

SENATE CS FOR CS FOR HOUSE BILL NO. 601 (SCW)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SPECIAL SESSION

BY THE SENATE COMMITTEE OF THE WHOLE

Offered: 6/19/92
Referred: Finance

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. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that**
5 **(1) there are Alaskans, both Native and non-Native, who have a traditional,**
6 **social, or cultural relationship to and dependence upon the wild renewable resources produced**
7 **by Alaska's land and water; the harvest and use of fish and game for personal and group**
8 **consumption is an integral part of those relationships;**

9 **(2) although customs, traditions, and beliefs vary, these Alaskans share ideals**
10 **of respect for nature, the importance of using resources wisely, and the value and dignity of**
11 **a way of life in which they use Alaska's fish and game for a substantial portion of their**
12 **sustenance; this way of life is recognized as "subsistence";**

13 **(3) customary and traditional uses of Alaska's fish and game originated with**
14 **Alaska Natives, and have been adopted and supplemented by many non-Native Alaskans as**

1 well; these uses, among others, are culturally, socially, spiritually, and nutritionally important
2 and provide a sense of identity for many subsistence users;

3 (4) while Alaska's fish and game are generally still plentiful, these resources
4 are not unlimited and cannot provide for every desired use, now or in the future; competition
5 for and the level of effort on these resources have required the legislature and the Board of
6 Fisheries and Board of Game to establish a preference for subsistence among the various
7 beneficial uses of fish and game in the state; and

8 (5) in most areas of the state, a preference for subsistence can be provided
9 without an overly burdensome intrusion upon other consumptive uses of fish and game.

10 (b) It is the purpose of this Act

11 (1) to develop and maintain healthy fish stocks and game populations through
12 management based on the sustained yield principle; and

13 (2) to provide for a preference for subsistence uses over other consumptive
14 uses of fish and game resources.

15 (c) It is the intent of the legislature that

16 (1) subsistence uses of Alaska's fish and game resources are given the highest
17 preference, in order to accommodate and perpetuate those uses; and

18 (2) this Act not result in significant reallocations of fish and game in Alaska.

19 * Sec. 2. AS 16.05 is amended by adding a new section to read:

20 Sec. 16.05.268. SUBSISTENCE USE AND ALLOCATION OF FISH AND
21 GAME. (a) Except in nonsubsistence areas, the Board of Fisheries and the Board
22 of Game shall identify the fish stocks and game populations, or portions of stocks or
23 populations, that are customarily and traditionally taken for subsistence. The
24 commissioner shall provide recommendations to the boards concerning the stock and
25 population identifications. The boards shall make identifications required under this
26 subsection after receipt of the commissioner's recommendations.

27 (b) The appropriate board shall determine whether a portion of a fish stock
28 or game population identified under (a) of this section can be harvested consistent
29 with sustained yield, and

30 (1) if the harvestable portion of the stock or population is sufficient
31 to provide for all consumptive uses, the appropriate board

1 (A) shall adopt regulations that provide a reasonable
2 opportunity to participate in the subsistence uses of those stocks or
3 populations;

4 (B) shall adopt regulations that provide for other consumptive
5 uses of those stocks or populations, subject to preferences among beneficial
6 uses; and

7 (C) may adopt regulations to differentiate among consumptive
8 uses;

9 (2) if the harvestable portion of the stock or population is sufficient
10 to provide for subsistence uses and some, but not all, other consumptive uses, the
11 appropriate board

12 (A) shall adopt regulations that provide a reasonable
13 opportunity to participate in the subsistence uses of those stocks or
14 populations;

15 (B) may adopt regulations that provide for other consumptive
16 uses of those stocks or populations; and

17 (C) shall adopt regulations to differentiate among consumptive
18 uses and provide for a preference for the subsistence uses, if regulations are
19 adopted under (B) of this paragraph;

