

Introduced: 3/14/83
Referred: Resources and
Finance

BY TISCHER,
LINDAUER AND WARD

1 IN THE HOUSE

2

HOUSE BILL NO. 266

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing personal consumptive use of fish
7 and game as the highest and best use of fish and game
8 and creating in the Department of Fish and Game a
9 section of consumptive use."

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

11 * Section 1. INTENT. The legislature declares that the personal har-
12 vesting of fish or game for personal consumptive use is the highest and
13 best use of fish and game; it is the intent of the legislature that any
14 restrictions adopted to assure the maintenance of fish stocks or game
15 populations on a sustained-yield basis assure that personal consumptive use
16 is the highest and best use of these resources.

17 * Sec. 2. AS 16.05.090(c) is amended to read:

18 (c) There is established in the Department of Fish and Game a
19 section of personal consumptive use [SUBSISTENCE] hunting and fishing.

20 * Sec. 3. AS 16.05.094 is amended to read:

21 Sec. 16.05.094. DUTIES OF SECTION OF PERSONAL CONSUMPTIVE USE
22 [SUBSISTENCE] HUNTING AND FISHING. The section of personal consumptive
23 use [SUBSISTENCE] hunting and fishing shall

24 (1) compile existing data and conduct studies to gather
25 information, including data from personal consumptive [SUBSISTENCE]
26 users, on all aspects of the role of personal consumptive use [SUB-
27 SISTENCE] hunting and fishing in the lives of the residents of the
28 state;

29 (2) quantify the amount, nutritional value, and extent of

1 dependence on food acquired through personal consumptive use [SUBSIS-
2 TENCE] hunting and fishing;

3 (3) make information gathered available to the public,
4 appropriate agencies, and other organized bodies;

5 (4) assist the department, the Board of Fisheries, and the
6 Board of Game in determining what uses of fish and game [, AS WELL AS
7 WHICH USERS AND WHAT METHODS,] should be termed personal consumptive
8 [SUBSISTENCE] uses [, USERS, AND METHODS];

9 (5) evaluate the impact of state and federal laws and
10 regulations on personal consumptive use and subsistence hunting and
11 fishing and, when corrective action is indicated, make recommendations
12 to the department;

13 (6) make recommendations to the Board of Game and the Board
14 of Fisheries regarding adoption, amendment and repeal of regulations
15 affecting personal consumptive use [SUBSISTENCE] hunting and fishing;

16 (7) participate with other divisions in the preparation of
17 statewide and regional management plans so that those plans reorganize
18 and incorporate the needs of personal consumptive [SUBSISTENCE] users
19 of fish and game.

20 * Sec. 4. AS 16.05.251(b) is amended to read:

21 (b) The Board of Fisheries shall adopt regulations in accordance
22 with the Administrative Procedure Act (AS 44.62) permitting the taking
23 of fish for personal consumptive [SUBSISTENCE] uses unless the board
24 determines, in accordance with the Administrative Procedure Act, that
25 adoption of such regulations will jeopardize or interfere with the
26 maintenance of fish stocks on a sustained-yield basis. Whenever it is
27 necessary to restrict the taking of fish to assure the maintenance of
28 fish stocks on a sustained-yield basis, or to assure the continuation
29 of personal consumptive [SUBSISTENCE] uses of such resources, personal

1 consumptive [SUBSISTENCE] use shall be the highest and best [PRIORITY]
2 use. If further restriction is necessary, the board shall establish
3 restrictions and limitations on and priorities for these consumptive
4 uses on the basis of economic [THE FOLLOWING] criteria from the State
5 of Alaska Office of Management and Budget's "Poverty Guidelines for
6 Alaska", published by the Department of Labor. The board shall adopt
7 income eligibility regulations for personal consumptive use reflecting
8 the cost of living in the villages and municipalities in the state
9 using the "Poverty Guidelines for Alaska" data to carry out the pur-
10 poses of this chapter [:

11 (1) CUSTOMARY AND DIRECT DEPENDENCE UPON THE RESOURCE AS
12 THE MAINSTAY OF ONE'S LIVELIHOOD;

13 (2) LOCAL RESIDENCY; AND

14 (3) AVAILABILITY OF ALTERNATIVE RESOURCES].

