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1 IN THE HOUSE

2 *SCSCS* HOUSE BILL NO. 804 (*Rules*)*am*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to subsistence areas."

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

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

9 ARTICLE 5. SUBSISTENCE AREAS.

10 Sec. 16.05.730. LEGISLATIVE FINDINGS. The legislature finds that  
11 traditional dependence on fish and game resources is a continuing and  
12 necessary way of life in many rural and bush areas of the state, and  
13 that the protection of subsistence usage of these resources is essential  
14 to the health, safety and general welfare of the citizens of the state  
15 in those areas.

16 Sec. 16.05.735. PETITION FOR ESTABLISHMENT OF A SUBSISTENCE AREA.

17 (a) Upon the written petition of not less than 15 interested residents  
18 of an area, the governing body of a village or rural community, the  
19 board of directors of a village corporation created under the Alaska  
20 Native Claims Settlement Act (P.L. 92-203, 85 Stat. 688), or a fish and  
21 game advisory board, the Board of Fisheries or the Board of Game, as  
22 appropriate, shall determine, in consultation with the subsistence  
23 advisory commission established in sec. 737 of this chapter, whether a  
24 subsistence area shall be created for the area described in the petition.

25 (b) At least 30 days before the determination made in (a) of this  
26 section, the department shall, after reasonable notice, hold a public  
27 hearing at or in close proximity to the area for which a subsistence  
28 area is requested. A determination as to whether a subsistence area  
29 shall be established shall be made by the board within a reasonable

1 time after the public hearing.

2 (c) The petition submitted under (a) of this section shall contain  
3 a complete description of the area requested as a subsistence area, a  
4 specification of the species within the area considered necessary for  
5 subsistence use and the length of time necessary to adequately utilize  
6 the species for subsistence purposes.

7 (d) No subsistence area may be created under this section if the  
8 department advises the board that biological evidence indicates that the  
9 creation of such an area is likely to adversely affect a resource in  
10 that it would fall below the level of sustained yield determined to be  
11 adequate by the department.

12 Sec. 16.05.737. SUBSISTENCE ADVISORY COMMISSION. There is created  
13 the Subsistence Advisory Commission to assist the board in determining  
14 whether a subsistence area shall be established in an area. The com-  
15 mission is composed of the following members appointed by the governor  
16 and serving at his pleasure for staggered three-year terms:

17 (1) the commissioner of community and regional affairs or his  
18 designee;

19 (2) the commissioner of health and social services or his  
20 designee;

21 (3) two members representative of the general public;

22 (4) one representative from the Alaska Federation of Natives;

23 (5) one representative from a publicly oriented rural assis-  
24 tance program.

25 Sec. 16.05.740. LIMITATIONS AND BOUNDARY CHANGES WITHIN A SUB-  
26 SISTENCE AREA. (a) In a subsistence area established under this sec-  
27 tion, the Board of Fisheries or the Board of Game, as appropriate, may  
28 limit the species or sex of fish or game, that are subject to subsis-  
29 tence use, and the methods and means for taking species of fish or game

1 that are subject to subsistence use.

2 (b) The Board of Fisheries or the Board of Game, or both in a  
3 joint meeting, at any time may review and change the boundaries of a  
4 subsistence area, or a portion of the area, after a hearing at or in  
5 close proximity to the area, upon a finding that

6 (1) the economic needs of the people who use the area have  
7 changed;

8 (2) the fish or game resources within the area have become  
9 depleted by falling below a sustained yield level; or

10 (3) a conflict exists in an area that is being commercially  
11 fished as of the effective date of this Act.

12 Sec. 16.05.748. APPLICATION OF THE ADMINISTRATIVE PROCEDURE ACT.  
13 When not in conflict with the provisions of this chapter, the Adminis-  
14 trative Procedure Act (AS 44.62) applies to proceedings under this  
15 chapter. However, the procedure for classification under this chapter,  
16 when otherwise consistent with due process of law, is not subject to the  
17 Administrative Procedure Act.

18 Sec. 16.05.750. COMPLIANCE WITH REGULATIONS MANDATORY. The  
19 establishment of a subsistence area under this chapter in no way  
20 exempts a person qualified to use it from complying with applicable  
21 regulations as promulgated by the commissioner or a board, as appro-  
22 priate.

23 Sec. 16.05.760. REPORT TO THE LEGISLATURE. The department shall  
24 submit a report to the legislature during the first 10 days of the  
25 legislative session beginning after January 1, 1977. The report shall  
26 include, but is not limited to, a listing of the specific subsistence  
27 areas established and the species subject to subsistence use within  
28 those areas.

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

1 (26) "rural community" means a community, town, or village  
2 where subsistence use of fish or game, or both, has traditionally  
3 been practiced among the residents.