20 (3) if the harvestable portion of the stock or population is sufficient
21 to provide for subsistence uses, but no other consumptive uses, the appropriate board
22 shall adopt regulations that eliminate other consumptive uses in order to provide a
23 reasonable opportunity for subsistence uses; and

24 (4) if the harvestable portion of the stock or population is not
25 sufficient to provide a reasonable opportunity for all subsistence uses, the appropriate
26 board shall

27 (A) adopt regulations eliminating all consumptive uses, other
28 than subsistence uses;

29 (B) distinguish among subsistence users, through limitations
30 based on

31 (i) the customary and direct dependence on the fish

1 stock or game population by the subsistence user for human
2 consumption as a mainstay of life;

3 (ii) the proximity of the domicile of the subsistence
4 user to the stock or population; and

5 (iii) the ability of the subsistence user to obtain food if
6 subsistence use is restricted or eliminated.

7 (c) If the harvestable portion of a fish stock or game population is insufficient
8 to provide both for a reasonable opportunity for subsistence uses and for all other
9 consumptive uses, the department shall prepare a plan to facilitate the recovery of that
10 stock or population to allow for increased consumptive uses as soon as possible. The
11 department shall provide recommendations to the appropriate board for necessary
12 regulatory changes. If subsistence uses of a fish stock or game population have been
13 eliminated to achieve sustained yield, the appropriate board shall adopt regulations to
14 allow subsistence uses when that board determines that the stock or population has
15 recovered sufficiently to allow the taking for any consumptive use, consistent with
16 sustained yield.

17 (d) The boards may not permit subsistence hunting or fishing in a
18 nonsubsistence area. The boards, acting jointly, shall identify by regulation the
19 boundaries of nonsubsistence areas. A nonsubsistence area is an area or community
20 where dependence upon subsistence is not a principal characteristic of the economy,
21 culture, and way of life of the area or community.

22 (e) In determining whether dependence upon subsistence is a principal
23 characteristic of the economy, culture, and way of life of an area or community under
24 (d) of this section, the boards shall jointly consider the relative importance of
25 subsistence compared to the totality of the following socio-economic characteristics
26 of the area or community:

27 (1) the social and economic structure;

28 (2) the stability of the economy;

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

31 (4) the amount and distribution of cash income among those domiciled

- 1 in the area or community;
- 2 (5) the cost and availability of goods and services to those domiciled
- 3 in the area or community;
- 4 (6) the variety of fish and game species used by those domiciled in the
- 5 area or community;
- 6 (7) the seasonal cycle of economic activity;
- 7 (8) the percentage of those domiciled in the area or community
- 8 participating in hunting and fishing activities or using wild fish and game;
- 9 (9) the harvest levels of fish and game by those domiciled in the area
- 10 or community;
- 11 (10) the cultural, social, and economic values associated with the
- 12 taking and use of fish and game;
- 13 (11) the geographic locations where those domiciled in the area or
- 14 community hunt and fish;
- 15 (12) the extent of sharing and exchange of fish and game by those
- 16 domiciled in the area or community;
- 17 (13) additional similar factors the boards establish by regulation to be
- 18 relevant to their determinations under this subsection.
- 19 (f) Fish stocks and game populations, or portions of fish stocks and game
- 20 populations not identified under (a) of this section may be taken only under
- 21 nonsubsistence regulations.
- 22 (g) Takings and uses of fish and game authorized under this section are
- 23 subject to regulations regarding open and closed areas, seasons, methods and means,
- 24 marking and identification requirements, quotas, bag limits, harvest levels, and sex,
- 25 age, and size limitations. Takings and uses of resources authorized under this section
- 26 are subject to AS 16.05.831 and AS 16.30.
- 27 (h) For purposes of this section, "reasonable opportunity" is an opportunity,
- 28 as determined by the appropriate board, that
- 29 (1) allows a subsistence user to participate in a subsistence hunt or
- 30 fishery that provides a normally diligent participant with a reasonable expectation of
- 31 success of taking of fish or game, but does not guarantee the taking of fish or game,