15 * Sec. 5. AS. 16.05.251 is amended by adding a new subsection to read:

16 (c) Regulations adopted by the Board of Fisheries shall permit
17 the taking of fish for personal consumptive use at the time and place,
18 in the manner, and to whatever extent required to reasonably accommo-
19 date the needs of persons who make personal consumptive use of fish,
20 unless the board determines that biological evidence indicates that
21 adoption of the regulations will jeopardize or interfere with the
22 maintenance of fish stocks on a sustained-yield basis. In adopting
23 the regulations, the board may exercise any of the rule-making author-
24 ity conferred by (a)(1) - (12) of this section. The board may not
25 permit the taking of fish from a fishery for beneficial uses other
26 than personal consumptive use unless the needs of persons who make
27 personal consumptive use of the fishery are reasonably accommodated.

28 * Sec. 6. AS 16.05.255(b) is amended to read:

29 (b) The Board of Game shall adopt regulations in accordance with

1 the Administrative Procedure Act (AS 44.62) permitting the taking of
2 game for personal consumptive [SUBSISTENCE] uses unless the board
3 determines, in accordance with the Administrative Procedure Act, that
4 adoption of such regulations will jeopardize or interfere with the
5 maintenance of game resources on a sustained-yield basis. Whenever it
6 is necessary to restrict the taking of game to assure the maintenance
7 of game resources on a sustained-yield basis, or to assure the contin-
8 uation of personal consumptive [SUBSISTENCE] uses of such resources,
9 personal consumptive [SUBSISTENCE] use shall be the highest and best
10 [PRIORITY] use. If further restriction is necessary, the board shall
11 establish restrictions and limitations on and priorities for these
12 consumptive uses on the basis of economic [THE FOLLOWING] criteria
13 from the State of Alaska Office of Management and Budget's "Poverty
14 Guidelines for Alaska", published by the Department of Labor. The
15 board shall adopt income eligibility regulations for personal consump-
16 tive use reflecting the cost of living in the villages and municipali-
17 ties in the state using the "Poverty Guidelines for Alaska" data to
18 carry out the purposes of this chapter [:

19 (1) CUSTOMARY AND DIRECT DEPENDENCE UPON THE RESOURCE AS
20 THE MAINSTAY OF ONE'S LIVELIHOOD;

21 (2) LOCAL RESIDENCY; AND

22 (3) AVAILABILITY OF ALTERNATIVE RESOURCES].

23 * Sec. 7. AS 16.05.255 is amended by adding a new subsection to read:

24 (c) Regulations adopted by the Board of Game shall permit the
25 taking of game for personal consumptive use at the time and place, in
26 the manner, and to whatever extent required to reasonably accommodate
27 the needs of persons who make personal consumptive use of the game,
28 unless the board determines that biological evidence indicates that
29 adoption of the regulations will jeopardize or interfere with

1 maintenance of game populations on a sustained-yield basis. In adopt-
2 ing the regulations, the board may exercise any of the rule-making
3 authority conferred by (a)(1) - (10) of this section. The board may
4 not permit the taking of game for beneficial uses other than personal
5 consumptive use unless the needs of persons who make personal consump-
6 tive use of the game are reasonably accommodated.

