

HOUSE BILL NO. 601

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson

Introduced: 6/15/92

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taking of fish and game for subsistence; and providing
2 for an effective date."

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

4 * Section 1. FINDINGS. The legislature finds that

5 (1) the overwhelming majority of residents of rural areas of the state, both
6 Alaska Natives and non-Natives, rely upon the subsistence use of fish and game for
7 nutritional, economic, social, and cultural purposes;

8 (2) residents of rural areas of the state have few nutritional and economic
9 alternatives for maintaining their livelihood other than subsistence uses of fish and wildlife;

10 (3) the state's fish and game are not unlimited and cannot provide for every
11 desired use, now or in the future; competition for and the level of effort on these resources
12 have required the legislature to establish a preference for subsistence among the various
13 beneficial uses of fish and game in the state; and

14 (4) residents of urban areas of the state have nutritional and economic

1 alternatives for maintaining their livelihood other than subsistence uses of fish and wildlife,
2 though many residents of urban areas do rely upon the taking of fish and wildlife for
3 nutritional and cultural purposes.

4 * Sec. 2. AS 16.05.094 is amended to read:

5 Sec. 16.05.094. DUTIES OF SECTION OF SUBSISTENCE HUNTING AND
6 FISHING. The section of subsistence hunting and fishing shall

7 (1) compile existing data and conduct studies to gather information,
8 including data from subsistence users and urban subsistence users, on all aspects of
9 the role of subsistence hunting and fishing in the lives of the rural and urban
10 residents of the state;

11 (2) quantify the amount, nutritional value, and extent of dependence
12 on food acquired through subsistence hunting and fishing by rural and urban
13 residents of the state;

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

16 (4) assist the department [, THE BOARD OF FISHERIES,] and the
17 boards [BOARD OF GAME] in determining what uses of fish and game, as well as
18 which users and what methods, should be termed subsistence uses, users, and
19 methods;

20 (5) evaluate the impact of state and federal laws and regulations on
21 subsistence hunting and fishing and, when corrective action is indicated, make
22 recommendations to the department;

23 (6) make recommendations to the boards [BOARD OF GAME AND
24 THE BOARD OF FISHERIES] regarding adoption, amendment, and repeal of
25 regulations affecting subsistence hunting and fishing and urban subsistence hunting
26 and fishing;

27 (7) participate with other divisions in the preparation of statewide and
28 regional management plans so that those plans recognize and incorporate the needs
29 of rural and urban subsistence users of fish and game.

30 * Sec. 3. AS 16.05.258 is repealed and reenacted to read:

31 Sec. 16.05.258. SUBSISTENCE AND ALLOCATION OF FISH AND

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GAME. (a) The boards shall jointly identify by regulation

(1) communities and areas of the state that qualify as rural areas under this paragraph as follows:

(A) a community or area with a population of 2,500 persons or less is a rural area unless the board determines that the community or area possesses significant characteristics of an urban nature or is a part of an urbanized area;

(B) a community or area with a population of more than 2,500 persons but not more than 7,000 persons shall be classified as a rural area or urban area according to the characteristics identified under (E) of this paragraph; the board shall classify communities and areas of more than 2,500 persons but not more than 7,000 persons before classifying other communities and areas;

(C) a community or area with a population of more than 7,000 persons is presumed to be an urban area, unless the board determines that the community or area should be classified as a rural area because the community or area possesses significant characteristics of a rural area;

(D) the population of a community or area is determined according to the most recent census conducted by the United States Bureau of the Census as updated by the Department of Labor;

(E) community or area characteristics shall be considered in determining whether the community or area is a rural area or urban area; the characteristics that may be considered include fish and game use, development and diversity of the economy, transportation, communication links, community infrastructure, and educational, cultural, and governmental institutions;

(F) communities or areas that are economically, socially, and communally integrated shall be considered in the aggregate;

(2) the criteria for identifying those residents who qualify as urban subsistence users because they

(A) are residents of a community or area that has a nutritional or cultural dependence upon wild renewable resources for urban subsistence

1 uses; or

2 (B) can individually demonstrate that they have a nutritional
3 or cultural dependence upon wild renewable resources for urban subsistence
4 uses.

