CS FOR HOUSE BILL NO. 601 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 6/18/92
Referred: Judiciary

Sponsor(s): REPRESENTATIVES LINCOLN, Mackie, MacLean, Jacko, Davidson, Ivan, Foster

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 16.05.251(a) is amended to read:

(a) The Board of Fisheries may adopt regulations it considers advisable in accordance with the Administrative Procedure Act (AS 44.62) for

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

(2) establishing open and closed seasons and areas for the taking of fish; if consistent with resource conservation and development goals, the board may adopt regulations establishing restricted seasons and areas necessary for persons 60 years of age and older to participate in sport, personal use, <u>customary use,</u> or subsistence fishing;

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

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

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

(6) classifying as commercial fish, sport fish, guided sport fish, personal use fish, **customary use fish,** subsistence fish, or predators or other categories essential for regulatory purposes;

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

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

(9) prohibiting and regulating the live capture, possession, transport, or release of native or exotic fish or their eggs;

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

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

(12) regulating commercial, sport, guided sport, **customary use,** subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries;

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

(A) is the only practical data-gathering or enforcement mechanism for that fishery;

(B) will not unduly disrupt the fishery;

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

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

(14) establishing nonexclusive, exclusive, and superexclusive registration and use areas for regulating commercial fishing;

(15) regulating resident or nonresident sport fishermen as needed for the conservation, development, and utilization of fishery resources.

*** Sec. 2.** AS 16.05.251(e) is amended to read:

(e) The Board of Fisheries may allocate fishery resources among personal use, sport, guided sport, **customary use,** and commercial fisheries. The board shall adopt criteria for the allocation of fishery resources and shall use the criteria as appropriate to particular allocation decisions. The criteria may include factors such as

(1) the history of each personal use, sport, guided sport, **customary use,** and commercial fishery;

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

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

(4) the availability of alternative fisheries resources;

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

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

(7) the importance of each fishery in providing recreational opportunities for residents and nonresidents**;**

(8) the importance of each fishery in meeting the social and cultural needs of the region and local area in which the fishery is located.

*** Sec. 3.** AS 16.05.255(a) is amended to read:

1 (a) The Board of Game may adopt regulations it considers advisable in
2 accordance with the Administrative Procedure Act (AS 44.62) for
3 (1) setting apart game reserve areas, refuges, and sanctuaries in the
4 water or on the land of the state over which it has jurisdiction, subject to the approval
5 of the legislature;
6 (2) establishing open and closed seasons and areas for the taking of
7 game;
8 (3) establishing the means and methods employed in the pursuit,
9 capture, and transport of game, including regulations, consistent with resource
10 conservation and development goals, establishing means and methods that may be
11 employed by persons with physical disabilities;
12 (4) setting quotas, bag limits, harvest levels, and sex, age, and size
13 limitations on the taking of game;
14 (5) classifying game as game birds, song birds, big game animals, fur
15 bearing animals, predators or other categories;
16 (6) methods, means, and harvest levels necessary to control predation
17 and competition among game in the state;
18 (7) watershed and habitat improvement, and management,
19 conservation, protection, use, disposal, propagation and stocking of game;
20 (8) prohibiting the live capture, possession, transport, or release of
21 native or exotic game or their eggs;
22 (9) establishing the times and dates during which the issuance of game
23 licenses, permits and registrations and the transfer of permits and registrations between
24 registration areas and game management units or subunits is allowed;
25 (10) regulating sport hunting, **customary use hunting,** and subsistence
26 hunting as needed for the conservation, development, and utilization of game.
27 * **Sec. 4.** AS 16.05.255 is amended by adding a new subsection to read:
28 (e) The Board of Game shall establish criteria for the allocation of game
29 resources among sport and customary use hunting. The criteria may, as appropriate
30 to particular allocation decisions, include factors such as
31 (1) the history of each sport and customary use hunt;

(2) the number of residents and nonresidents who have participated in each hunt in the past and the number of residents and nonresidents who can reasonably be expected to participate in the future;

(3) the importance of each hunt for providing residents the opportunity to obtain game for personal and family consumption;

(4) the availability of alternative game resources;

(5) the importance of each hunt in providing recreational opportunities for residents and nonresidents;

(6) the importance of each hunt in meeting the economic, social, and cultural needs of the region and local area in which the hunt is located.