7 * Sec. 8. AS 16.05.257 is amended to read:

8 Sec. 16.05.257. PERSONAL CONSUMPTIVE USE [SUBSISTENCE] HUNTING
9 REGULATIONS. (a) The Board of Game, at its regularly scheduled
10 annual meeting and other meetings held under authority of AS 16.05.-
11 300(a), shall consider and may adopt regulations providing for per-
12 sonal consumptive use [SUBSISTENCE] hunting in a game management unit
13 or subunit or a portion of a unit or subunit upon

14 (1) recommendation of the department, based on biological
15 evidence;

16 (2) the recommendation of the active local advisory commit-
17 tees for that game management unit or subunit or a portion of a unit
18 or subunit [;

19 (3) THE WRITTEN PETITION OF NOT LESS THAN 100 INTERESTED
20 RESIDENTS OF THAT GAME MANAGEMENT UNIT OR SUBUNIT; OR

21 (4) THE WRITTEN PETITION OF NOT LESS THAN 25 INTERESTED
22 RESIDENTS OF AN AREA WHICH IS REQUESTED FOR ESTABLISHMENT AS A SUBSIS-
23 TENCE AREA WITHIN A GAME MANAGEMENT UNIT OR SUBUNIT].

24 (b) The regulations may include but are not limited to the
25 following:

26 (1) the establishment of personal consumptive use [SUBSIS-
27 TENCE] hunting areas;

28 (2) the regulation of transportation methods and means to
29 protect personal consumptive use [SUBSISTENCE] hunting within personal

1 consumptive use [SUBSISTENCE] hunting areas, including the prohibition
2 or limitation of pack animals, mechanized vehicles and aircraft, other
3 than watercraft or wheeled vehicles operating on a road maintained by
4 public funds;

5 (3) the establishment of open and closed seasons and areas
6 to protect personal consumptive use [SUBSISTENCE] hunting;

7 (4) the limitation of hunting to only one sex of the ani-
8 mal.

9 (c) No regulations may be adopted by the Board of Game under
10 (a), (b) or (f) of this section unless, in addition to the require-
11 ments of AS 44.62.180 - 44.62.290, the department

12 (1) holds public hearings, after reasonable notice, at
13 least 30 days before the meeting at which the regulation is to be
14 adopted, with at least one of the hearings being held in close proxim-
15 ity to the area potentially affected;

16 (2) presents at the hearings the information provided for
17 in (e) of this section;

18 (3) makes the information provided for in (e) of this
19 section available to the appropriate advisory committees and to peti-
20 tioners if consideration of adoption of regulations was prompted by
21 petitions under (a)(3) or (4) of this section; comments shall be
22 received by the board until 10 days before any adoption of regula-
23 tions.

24 (d) A petition submitted under (a)(3) - (4) of this section
25 shall contain a complete description of the area requested as a per-
26 sonal consumptive use [SUBSISTENCE] area and a specification of the
27 species within the area considered necessary for personal consumptive
28 [SUBSISTENCE] use. A petition or recommendation made under (a)(2),
29 (3) or (4) of this section must be filed with the department at least

1 75 days before the meeting of the board at which the petition or
2 recommendation is to be considered.

3 (e) The department shall investigate, by collecting existing
4 data, and, when necessary, conducting new studies, every petition or
5 recommendation made under (a)(2), (3) or (4) of this section to the
6 extent practicable within the time available and provide the following
7 information:

8 (1) the concentration of the species to be affected and
9 carrying capacity of the area to be affected;

10 (2) the current hunting practices in the area, including
11 numbers of animals taken and by what methods and means [AND WHETHER
12 THE TAKE IS SUBSISTENCE OR RECREATIONAL];

13 (3) the dependence of persons in the area for personal
14 consumptive [SUBSISTENCE] use of a species;

15 (4) the population trends of the affected fish and game in
16 the area;

17 (5) whether the affected fish and game population is able
18 to support a nonpersonal consumptive use [NONSUBSISTENCE] harvest; and

19 (6) other information considered necessary by the section
20 of personal consumptive use [SUBSISTENCE] hunting and fishing.

21 (f) The Board of Game at any time may review and change the
22 boundaries of a personal consumptive use [SUBSISTENCE] area upon

23 (1) the recommendation of the department, based on biologi-
24 cal evidence;

25 (2) the written petition of not less than 25 interested
26 residents of that area; or

27 (3) the majority vote of the active local advisory commit-
28 tees for that area.