1 the conditions of the hunt or fishery, or the taking of all the fish and game that the
2 participant wants or needs; and

3 (2) is based on the findings of the appropriate board on each of the
4 following factors:

5 (A) resource population and management objectives;

6 (B) estimated harvest per unit of effort by participants in the
7 fishery or hunt;

8 (C) patterns and levels of customary and traditional taking and
9 use of the fish or game;

10 (D) migratory patterns and availability of fish or game;

11 (E) competition for the fish or game from other subsistence and
12 nonsubsistence uses; and

13 (F) other factors that the appropriate board considers relevant.

14 * Sec. 3. AS 16.05.251(d) is amended to read:

15 (d) Regulations adopted under (a) of this section must, consistent with
16 sustained yield and the provisions of AS 16.05.268 [AS 16.05.258], provide a fair and
17 reasonable opportunity for the taking of fishery resources by personal use, sport, and
18 commercial fishermen.

19 * Sec. 4. AS 16.05.255(d) is amended to read:

20 (d) Regulations adopted under (a) of this section shall provide that, consistent
21 with the provisions of AS 16.05.268 [AS 16.05.258], the taking of moose, deer, elk,
22 and caribou by residents for personal or family consumption has preference over
23 taking by nonresidents.

24 * Sec. 5. AS 16.05.940 is amended by adding new paragraphs to read:

25 (36) "customary and traditional" means the noncommercial, long-term,
26 consistent, and ongoing dependence on the taking and use of fish or game in a
27 specific area and the use patterns and harvest levels of that fish or game that have
28 been established over at least one preceding generation of users;

29 (37) "customary trade" means the limited, noncommercial exchange,
30 for minimal amounts of cash, as restricted by the appropriate board, of fish or game
31 resources harvested primarily for personal or family consumption; "customary trade"

1 does not include sales in commercial channels; the terms of this paragraph do not
2 restrict money sales of furs or furbearers.

3 * Sec. 6. AS 16.05.258 and 16.05.940(26) are repealed.

4 * Sec. 7. REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board
5 of Fisheries, Board of Game, and Department of Fish and Game shall adopt regulations
6 necessary to implement the provisions of this Act.

7 * Sec. 8. TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries
8 and the Board of Game expeditiously adopt regulations necessary to implement this Act.

9 (b) Regulations adopted by the Board of Fisheries, Board of Game, or Department
10 of Fish and Game after July 1, 1992, may not be inconsistent with the provisions of this Act.

11 (c) Regardless of whether regulations adopted under the authority of AS 16.05.251,
12 16.05.255, or 16.05.258 and in effect on July 1, 1992, are inconsistent with the provisions of
13 this Act, they may continue to be implemented and enforced until the effective date of sec. 2
14 of this Act.

15 * Sec. 9. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals
16 with a subject of vital concern and that the subject merits review. Therefore, it is the intent
17 of the legislature that the operation of this Act and the regulations adopted under this Act be
18 fully reviewed by the governor no later than June 1, 1994.

19 (b) This review period is intended to allow for further research and to gain experience
20 in implementing this Act and regulations adopted under this Act. It is the intent of the
21 legislature that the governor convene a representative group to provide recommendations to
22 the governor before the end of the review period. It is the intent of the legislature that
23 representatives of the legislature and persons with a history in the formulation of subsistence
24 legislation in this state participate in the group.

25 (c) It is the intent of the legislature that the review under this section occur with
26 public input and participation.

27 (d) No later than September 1, 1994, the governor shall provide a report to the
28 legislature on the results of the review and proposed recommendations for statutory
29 amendments.

30 * Sec. 10. Sections 7 and 8 of this Act take effect immediately under AS 01.10.070(c).

31 * Sec. 11. Sections 1 - 6 and 9 of this Act take effect on the effective date of regulations

1 first adopted under this Act by the Board of Fisheries and the Board of Game.