the legislature within 30 days from the termination

1 of his authority under sec. 735 of this chapter. The report shall
2 include, but is not limited to, a listing of the specific subsistence
3 zones established and the species subject to subsistence use within
4 those zones.

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

6 (26) "subsistence zone" or "zone" means the specified land
7 area designated by the commissioner or the board, as appropriate, for
8 subsistence permit hunting or fishing;

9 (27) "rural community" means a community, town, or village
10 selected by the commissioner or the board, as appropriate, after a
11 determination that a general economic need exists at the time the deter-
12 mination is made and that subsistence use of fish and game has tradi-
13 tionally been practiced among most of the residents of the community;

14 (28) "bona fide resident of a rural community" means a person
15 who

16 (A) maintains a permanent place of abode within the
17 community or village;

18 (B) has not claimed residence elsewhere;

19 (C) shows by all attending circumstances that his intent
20 is to make the community his permanent home;

21 (29) "subsistence" means the taking of fish or game for use
22 and consumption by the person taking the fish or game and his family
23 or household, or for the consumption of his domestic animals; however,
24 by-products of the fish or game may be used in the construction of
25 native handicrafts;

26 (30) "sustained yield level" means maintenance of the numbers
27 of fish and game in an area at maximum productivity of the population
28 or species, considering the optimum carrying capacity of the habitat
29 and the health of the ecosystem of which they form a constituent

1 element.

2 * Sec. 3. AS 16.05.250 is amended to read:

3 Sec. 16.05.250. REGULATIONS. Subject to secs. 735 - 763 of this
4 chapter, the [THE] board may make rules and regulations it considers
5 advisable in accordance with the Administrative Procedure Act (AS 44.62)
6 for

7 (1) setting apart fish and game reserve areas, refuges and
8 sanctuaries in the waters or on the lands of the state over which it has
9 jurisdiction, subject to the approval of the legislature;

10 (2) establishment of open and closed seasons and areas for
11 fish and game;

12 (3) establishment of the means and methods employed in the
13 pursuit, capture, and transport of fish and game;

14 (4) setting quotas and bag limits on the taking of fish and
15 game;

16 (5) classifying fish and game as commercial fish, sport fish,
17 game birds, song birds, big game animals, fur bearing animals, predators
18 vermin, or other categories essential for regulatory purposes;

19 (6) Repealed

20 (7) engaging in biological research, watershed and habitat
21 improvement, fish and game management, protection, propagation and
22 stocking;

23 (8) investigating and determining the extent and effect of
24 predation and competition among fish and game in the state, exercising
25 control measures considered necessary to the resources of the state and
26 designating game management units or parts of game management units in
27 which bounties for predatory animals shall be paid;

28 (9) entering into cooperative agreements with educational
29 institutions and state, federal, or other agencies to promote fish and

1 game research, management, education, and information and to train men
2 for fish and game management;

3 (10) prohibiting the live capture, possession, transport, or
4 release of native or exotic fish or game or their eggs;

5 (11) Repealed

6 (12) Repealed

7 (13) establishing seasons, areas, quotas and methods of
8 harvest for aquatic plants;

9 (14) establishment of the times and dates during which the
10 issuance of fish and game licenses, permits and registrations and the
11 transfer of permits and registrations between registration areas, game
12 management units or sub-units, is allowed;

13 (15) classifying areas of the state as subsistence zones
14 under sec. 737 of this chapter.

15 * Sec. 4. AS 16.05.050 is amended by adding a new paragraph to read:

16 (11) the establishment of subsistence zones under sec. 735
17 of this chapter, the issuance of subsistence permits under sec. 740
18 of this chapter, and the establishment of regulations under sec. 763
19 of this chapter.