29 (g) The department shall submit a report to the legislature

1 during the first 10 days of each legislative session beginning after
2 January 1, 1984 [1977]. The report shall include, but is not limited
3 to, a listing of the specific personal consumptive use [SUBSISTENCE]
4 areas established or modified during the preceding year and the spe-
5 cies subject to personal consumptive [SUBSISTENCE] use within those
6 areas.

7 (h) In this section

8 (1) "personal consumptive use [SUBSISTENCE] hunting" means
9 the taking of game animals by a state resident for personal consump-
10 tive [SUBSISTENCE] uses by means defined by the Board of Game;

11 (2) "personal consumptive use [SUBSISTENCE] hunting area"
12 means an area in which only personal consumptive use [SUBSISTENCE]
13 hunting of the affected species is permitted and which is managed for
14 maximum food potential.

15 (i) The Board of Game may make no decision denying, creating or
16 changing a personal consumptive use [SUBSISTENCE] hunting area unless
17 based on specific written findings of fact regarding all the informa-
18 tion provided in accordance with (e) of this section.

19 * Sec. 9. AS 16.05.930(e) is amended to read:

20 (e) AS 16.05.010 - 16.05.950 do not prevent the [TRADITIONAL]
21 barter of fish and game taken by personal consumptive use [SUBSIS-
22 TENCE] hunting or fishing, except that the commissioner may prohibit
23 the barter of fish and game taken for personal consumptive use [SUB-
24 SISTENCE-TAKING FISH AND GAME] by regulation, emergency or otherwise,
25 if a determination on the record is made that the barter is resulting
26 in a waste of the resource, damage to fish stocks or game populations,
27 or circumvention of fish or game management programs.

28 * Sec. 10. AS 16.05.940(17) is amended to read:

29 (17) "personal consumptive use [SUBSISTENCE] fishing" means

1 the taking, fishing for, or possession of fish, shellfish, or other
2 fisheries resources for personal consumptive [SUBSISTENCE] uses with
3 gill net, seine, fish wheel, long line, or by hook and line held in
4 the hand, or by hook and line with the line attached to a pole or rod
5 which is held in the hand or closely attended, or by other means and
6 in areas defined by the Board of Fisheries;

7 * Sec. 11. AS 16.05.940(26) is amended to read:

8 (26) "personal consumptive [SUBSISTENCE] uses" means the
9 [CUSTOMARY AND TRADITIONAL] uses in the state [ALASKA] of wild, re-
10 newable resources for direct personal or family consumption as food,
11 shelter, fuel, clothing, tools, or transportation, for the making and
12 selling of handicraft articles out of nonedible by-products of fish
13 and wildlife resources taken for personal or family consumption, and
14 for the bartering [CUSTOMARY TRADE, BARTER] or sharing for personal or
15 family consumption; for the purposes of this paragraph, "family" means
16 all persons related by blood, marriage, or adoption, and any person
17 living within the household on a permanent basis;

18 * Sec. 12. AS 16.05.940(30) is amended by adding a new paragraph to
19 read:

20 (30) "barter" means the exchange or trade of fish or game,
21 or their parts, taken for personal consumptive use

22 (A) for other fish or game or their parts; or

23 (B) for other food or for nonedible items other than
24 money if the exchange is of a limited and noncommercial nature.

25 * Sec. 13. AS 16.10.380(b) is amended to read:

26 (b) In this section "user group" includes, but is not limited
27 to, sport fishermen, processors, commercial fishermen, personal con-
28 sumptive use [SUBSISTENCE] fishermen, and representatives of local
29 communities.