5 (b) The boards shall identify, by regulation, for each rural and urban area of
6 the state,

7 (1) the fish stocks and game populations that are taken for subsistence
8 uses or urban subsistence uses;

9 (2) the customary and traditional patterns of taking and use of fish
10 stocks and game populations taken for subsistence uses or urban subsistence uses;

11 (3) what portion, if any, of the fish stocks and game populations
12 identified in (1) of this subsection can be harvested consistent with sustained yield;

13 (4) how much of the harvestable portion of a fish stock or game
14 population identified in (3) of this subsection is needed to satisfy subsistence uses and
15 urban subsistence uses of the fish stock or game population.

16 (c) The boards shall adopt subsistence fishing and hunting regulations for each
17 fish stock and game population for which a harvestable portion is determined to exist
18 under (b) of this section. Regulations adopted by a board under this subsection must
19 provide, to the extent consistent with sustained yield, for the customary and traditional
20 uses and practices of residents who engage in subsistence uses in a manner that will
21 result in the least adverse effect upon those uses. If the harvestable portion of a fish
22 stock or game population is not sufficient to accommodate all consumptive uses of
23 the fish stock or game population, but is sufficient to accommodate subsistence uses
24 of the fish stock or game population, then nonwasteful subsistence uses shall be
25 accorded a preference over other consumptive uses, including urban subsistence uses,
26 of the fish stock or game population. If it is necessary to restrict subsistence fishing
27 or subsistence hunting in order to assure sustained yield or to continue subsistence
28 uses of the fish stock or game population, then the preference for subsistence uses
29 shall be limited, and the appropriate board shall distinguish among subsistence users,
30 by applying the following criteria:

31 (1) customary and direct dependence on the fish stock or game

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population as the mainstay of livelihood;

(2) local residency; and

(3) availability of alternative resources.

(d) If the harvestable portion of a fish stock or game population, as identified under (b) of this section is sufficient to accommodate consumptive uses in addition to subsistence uses, the appropriate board shall adopt regulations consistent with this section that authorize the taking of the fish stock or game population for urban subsistence uses and may, as appropriate, adopt regulations consistent with this section that authorize the taking of the fish stock or game population for other consumptive uses.

(e) Regulations adopted by a board under (d) of this section may not authorize a level of nonsubsistence hunting or fishing that would deny subsistence users the opportunity to satisfy subsistence uses or urban subsistence uses due to overcrowding in harvest areas or disruption of fish stocks or game populations.

(f) Regulations adopted under (d) of this section must provide for the taking of all, or a portion, of the remainder of the harvestable portion of a fish stock or game population for urban subsistence uses and must provide that the taking of a fish stock or game population for urban subsistence uses has a preference over the taking of the fish stock or game population for nonsubsistence consumptive uses. If the harvestable portion of a fish stock or game population available for urban subsistence uses is not sufficient to accommodate all urban subsistence users, the appropriate board shall determine which urban subsistence users may participate in the taking of the fish stock or game population for urban subsistence uses on the basis of

(1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;

(2) local residency; and

(3) availability of alternative resources.

(g) Subject to (c) of this section, the taking of fish or game authorized under this section is subject to reasonable regulation of seasons, catch or bag limits, and methods and means by the appropriate board. The taking and use of fish and game authorized under this section is subject to AS 16.05.831 and AS 16.30.

1 (h) If the harvestable portion of a fish stock or game population is insufficient
2 to provide for subsistence uses, urban subsistence uses, and nonsubsistence
3 consumptive uses, the department and advisory committee members representing
4 affected subsistence users, urban subsistence users, and nonsubsistence users shall
5 develop a cooperative management plan to facilitate the recovery of the fish stock or
6 game population to allow for increased consumptive use of the fish stock or game
7 population. The cooperative management plan must contain recommendations to the
8 appropriate board for necessary changes in regulations. If the subsistence uses or
9 urban subsistence uses of a fish stock or game population have been eliminated to
10 achieve sustained yield, the appropriate board shall adopt regulations to allow
11 subsistence harvest of the fish stock or game population as soon as the board has
12 determined there is a harvestable portion consistent with sustained yield.

13 (i) In this section, "community" means a group of people who can
14 demonstrate a sustained interaction or significant relationship that differentiate
15 members of the group from nonmembers; "community" shall be construed in the
16 context of the history, geography, and cultural organization of the group.

