

CS FOR HOUSE BILL NO. 601 (JUDICIARY) am (efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 6/19/92

Offered: 6/18/92

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the taking of fish and game."**

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

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

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

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

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

14 (3) setting quotas, bag limits, harvest levels, and sex and size

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

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(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:

(a) The Board of Game may adopt regulations it considers advisable in

1 accordance with the Administrative Procedure Act (AS 44.62) for

2 (1) setting apart game reserve areas, refuges, and sanctuaries in the
3 water or on the land of the state over which it has jurisdiction, subject to the approval
4 of the legislature;

5 (2) establishing open and closed seasons and areas for the taking of
6 game;

7 (3) establishing the means and methods employed in the pursuit,
8 capture, and transport of game, including regulations, consistent with resource
9 conservation and development goals, establishing means and methods that may be
10 employed by persons with physical disabilities;

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

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

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

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

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

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

24 (10) regulating sport hunting, customary use hunting, and subsistence
25 hunting as needed for the conservation, development, and utilization of game.

26 * Sec. 4. AS 16.05.255 is amended by adding a new subsection to read:

27 (e) The Board of Game shall establish criteria for the allocation of game
28 resources among sport and customary use hunting. The criteria may, as appropriate
29 to particular allocation decisions, include factors such as

30 (1) the history of each sport and customary use hunt;

31 (2) the number of residents and nonresidents who have participated in

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

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

5 (4) the availability of alternative game resources;

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

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

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

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

24 (1) the availability of alternative resources to the person; and

25 (2) either

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

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

30 (h) In determining whether dependence upon subsistence is a principal
31 characteristic of the economy, culture, and way of life of an area under (g) of this

1 section, the boards shall jointly consider the relative importance of subsistence
2 compared to the totality of the following socio-economic characteristics of the area:

- 3 (1) the social and economic structure;
4 (2) the stability of the economy;
5 (3) the extent and the kinds of employment for wages, including full-
6 time, part-time, temporary, and seasonal employment;
7 (4) the amount and distribution of cash income among those domiciled
8 in the area;
9 (5) the cost and availability of goods and services to those domiciled
10 in the area;
11 (6) the variety of fish and wildlife species used by those domiciled in
12 the area;
13 (7) the seasonal cycle of economic activity;
14 (8) the percentage of those domiciled in the area participating in
15 hunting and fishing activities or using wild fish and game;
16 (9) the harvest levels of fish and game by those domiciled in the area;
17 (10) the cultural, social, and economic values associated with the
18 taking and use of fish and game;
19 (11) the geographic locations where those domiciled in the area hunt
20 and fish;
21 (12) the extent of sharing and exchange of fish and game by those
22 domiciled in the area; and
23 (13) similar factors the boards find relevant to their determinations
24 under this subsection.

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

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

28 Sec. 16.05.259. NO SUBSISTENCE OR CUSTOMARY USE DEFENSE.

29 In a prosecution for the taking of fish or game in violation of a statute or regulation,
30 it is not a defense that the taking was done for subsistence uses or customary uses.

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

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

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

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

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