1 * Sec. 14. AS 16.20.090(2) is amended to read:

2 (2) the Walrus Islands are uninhabited, and the walrus
3 frequenting them are not required by the state for personal consump-
4 tive use [SUBSISTENCE] utilization;

5 * Sec. 15. AS 05.25.100(3) is amended to read:

6 (3) "operate" means to navigate or otherwise use a water-
7 craft for recreational purposes [AS OPPOSED TO BUSINESS, SUBSISTENCE
8 OR COMMERCIAL PURPOSES];

9 * Sec. 16. AS 18.56.097 is amended to read:

10 Sec. 18.56.097. COLLATERAL FOR LOANS. Under procedures estab-
11 lished by regulations of the corporation adopted in accordance with
12 AS 18.56.088 a person may pledge as security for the repayment of a
13 loan made, purchased or insured by the corporation under this chapter
14 a preference right the person [HE] holds to receive title to land
15 occupied [HE OCCUPIES] as a primary place of residence, primary place
16 of business, personal consumptive use [SUBSISTENCE] campsite, or as
17 headquarters for reindeer husbandry. The preference right must be
18 conveyed to the person by the Native corporation to which the land was
19 granted under section 14 of the Alaska Native Claims Settlement Act
20 (85 Stat. 688, 43 U.S.C. secs. 1601 - 1626, as amended by P.L. 94-204)
21 before it may be pledged as security under this section. The Depart-
22 ment of Community and Regional Affairs shall prescribe procedures and
23 standard forms for establishing and appraising the value of a prefer-
24 ence right held by a person to secure the repayment of a loan made,
25 purchased or insured by the corporation under this chapter.

26 * Sec. 17. AS 19.40.010(b) is amended to read:

27 (b) It is the sense of the legislature that the construction of
28 the highway will not impair the natural wilderness adjacent to the
29 highway and will not unreasonably interfere with personal consumptive

1 use [SUBSISTENCE] hunting, fishing, trapping and gathering.

2 * Sec. 18. AS 38.04.015(1) is amended to read:

3 (1) to make them available on a sustained-yield basis for a
4 variety of beneficial uses including personal consumptive use [SUBSIS-
5 TENCE] energy development, aquaculture, forestry, grazing, sport
6 hunting and fishing, hiking, snowmobiling, skiing, and other activi-
7 ties of a type which can generally be made available to more people
8 and conducted more successfully if the land is in public rather than
9 private ownership;

10 * Sec. 19. AS 38.35.100(a)(3)(C) is amended to read:

11 (C) protect the interests of individuals living in the
12 general area of the right-of-way who rely on fish, wildlife and
13 biotic resources of the area for personal consumptive use [SUB-
14 SISTENCE] purposes;

15 * Sec. 20. AS 38.35.120(d)(5) is amended to read:

16 (5) protect the interests of individuals living in the
17 general area of the right of way who rely on the fish, wildlife, and
18 biotic resources of the area for personal consumptive use [SUBSIS-
19 TENCE] purposes.

20 * Sec. 21. AS 41.15.520(d) is amended to read:

21 (d) The Department of Fish and Game is responsible for the
22 management of fish and game resources in the Haines State Forest
23 Resource Management Area under applicable law and in a manner consis-
24 tent with AS 41.15.500 - 41.15.520 except that an opportunity for
25 continued traditional use of the Haines State Forest Resource Manage-
26 ment Area at levels and by traditional methods and means is guaran-
27 teed. The traditionally compatible uses include but are not limited
28 to fishing, hunting, trapping, berry picking, personal consumptive use
29 [SUBSISTENCE], and recreational uses, operation of motorized vehicles,

1 and the harvest of personal-use firewood.

2 * Sec. 22. AS 41.20.460 is amended to read:

3 Sec. 41.20.460. DECLARATION OF PURPOSE. The purpose of AS 41.-
4 20.460 - 41.20.490 is to establish the state-owned land and water
5 areas described in AS 41.20.470 as the Wood-Tikchik State Park. The
6 primary purposes of creating the Wood-Tikchik State Park are to pro-
7 tect the area's fish and wildlife breeding and support systems and to
8 preserve the continued use of the area for personal consumptive use
9 [SUBSISTENCE] and recreational activities. The state park is also
10 created to protect the area's recreational and scenic resources.
11 AS 41.20.460 - 41.20.490 are intended to close the described land and
12 water to multiple-purpose use in conformity with AS 38.05.300 and to
13 dedicate them as a special purpose site in accordance with art. VIII,
14 sec. 7 of the Constitution of the State of Alaska.

