

BY SEN. COGHILL

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 305

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to personal use of fish and game,
7 utilization of fish caught by personal use fishermen,
8 waste of fish, and management of and planning for
9 certain salmon stocks; repealing subsistence; and
10 providing for an effective date."

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

12 * Section 1. FINDINGS. The legislature finds that it is in the best
13 interest of the state to

14 (1) maximize the utilization of fishery resources on a sustained
15 yield basis;

16 (2) make the fishery resources of the state available to resi-
17 dents to the maximum extent possible;

18 (3) allow the commercial utilization of certain fish parts from
19 fish caught for personal use in order to avoid the waste of fish parts that
20 have an economic value; and

21 (4) eliminate the waste of less valuable fish parts or carcasses
22 that would otherwise be discarded by fishermen.

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

24 (c) There is established in the department a section of personal
25 use [SUBSISTENCE] hunting and fishing.

26 * Sec. 3. AS 16.05.092 is amended by adding a new subsection to read:

27 (b) The division shall develop plans and programs for reha-
28 bilitation and enhancement of salmon stocks that spawn in terminal
29 areas, identified by the Board of Fisheries under AS 16.05.251(g), to

1 meet the needs of personal use, sport, and commercial fishermen who
2 utilize those salmon stocks.

3 * Sec. 4. AS 16.05.094 is amended to read:

4 Sec. 16.05.094. DUTIES OF SECTION OF PERSONAL USE [SUBSISTENCE]
5 HUNTING AND FISHING. The section of personal use [SUBSISTENCE] hunt-
6 ing and fishing shall

7 (1) compile existing data and conduct studies to gather
8 information, including data from personal use fishers and hunters
9 [SUBSISTENCE USERS], on all aspects of the role of personal use [SUB-
10 SISTENCE] hunting and fishing in the lives of the residents of the
11 state;

12 (2) quantify the amount, nutritional value, and extent of
13 dependence on food acquired through personal use [SUBSISTENCE] hunting
14 and fishing;

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

17 (4) assist the department, the Board of Fisheries, and the
18 Board of Game in determining what uses of fish and game, as well as
19 which users and what methods, should be termed personal use [SUBSIS-
20 TENCE] uses, users, and methods;

21 (5) evaluate the impact of state and federal laws and
22 regulations on personal use [SUBSISTENCE] hunting and fishing and,
23 when corrective action is indicated, make recommendations to the
24 department;

25 (6) make recommendations to the Board of Game and the Board
26 of Fisheries regarding adoption, amendment, and repeal of regulations
27 affecting personal use [SUBSISTENCE] hunting and fishing;

28 (7) participate with other divisions in the preparation of
29 statewide and regional management plans so that those plans recognize

1 and incorporate the needs for personal use [OF SUBSISTENCE USERS] of
2 fish and game.

3 * Sec. 5. AS 16.05.251(a) is amended to read:

4 Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES. (a) The
5 Board of Fisheries may adopt regulations it considers advisable in
6 accordance with the Administrative Procedure Act (AS 44.62) for

7 (1) setting apart fish reserve areas, refuges, and sanctu-
8 aries in the waters of the state over which it has jurisdiction,
9 subject to the approval of the legislature;

10 (2) establishing open and closed seasons and areas for the
11 taking of fish; if consistent with resource conservation and develop-
12 ment goals, the board may adopt regulations establishing restricted
13 seasons and areas necessary for persons 60 years of age and older to
14 participate in sport or [,] personal use [, OR SUBSISTENCE] fishing;

15 (3) setting quotas, bag limits, harvest levels, and sex and
16 size limitations on the taking of fish;

17 (4) establishing the means and methods employed in the
18 pursuit, capture, and transport of fish;

19 (5) establishing marking and identification requirements
20 for means used in pursuit, capture, and transport of fish;

21 (6) classifying as commercial fish, sport fish, personal
22 use fish, [SUBSISTENCE FISH,] or predators or other categories essen-
23 tial for regulatory purposes;

24 (7) watershed and habitat improvement, and management,
25 conservation, protection, use, disposal, propagation, and stocking of
26 fish;

27 (8) investigating and determining the extent and effect of
28 disease, predation, and competition among fish in the state, exercis-
29 ing control measures considered necessary to the resources of the

1 state;

2 (9) prohibiting and regulating the live capture, posses-
3 sion, transport, or release of native or exotic fish or their eggs;

4 (10) establishing seasons, areas, quotas, and methods of
5 harvest for aquatic plants;

6 (11) establishing the times and dates during which the
7 issuance of fishing licenses, permits, and registrations and the
8 transfer of permits and registrations between registration areas is
9 allowed; however, this paragraph does not apply to permits issued or
10 transferred under AS 16.43;

11 (12) regulating commercial, sport, [SUBSISTENCE,] and per-
12 sonal use fishing as needed for the conservation, development, and
13 utilization of fisheries;