17 * Sec. 4. AS 16.05.260 is amended by adding new subsections to read:

18 (b) The boards, acting jointly, shall divide the state into at least six
19 subsistence regions. The number and boundaries of the regions must be sufficient to
20 assure that regional differences in subsistence uses and urban subsistence uses of fish
21 and game are adequately accommodated. The commissioner shall establish a regional
22 council in each subsistence region. The membership of each regional council consists
23 of the chair, or the chair's designee, of each advisory committee within the region.

24 (c) Each regional council, in consultation with the section of subsistence
25 hunting and fishing, shall provide recommendations to the boards on the
26 identifications and regulations required under AS 16.05.258. The board shall adopt
27 a recommendation of a regional council unless the recommendation is not supported
28 by substantial evidence presented during the course of its proceedings, violates
29 recognized principles of fish and wildlife conservation, or would be detrimental to the
30 satisfaction of subsistence needs. If the board does not follow the recommendation
31 of a regional council, the board shall return the recommendation with an explanation

1 of its reason for not adopting the recommendation to the regional council for further
2 consideration.

3 * Sec. 5. AS 16.05.330(c) is amended to read:

4 (c) The boards [BOARD OF FISHERIES AND THE BOARD OF GAME]
5 may adopt regulations providing for the issuance and expiration of subsistence permits
6 for areas, villages, communities, groups, or individuals as needed for authorizing,
7 regulating, and monitoring the subsistence harvest of fish and game by subsistence
8 users or urban subsistence users. The boards shall adopt these regulations when the
9 subsistence preference requires a reduction in the harvest of a fish stock or game
10 population by subsistence users, urban subsistence users, or nonsubsistence users.

11 * Sec. 6. AS 16.05.940(26) is repealed and reenacted to read:

12 (26) "rural area" means a community or area of the state classified as
13 rural by the Board of Fisheries and Board of Game;

14 * Sec. 7. AS 16.05.940(29) is repealed and reenacted to read:

15 (29) "subsistence fishing" means the taking of, fishing for, or
16 possession of fish, shellfish, or other fisheries resources by a resident domiciled in a
17 rural area of the state for subsistence uses with gill net, seine, fish wheel, long line,
18 or other means defined by the Board of Fisheries;

19 * Sec. 8. AS 16.05.940(30) is repealed and reenacted to read:

20 (30) "subsistence hunting" means the taking of, hunting for, or
21 possession of game by a resident domiciled in a rural area of the state for subsistence
22 uses by means defined by the Board of Game;

23 * Sec. 9. AS 16.05.940(31) is repealed and reenacted to read:

24 (31) "subsistence uses" means the noncommercial, customary, and
25 traditional uses of wild, renewable resources by a resident domiciled in a rural area
26 of the state for direct personal or family consumption as food, shelter, fuel, clothing,
27 tools, or transportation, for the making and selling of handicraft articles out of
28 nonedible by-products of fish and game resources taken for personal or family
29 consumption, and for the customary trade, barter, or sharing for personal or family
30 consumption; in this paragraph, "family" means persons related by blood, marriage,
31 or adoption, and includes a person living in the household on a permanent basis;

1 * **Sec. 10.** AS 16.05.940 is amended by adding new paragraphs to read:

2 (36) "urban subsistence fishing" means the taking of, fishing for, or
3 possession of fish, shellfish, or other fisheries resources by a resident who is
4 domiciled in an urban area of the state for urban subsistence uses with gill net, seine,
5 fish wheel, long line, or other means defined by the Board of Fisheries;

6 (37) "urban subsistence hunting" means the taking of, hunting for, or
7 possession of game by a resident who is domiciled in an urban area of the state for
8 urban subsistence uses by means defined by the Board of Game;

9 (38) "urban subsistence uses" means the noncommercial, customary,
10 and traditional uses of wild, renewable resources by a resident of the state domiciled
11 in an urban area of the state for direct personal or family consumption as food,
12 shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft
13 articles out of nonedible by-products of fish and game resources taken for personal
14 or family consumption, and for the customary trade, barter, or sharing for personal or
15 family consumption; in this paragraph, "family" means persons related by blood,
16 marriage, or adoption, and includes a person living in the household on a permanent
17 basis;

18 (39) "urban area" means a community or area that has not been
19 classified as a rural area by the Board of Fisheries and Board of Game.

20 * **Sec. 11.** This Act takes effect on the effective date of a constitutional amendment
21 authorizing rural and urban subsistence uses of fish and game that is approved by the voters
22 at the 1992 general election.