* **Sec. 5.** AS 16.05.258 is amended by adding new subsections to read:

(g) The boards may not permit subsistence hunting or fishing in a nonsubsistence area. The boards, acting jointly, shall identify by regulation the boundaries of nonsubsistence areas. A nonsubsistence area is an area or community where dependence upon subsistence is not a principal characteristic of the economy, culture, and way of life of the area or community. The boards shall identify by regulation the fish stocks and game populations that have been customarily taken for subsistence uses in each nonsubsistence area prior to the establishment of the nonsubsistence area. The boards shall adopt regulations providing for the issuance of permits consistent with the customary use of those fish stocks and game populations identified under this subsection for which the boards have determined that a harvestable portion exists. The boards shall jointly establish eligibility for issuance of a customary use permit to participate in the take of the harvestable portion of the fish stock or game population that is allocated for customary use, based on the following criteria:

(1) the permittee's proximity to the resource;

(2) the availability of alternative resources to the permittee; and

(3) either

(A) the permittee's dependence on wild, renewable resources as a mainstay of livelihood; or

(B) the permittee's cultural need to engage in personal or

1 family use and consumption of wild, renewable resources.

2 (h) In determining whether dependence upon subsistence is a principal
3 characteristic of the economy, culture, and way of life of an area under (g) of this
4 section, the boards shall jointly consider the relative importance of subsistence
5 compared to the totality of the following socio-economic characteristics of the area:

6 (1) the social and economic structure;

7 (2) the stability of the economy;

8 (3) the extent and the kinds of employment for wages, including full-
9 time, part-time, temporary, and seasonal employment;

10 (4) the amount and distribution of cash income among those domiciled
11 in the area;

12 (5) the cost and availability of goods and services to those domiciled
13 in the area;

14 (6) the variety of fish and wildlife species used by those domiciled in
15 the area;

16 (7) the seasonal cycle of economic activity;

17 (8) the percentage of those domiciled in the area participating in
18 hunting and fishing activities or using wild fish and game;

19 (9) the harvest levels of fish and game by those domiciled in the area;

20 (10) the cultural, social, and economic values associated with the
21 taking and use of fish and game;

22 (11) the geographic locations where those domiciled in the area hunt
23 and fish;

24 (12) the extent of sharing and exchange of fish and game by those
25 domiciled in the area; and

26 (13) similar factors the boards find relevant to their determinations
27 under this subsection.

28 * **Sec. 6.** AS 16.05.259 is amended to read:

29 Sec. 16.05.259. NO SUBSISTENCE <u>OR CUSTOMARY USE</u> DEFENSE.
30 In a prosecution for the taking of fish or game in violation of a statute or regulation,
31 it is not a defense that the taking was done for subsistence uses <u>or customary uses</u>.

1 * **Sec. 7.** AS 16.05.940(5) is amended to read:

2 (5) "commercial fishing" means the taking, fishing for, or possession
3 of fish, shellfish, or other fishery resources with the intent of disposing of them for
4 profit, or by sale, barter, trade, or in commercial channels; the failure to have a valid
5 subsistence **or customary use** permit in possession, if required by statute or
6 regulation, is considered prima facie evidence of commercial fishing if commercial
7 fishing gear as specified by regulation is involved in the taking, fishing for, or
8 possession of fish, shellfish, or other fish resources;

9 * **Sec. 8.** AS 16.05.940 is amended by adding new paragraphs to read:

10 (36) "customary trade" means the limited exchange, for minimal
11 amounts of cash, as restricted by the appropriate board, of fish or game resources; this
12 paragraph does not restrict money sales of furs or furbearers;

13 (37) "customary use" means uses of fish stocks and game populations
14 permitted under AS 16.05.258(g).

15 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).