14 (13) requiring, in a fishery, observers on board fishing
15 vessels, as defined in AS 16.05.475(d), that are registered under the
16 laws of the state, as defined in AS 16.05.475(c), after making a
17 written determination that an on-board observer program

18 (A) is the only practical data-gathering or enforce-
19 ment mechanism for that fishery;

20 (B) will not unduly disrupt the fishery;

21 (C) can be conducted at a reasonable cost; and

22 (D) can be coordinated with observer programs of other
23 agencies, including the National Marine Fisheries Service, North
24 Pacific Fishery Management Council, and the International Pacific
25 Halibut Commission;

26 (14) establishing nonexclusive, exclusive, and superexclu-
27 sive registration and use areas for regulating commercial fishing.

28 * Sec. 6. AS 16.05.251(d) is amended to read:

29 (d) Regulations adopted under (a) of this section must,

1 consistent with sustained yield and the provisions of AS 16.05.263
2 [AS 16.05.258], provide a fair and reasonable opportunity for the
3 taking of fishery resources by [PERSONAL USE,] sport [,] and commer-
4 cial fishermen.

5 * Sec. 7. AS 16.05.251(e) is amended to read:

6 (e) The Board of Fisheries shall establish criteria for the
7 allocation of fishery resources among [PERSONAL USE,] sport [,] and
8 commercial fishing. The criteria may, as appropriate to particular
9 allocation decisions, include factors such as

10 (1) the history of each [PERSONAL USE,] sport [,] and
11 commercial fishery;

12 (2) the number of residents and nonresidents who have
13 participated in each fishery in the past and the number of residents
14 and nonresidents who can reasonably be expected to participate in the
15 future;

16 (3) the importance of each fishery for providing residents
17 the opportunity to obtain fish for personal and family consumption;

18 (4) the availability of alternative fisheries resources;

19 (5) the importance of each fishery to the economy of the
20 state;

21 (6) the importance of each fishery to the economy of the
22 region and local area in which the fishery is located;

23 (7) the importance of each fishery in providing recrea-
24 tional opportunities for residents and nonresidents.

25 * Sec. 8. AS 16.05.251 is amended by adding a new subsection to read:

26 (g) The Board of Fisheries shall identify terminal areas encom-
27 passing those rivers and streams that terminate within the state and
28 that are important to the spawning of salmon stocks traditionally and
29 customarily utilized by residents of the area. The board shall adopt

1 regulations for the management of salmon stocks that spawn in a termi-
2 nal area to ensure the continued use of the salmon stocks by those
3 residents of the area who have traditionally and customarily utilized
4 the salmon stocks.

5 * Sec. 9. AS 16.05.255(a) is amended to read:

6 (a) The Board of Game may adopt regulations it considers advis-
7 able in accordance with the Administrative Procedure Act (AS 44.62)
8 for

9 (1) setting apart game reserve areas, refuges, and sanctu-
10 aries in the water or on the land of the state over which it has
11 jurisdiction, subject to the approval of the legislature;

12 (2) establishing open and closed seasons and areas for the
13 taking of game;

14 (3) establishing the means and methods employed in the
15 pursuit, capture, and transport of game, including regulations, con-
16 sistent with resource conservation and development goals, establishing
17 means and methods that may be employed by persons with physical dis-
18 abilities;

19 (4) setting quotas, bag limits, harvest levels, and sex,
20 age, and size limitations on the taking of game;

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

23 (6) methods, means, and harvest levels necessary to control
24 predation and competition among game in the state;

25 (7) watershed and habitat improvement, and management,
26 conservation, protection, use, disposal, propagation, and stocking of
27 game;

28 (8) prohibiting the live capture, possession, transport, or
29 release of native or exotic game or their eggs;

(9) establishing the times and dates during which the issuance of game licenses, permits, and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed;

(10) regulating sport hunting and personal use [SUBSISTENCE] hunting as needed for the conservation, development, and utilization of game.

* Sec. 10. AS 16.05.255(d) is amended to read:

(d) Regulations adopted under (a) of this section shall provide that, consistent with the provisions of AS 16.05.263 [AS 16.05.258], the taking of moose, deer, elk, and caribou by residents for personal or family consumption has preference over taking by nonresidents.

* Sec. 11. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.263. PERSONAL USE OF FISH AND GAME. (a) Personal use of fish and game by residents for direct personal or family consumption as food, shelter, fuel, clothing, tools, artifacts, or transportation to satisfy physical, customary and traditional, or cultural needs shall have priority over other consumptive uses of fish and game.

(b) Fish and game taken for personal use may also be used for
(1) making handicraft articles for personal or family use or for sale out of nonedible byproducts of the fish and game;

(2) customary trade, barter, or sharing for personal or family consumption; and

(3) incidental sale of byproducts of fish and wildlife under AS 16.05.833 and regulations of the boards.

