

**CS FOR HOUSE BILL NO. 601 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 6/18/92**

**Referred: Rules**

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

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

5 (a) The 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 sanctuaries in the  
8 waters of the state over which it has jurisdiction, subject to the approval of the  
9 legislature;

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

- 1 (3) setting quotas, bag limits, harvest levels, and sex and size  
2 limitations on the taking of fish;
- 3 (4) establishing the means and methods employed in the pursuit,  
4 capture and transport of fish;
- 5 (5) establishing marking and identification requirements for means  
6 used in pursuit, capture, and transport of fish;
- 7 (6) classifying as commercial fish, sport fish, guided sport fish,  
8 personal use fish, customary use fish, subsistence fish, or predators or other  
9 categories essential for regulatory purposes;
- 10 (7) watershed and habitat improvement, and management,  
11 conservation, protection, use, disposal, propagation, and stocking of fish;
- 12 (8) investigating and determining the extent and effect of disease,  
13 predation, and competition among fish in the state, exercising control measures  
14 considered necessary to the resources of the state;
- 15 (9) prohibiting and regulating the live capture, possession, transport,  
16 or release of native or exotic fish or their eggs;
- 17 (10) establishing seasons, areas, quotas, and methods of harvest for  
18 aquatic plants;
- 19 (11) establishing the times and dates during which the issuance of  
20 fishing licenses, permits, and registrations and the transfer of permits and registrations  
21 between registration areas is allowed; however, this paragraph does not apply to  
22 permits issued or transferred under AS 16.43;
- 23 (12) regulating commercial, sport, guided sport, customary use,  
24 subsistence, and personal use fishing as needed for the conservation, development, and  
25 utilization of fisheries;
- 26 (13) requiring, in a fishery, observers on board fishing vessels, as  
27 defined in AS 16.05.475(d), that are registered under the laws of the state, as defined  
28 in AS 16.05.475(c), after making a written determination that an on-board observer  
29 program
- 30 (A) is the only practical data-gathering or enforcement  
31 mechanism for that fishery;

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- (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 economic, 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;

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

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

6 (4) the availability of alternative game resources;

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

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

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

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

25 (1) the person's proximity to the resource;

26 (2) the availability of alternative resources to the person; and

27 (3) either

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

30 (B) the person's cultural need to engage in personal or family  
31 use and consumption of wild, renewable resources.

1 (h) In determining whether dependence upon subsistence is a principal  
2 characteristic of the economy, culture, and way of life of an area under (g) of this  
3 section, the boards shall jointly consider the relative importance of subsistence  
4 compared to the totality of the following socio-economic characteristics of the area:  
5 (1) the social and economic structure;  
6 (2) the stability of the economy;  
7 (3) the extent and the kinds of employment for wages, including full-  
8 time, part-time, temporary, and seasonal employment;  
9 (4) the amount and distribution of cash income among those domiciled  
10 in the area;  
11 (5) the cost and availability of goods and services to those domiciled  
12 in the area;  
13 (6) the variety of fish and wildlife species used by those domiciled in  
14 the area;  
15 (7) the seasonal cycle of economic activity;  
16 (8) the percentage of those domiciled in the area participating in  
17 hunting and fishing activities or using wild fish and game;  
18 (9) the harvest levels of fish and game by those domiciled in the area;  
19 (10) the cultural, social, and economic values associated with the  
20 taking and use of fish and game;  
21 (11) the geographic locations where those domiciled in the area hunt  
22 and fish;  
23 (12) the extent of sharing and exchange of fish and game by those  
24 domiciled in the area; and  
25 (13) similar factors the boards find relevant to their determinations  
26 under this subsection.

27 (i) The boards shall jointly adopt by regulation a definition of "customary  
28 trade" that is consistent with the definition of that term in AS 16.05.940(36).

29 \* Sec. 6. AS 16.05.259 is amended to read:

30 Sec. 16.05.259. NO SUBSISTENCE OR CUSTOMARY USE DEFENSE.  
31 In a prosecution for the taking of fish or game in violation of a statute or regulation,

1 it is not a defense that the taking was done for subsistence uses or customary uses.

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

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

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

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

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

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