15 * Sec. 23. AS 41.20.490(b) is amended to read:

16 (b) The regulations adopted under AS 41.20.480(d) shall recog-
17 nize that the current practice of personal consumptive use [TRADI-
18 TIONAL SUBSISTENCE] and recreational activities includes the use of
19 small outboard motors and snow machines. Reasonable access by aircraft
20 for recreational purposes shall be permitted.

21 * Sec. 24. AS 41.20.507(g) is amended to read:

22 (g) Continued opportunities for traditional uses of the Alaska
23 Chilkat Bald Eagle Preserve at levels and by methods and means that
24 are compatible with the protection of the bald eagle population are
25 guaranteed. These historically compatible uses include but are not
26 limited to hunting, trapping, fishing, berry picking, other personal
27 consumptive use [SUBSISTENCE] and recreational uses, operation of
28 motorized vehicles, and the harvesting of personal-use firewood. The
29 level and method or means of traditional use may continue subject to

1 reasonable regulation unless the director of the division of parks,
2 Department of Natural Resources, after consultation with the Alaska
3 Chilkat Bald Eagle Preserve Advisory Council, makes a finding that the
4 level or method and means of use is causing significant resource
5 damage that is inconsistent with AS 41.20.506(a) and (b). The direc-
6 tor of the division of parks shall hold a public hearing in Haines and
7 Klukwan before restricting a traditional use permitted under this
8 section.

9 * Sec. 25. AS 44.47.400(b) is amended to read:

10 (b) A person may pledge as security for the repayment of a loan
11 originated or purchased in whole or in part under AS 44.47.380 a
12 preference right the person [HE] holds to receive title to land the
13 person [HE] occupies as a primary place of residence, primary place of
14 business, personal consumptive use [SUBSISTENCE] campsite, or as
15 headquarters for reindeer husbandry. The preference right must be
16 conveyed to the person by the Native corporation to which the land was
17 granted under section 14 of the Alaska Native Claims Settlement Act
18 (85 Stat. 688, 43 U.S.C. secs. 1601 - 1626, as amended by P.L. 94-204)
19 before it may be pledged as security under this subsection. The
20 commissioner of community and regional affairs shall prescribe proce-
21 dures and standard forms for establishing, pledging, and appraising
22 the value of a preference right held by a person to secure the repay-
23 ment of a loan originated or purchased in whole or in part under
24 AS 44.47.380.

25 * Sec. 26. AS 46.03.758(2) is amended to read:

26 (2) the exact nature and extent of oil pollution can be
27 neither documented with certainty nor precisely quantified on a spill-
28 by-spill basis; however, in light of the magnitude of harm which may
29 be caused by oil discharges, and the vital importance of commercial,

1 sport and personal consumptive use [SUBSISTENCE] fishing, tourism, and
2 Alaska's natural abundance and beauty to the economic future of the
3 state, and its quality of life, it is the judgment of the legislature
4 that substantial civil penalties should be imposed for the discharge
5 of oil, in order to provide a meaningful incentive for the safe handl-
6 ing of oil and to insure that the public does not bear substantial
7 losses from oil pollution for which, because of its subtle, long-term
8 or unquantifiable nature, compensation would not otherwise be
9 received; and

10 * Sec. 27. AS 46.03.826(2) is amended to read:

11 (2) "economic benefit" means a benefit measurable in eco-
12 nomic terms, including but not limited to the gathering, catching, or
13 killing of food or other items utilized in a personal consumptive use
14 [SUBSISTENCE] economy and their replacement cost;

15 * Sec. 28. AS 46.03.826(6) is amended to read:

16 (6) "personal consumptive use [SUBSISTENCE] economy" means
17 an economy which utilizes on a regular basis an item which is owned in
18 common by the people of the state, or the United States, including but
19 not limited to fish, game, fur bearing animals, birds, timber or any
20 part of the natural habitat for noncommercial purposes;