(c) The Board of Fisheries and the Board of Game shall adopt personal use fishing, hunting, and trapping regulations.

(d) If the harvestable portion of a fish stock or game

1 population is not sufficient to accommodate all consumptive uses of
2 the stock or population but is sufficient to accommodate personal use
3 of the stock or population, then personal use shall be accorded a
4 preference over other consumptive uses, and the regulations shall
5 provide a reasonable opportunity to satisfy the needs of residents to
6 take fish and game for personal use. If the harvestable portion is
7 sufficient to accommodate the personal use of the stock or population,
8 then the boards may provide for other consumptive uses of the remain-
9 der of the harvestable portion. If it is necessary to restrict fish-
10 ing, hunting, or trapping for personal use in order to assure sus-
11 tained yield of a fish stock or game population, then the preference
12 shall be limited, and the board shall adopt regulations that establish
13 criteria, including the following criteria, for determining who may
14 take the harvestable portion:

15 (1) dependence on fish or game as a mainstay of livelihood;

16 (2) availability of alternative resources; and

17 (3) customary and traditional use of the particular fish
18 stock or game population.

19 (e) The boards and the department may not close a season or area
20 to personal use fishing or hunting for a fish or game species while
21 the season or area is open to other consumptive uses of the fish or
22 game species.

23 (f) Takings authorized under this section are subject to reason-
24 able regulation of seasons, catch or bag limits, and methods and
25 means. Takings and uses of resources authorized under this section
26 are subject to AS 16.05.831, 16.05.833, and AS 16.30.

27 Sec. 16.05.265. PERSONAL USE PERMIT. (a) The Board of Fisher-
28 ies and the Board of Game shall provide for personal use permits to be
29 issued by the department. The boards may provide for permits to take

1 fish and game, fish or game, or a species, stock, or population of
2 fish or game.

3 (b) A person shall receive a personal use permit if the person
4 applies to the department and asserts a physical, customary and tradi-
5 tional, or cultural need to take fish or game for direct personal or
6 family consumption. If a board determines that it is necessary to
7 restrict the take of a fish stock or game population for personal use
8 to assure sustained yield of the stock or population, the board may
9 impose additional qualifications for a personal use permit to take the
10 harvestable portion of that stock or population.

11 (c) A person who obtains a personal use permit shall report the
12 amount and number of fish and game taken under the permit to the
13 department.

14 (d) A person may not take fish or game for personal use without
15 having a personal use permit in the person's physical possession.

16 * Sec. 12. AS 16.05.831 is amended to read:

17 Sec. 16.05.831. WASTE OF FISH [SALMON]. (a) Except as provided
18 in AS 16.10.173, a [A] person may not waste fish [SALMON] intention-
19 ally, knowingly, or with reckless disregard for the consequences. In
20 this subsection [SECTION], "waste" means the failure to utilize the
21 majority of the carcass, excluding viscera and sex parts, of a fish
22 [SALMON] intended for

- 23 (1) sale to a commercial buyer or processor;
24 (2) consumption by humans or domesticated animals; or
25 (3) scientific, educational, or display purposes.

26 (b) The commissioner, upon request, may authorize other uses of
27 fish [SALMON] that would be consistent with maximum and wise use of
28 the resource.

29 (c) A person who violates this section or a regulation adopted

1 under this section [IT] is punishable by a fine of not more than
2 \$10,000, or by imprisonment for not more than one year [SIX MONTHS],
3 or by both. In addition, a person who violates this section is sub-
4 ject to a civil action by the state for the cost of replacing the fish
5 [SALMON] wasted.

6 * Sec. 13. AS 16.05 is amended by adding a new section to read:

7 Sec. 16.05.833. COMMERCIAL UTILIZATION OF FISH PARTS FROM FISH
8 TAKEN FOR PERSONAL USE. (a) The department shall issue a commercial
9 use permit to a resident who applies for the permit, satisfies appli-
10 cable personal use fishing permit requirements, and provides proof of
11 two years of personal use fishing activity within the fish management
12 region for which the permit is issued. A commercial use permit au-
13 thorizes the sale of specified amounts of underutilized fish parts of
14 fish legally taken in a personal use fishery. A commercial use permit
15 may be issued for more than one species of fish.

16 (b) The number of pounds of roe that may be sold under a commer-
17 cial use permit is equal to one-half of the product of the number of
18 fish of each species for which the personal use fishing permit is
19 issued that the applicant will take to satisfy the applicant's per-
20 sonal use needs multiplied by the average weight of roe produced by
21 each species of fish for which the permit is issued.

22 (c) A commercial use permit may not limit the taking of fish for
23 personal use purposes.