4 (27) "subsistence" means the taking or possession of fish or  
5 game, or both, by means defined by the appropriate board for use and  
6 consumption by the person taking the fish or game and his family or  
7 household, or for the consumption of his domestic animals and not for  
8 sale or barter; however, by-products of the fish or game may be used in  
9 the construction of native handicrafts;

10 (28) "subsistence area" or "area" means the specified land  
11 area designated by the board for subsistence hunting or fishing, or  
12 both and in which it is unlikely that subsistence needs will be met if  
13 recreational hunting, including hunting for trophy purposes, is per-  
14 mitted or if certain methods and means are continued;

15 (29) "sustained yield level" means maintenance of the numbers  
16 of fish and game in an area at maximum productivity of the population or  
17 species, considering the optimum carrying capacity of the habitat and  
18 the health of the ecosystem of which they form a constituent element.

19 \* Sec. 3. AS 16.05.251 is amended to read:

20 Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES. Subject to  
21 secs. 730 - 760 of this chapter, the [THE] Board of Fisheries may make  
22 regulations it considers advisable in accordance with the Administrative  
23 Procedure Act (AS 44.62) for

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

27 (2) establishment of open and closed seasons and areas for  
28 the taking of fish;

29 (3) setting quotas and bag limits on the taking of fish;

1 (4) establishment of the means and methods employed in the  
2 pursuit, capture and transport of fish;

3 (5) establishment of marking and identification requirements  
4 for means used in the pursuit, capture and transport of fish;

5 (6) classifying fish as commercial fish, sport fish or pre-  
6 dators or other categories essential for regulatory purposes;

7 (7) engaging in biological research, watershed and habitat  
8 improvement, fish management, protection, propagation and stocking;

9 (8) investigating and determining the extent and effect of  
10 predation and competition among fish in the state, exercising control  
11 measures considered necessary to the resources of the state;

12 (9) entering into cooperative agreements with educational  
13 institutions and state, federal, or other agencies to promote fish  
14 research, management, education and information and to train men for  
15 fish management;

16 (10) prohibiting the live capture, possession, transport, or  
17 release of native or exotic fish or their eggs;

18 (11) establishing seasons, areas, quotas and methods of har-  
19 vest for aquatic plants;

20 (12) establishment of the times and dates during which the  
21 issuance of fishing licenses, permits and registrations and the transfer  
22 of permit and registrations between registration areas is allowed; how-  
23 ever, this paragraph does not apply to permits issued or transferred  
24 under ch. 43 of this title;

25 (13) changing the boundary or area of a subsistence fish area  
26 under sec. 740 of this chapter or classifying areas of the state as  
27 subsistence fish areas under sec. 735 of this chapter.

28 \* Sec. 4. AS 16.05.255 is amended to read:

29 Sec. 16.05.255. REGULATIONS OF THE BOARD OF GAME. Subject to

1 secs. 730 - 760 of this chapter, the [THE] Board of Game may make  
2 regulations it considers advisable in accordance with the Administrative  
3 Procedure Act (AS 44.62) for

4 (1) setting apart game reserve areas, refuges and sanctuaries  
5 in the waters or on the lands of the state over which it has jurisdic-  
6 tion, subject to the approval of the legislature;

7 (2) establishment of open and closed seasons and areas for  
8 the taking of game;

9 (3) establishment of the means and methods employed in the  
10 pursuit, capture and transport of game;

11 (4) setting quotas and bag limits on the taking of game;

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

14 (6) investigating and determining the extent and effect of  
15 predation and competition among game in the state, exercising control  
16 measures considered necessary to the resources of the state and desig-  
17 nating game management units or parts of game management units in which  
18 bounties for predatory animals shall be paid;

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

21 (8) entering into cooperative agreements with educational  
22 institutions and state, federal, or other agencies to promote game  
23 research, management, education, and information and to train men for  
24 game management;

25 (9) prohibiting the live capture, possession, transport, or  
26 release of native or exotic game or their eggs;

27 (10) establishing the times and dates during which the issu-  
28 ance of game licenses, permits and registrations and the transfer of  
29 permits and registrations between registration areas and game management

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units or subunits is allowed;

(11) changing the boundary or area of subsistence game areas under sec. 740 of this chapter or classifying areas of the state as subsistence game areas under sec. 735 of this chapter.

\* Sec. 5. AS 16.05.827(a) is amended to read:

(a) Notwithstanding sec. 940(28) [940(17)] of this chapter, the board may adopt regulations permitting the sale of subsistence salmon roe under conditions the board considers advisable.

\* Sec. 6. AS 16.05.257 and 16.05.940(17) are repealed.