24 (d) A person may not sell underutilized fish parts from fish
25 taken for personal use without first obtaining a commercial use permit
26 under this section.

27 (e) The Board of Fisheries shall adopt regulations that are
28 necessary to implement this section in each fish management region
29 established by regulation by the board. The regulations for each

1 region must be based on recommendations received from the fish and
2 game council for that region.

3 (f) The sale of underutilized fish parts under a commercial use
4 permit is exempt from the requirements of AS 16.05.675, 16.05.680, and
5 AS 16.43.

6 (g) In this section "underutilized fish parts" means the skin,
7 bones, viscera, and sex parts, including roe, of fish.

8 * Sec. 14. AS 16.05.930(e) is amended to read:

9 (e) This chapter does not prevent the traditional barter of fish
10 and game taken for personal use [BY SUBSISTENCE HUNTING OR FISHING],
11 except that the commissioner may prohibit by regulation the barter of
12 [SUBSISTENCE-TAKEN] fish and game taken for personal use, if the
13 commissioner finds [BY REGULATION, EMERGENCY OR OTHERWISE, IF A DETER-
14 MINATION ON THE RECORD IS MADE] that the barter is resulting in a
15 waste of the resource, damage to fish stocks or game populations, or
16 circumvention of fish or game management programs.

17 * Sec. 15. AS 16.05.940(5) is amended to read:

18 (5) "commercial fishing" means the taking, fishing for, or
19 possession of fish, shellfish, or other fishery resources with the
20 intent of disposing of them for profit [,] or by sale, barter, trade,
21 or in commercial channels; the failure to have a valid personal use
22 [SUBSISTENCE] permit in possession, if required by statute or regu-
23 lation, is considered prima facie evidence of commercial fishing if
24 commercial fishing gear as specified by regulation is involved in the
25 taking, fishing for, or possession of fish, shellfish, or other fish
26 resources;

27 * Sec. 16. AS 16.05.940(23) is amended to read:

28 (23) "personal use fishing" means the taking, fishing for,
29 or possession of finfish, shellfish, or other fishery resources [,] by

1 Alaska residents for direct personal or family consumption [USE AND
2 NOT FOR SALE OR BARTER, WITH GILL OR DIP NET, SEINE, FISH WHEEL, LONG
3 LINE, OR OTHER MEANS DEFINED BY THE BOARD OF FISHERIES];

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

5 (28) "sport fishing" means the taking of or attempting to
6 take for noncommercial [PERSONAL] use, and not for sale or barter, any
7 fresh water, marine, or anadromous fish by hook and line held in the
8 hand, or by hook and line with the line attached to a pole or rod
9 which is held in the hand or closely attended, or by other means
10 defined by the Board of Fisheries;

11 * Sec. 18. AS 16.10.265(a) is amended to read:

12 (a) It is unlawful for an individual while acting as a fish
13 processor or primary fish buyer, or as an agent, director, officer,
14 member, or employee of a fish processor, of a primary fish buyer, or
15 of a cooperative corporation organized under AS 10.15 to intentionally
16 or knowingly make an original purchase of fish from a seller who, in
17 violation of AS 16.43, does not hold a landing permit, an entry per-
18 mit, [OR] an interim-use permit, or a commercial use permit issued
19 under AS 16.05.833.

20 * Sec. 19. AS 16.10.267(a) is amended to read:

21 (a) When a fisherman sells fish, the fisherman shall possess

22 (1) a landing permit, entry permit, or interim-use permit
23 issued or transferred to the fisherman under AS 16.43, commercial use
24 permit issued under AS 16.05.833, or other document authorized by
25 regulation to be used in place of an entry permit or interim-use
26 permit; and

27 (2) an identification card that has been issued to the
28 fisherman by a state or federal agency or other organization desig-
29 nated by the Department of Public Safety and that bears a photograph

1 of the fisherman.

2 * Sec. 20. AS 16.10.267(b) is amended to read:

3 (b) If requested by the purchaser of the fish or by a peace
4 officer, the fisherman shall present for inspection the identification
5 card, entry permit, interim-use permit, commercial use permit, or
6 other document required to be in the fisherman's possession under (a)
7 of this section.

8 * Sec. 21. The division of legal services of the Legislative Affairs
9 Agency shall prepare a bill containing appropriate amendments to the Alaska
10 Statutes, outside of AS 16.05, correcting references to "subsistence,"
11 "subsistence uses," "subsistence users," "personal use of fish and game,"
12 and similar terms in order to conform to the provisions of this Act. The
13 bill shall be presented to the House and Senate Rules Committees for intro-
14 duction on the first day of the First Session of the Seventeenth Alaska
15 State Legislature.

16 * Sec. 22. AS 16.05.258, 16.05.259, 16.05.330(c), and 16.05.940(26),
17 (29), (30), and (31) are repealed.

18 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).