

SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/21/92
Referred: Resources, Judiciary, Finance

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to the taking of fish and game for subsistence; and providing for an
2 effective 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, social, or
6 cultural relationship to and dependence upon the wild renewable resources produced by Alaska's land
7 and water; the harvest and use of fish and game for personal and group consumption is an integral part
8 of those relationships;

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

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

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

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

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

9 (6) among persons who take fish and game, a large majority of those living in areas
10 described in AS 16.05.268(f)(1); a majority of those living in areas described in AS 16.05.268(f)(2); and
11 a small minority of those living in areas described in AS 16.05.268(f)(3), depend upon the subsistence
12 taking of fish and game;

13 (7) in determining dependence upon the subsistence taking of fish and game, the
14 application of different levels of presumptions based on categories is logical; does not deny any person
15 the opportunity to demonstrate dependence on subsistence use; focuses on persons who depend on
16 subsistence use; is administratively efficient; and is compatible with existing management measures
17 without needlessly interfering with other uses of fish and game resources; and

18 (8) the application of presumptions, based on areas of domicile, to facilitate
19 determinations of a person's qualifications as a subsistence user will maximize the state's management
20 efforts.

21 (b) It is the purpose of this Act

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

24 (2) to provide for a preference for subsistence use over other consumptive uses of fish
25 and game resources;

26 (3) to provide for the participation in the subsistence taking of fish and game by those
27 Alaskans who actually and substantially depend upon that subsistence taking;

28 (4) to maximize the state's management efforts by applying presumptions based on
29 subsistence characteristics of areas to reduce the need for case-by-case individual determinations of
30 dependence on subsistence in those areas of the state which have a high proportion of subsistence users
31 who meet the qualifications of this Act.

1 (c) It is the intent of the legislature

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

4 (2) to clarify the statutory protection for actual, substantial dependence on fish and game
5 for subsistence; and

6 (3) that this Act not result in significant reallocations of fish and game in Alaska.

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

8 Sec. 16.05.268. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME. (a)

9 The Board of Fisheries and the Board of Game shall identify the fish stocks and game
10 populations, or portions of stocks or populations, that are customarily and traditionally used for
11 subsistence in the areas of the state identified by the boards under (f)(1) and (f)(2) of this section.

12 The commissioner shall provide recommendations to the boards on the identifications. The
13 boards shall make identifications required under this subsection after receipt of the
14 commissioner's recommendations.

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

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

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

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

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

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

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

28 (B) may adopt regulations that provide for other consumptive use of those
29 stocks or populations; and

30 (C) shall adopt regulations to differentiate among consumptive uses and
31 provide for a preference for the subsistence uses, if regulations are adopted under (B) of

1 this paragraph;

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

6 (4) if the harvestable portion of the stock or population is not sufficient to provide
7 for all subsistence uses, the appropriate board

8 (A) shall adopt regulations eliminating all consumptive uses, other than
9 subsistence uses;

10 (B) shall distinguish among subsistence users, through limitations based
11 on

12 (i) the customary and direct dependence on the fish stock or game
13 population by the subsistence user for human consumption as a mainstay of life;

14 (ii) the proximity of the domicile of the subsistence user to the
15 stock or population; and

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

18 (c) If the harvestable portion of a stock or population is insufficient to provide for both
19 subsistence and other consumptive uses, the department shall analyze and prepare a plan to
20 facilitate the recovery of that stock or population to allow for increased consumptive uses as soon
21 as possible. The department shall provide recommendations to the appropriate board for
22 necessary regulatory changes. If subsistence use of a stock or population has been eliminated
23 to achieve sustained yield, the appropriate board shall adopt regulations to allow subsistence uses
24 when that board determines that the stock or population has recovered sufficiently to allow the
25 taking for any consumptive use, consistent with sustained yield.

26 (d) The subsistence use area for a stock or population is the subunit of a game
27 management unit in which fish or game may be taken under subsistence regulations adopted
28 under (b) of this section, together with contiguous game management subunits, unless the
29 appropriate board identifies and delineates a subsistence use area with different boundaries for
30 a particular fish stock or game population under (e) of this section.

31 (e) Each board shall consider subsistence use area boundaries described in (d) of this

1 section. Each board shall delineate a different boundary for a particular stock or population if
2 the appropriate board determines that the boundary of a subsistence use area is inconsistent with
3 established patterns of taking and use of that fish stock or game population for subsistence, or
4 is inconsistent with the efficiency and economy of effort, cost, and transportation inherent in the
5 customary and traditional taking and use of fish and game for subsistence.

6 (f) The boards shall, by regulation, for the state, jointly identify and delineate areas, using
7 game management units, portions of game management units, or communities, into the following
8 categories:

9 (1) category 1, an area where the human population of each community in the
10 area is less than 2,500, is not part of an urban area, and where dependence upon subsistence is
11 a principal characteristic of the economy, culture, and way of life of the area;

12 (2) category 2, an area that consists of a single community that has a human
13 population of 2,500 to 6,999, is not part of an urban area, and where dependence upon
14 subsistence is a principal characteristic of the economy, culture, and way of life of the
15 community;

16 (3) category 3, an area that

17 (A) is an urban area or a single community where the human population
18 is 7,000 or greater; or

19 (B) is an area or community where dependence upon subsistence is not
20 a principal characteristic of the economy, culture, and way of life of the area or
21 community.

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

26 (1) the social and economic structure;

27 (2) the stability of the economy;

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

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

- 1 (5) the cost and availability of goods and services to those domiciled in the area;
2 (6) the variety of fish and wildlife species used by those domiciled in the area;
3 (7) the seasonal cycle of economic activity;
4 (8) the percentage of those domiciled in the area participating in hunting and
5 fishing activities or using wild fish and game;
6 (9) the harvest levels of fish and game by those domiciled in the area;
7 (10) the cultural, social, and economic values associated with the taking and use
8 of fish and game;
9 (11) the geographic locations where those domiciled in the area hunt and fish;
10 (12) the extent of sharing and exchange of fish and game by those domiciled in
11 the area;
12 (13) additional similar factors the boards establish in regulation to be relevant to
13 their determinations under this subsection.

14 (h) Participation in a subsistence harvest in a subsistence use area is limited to persons
15 who meet the requirements for qualification under (i) of this section for that subsistence use area,
16 with the following presumptions and requirements:

17 (1) a person who is domiciled in the subsistence use area in an area identified
18 under (f)(1) of this section, and who intends to take fish or game for subsistence purposes is
19 presumed to meet the requirements for qualification under (i) of this section for that subsistence
20 use area; this presumption may be rebutted only by clear and convincing evidence, and the boards
21 may not require a permit or filing of a statement affirming that the person meets the requirements
22 for qualification under (i) of this section;

23 (2) a person who is domiciled in the subsistence use area in an area identified
24 under (f)(2) of this section, and who intends to take fish or game for subsistence purposes is
25 rebuttably presumed to meet the requirements for qualification under (i) of this section for that
26 subsistence use area upon that person's signing a statement, on a form provided by the
27 department, affirming that the person meets those requirements; the department may rebut this
28 presumption by a preponderance of the evidence that the person does not meet those qualification
29 requirements;

30 (3) a person domiciled in an area identified under (f)(3) of this section or who
31 is domiciled outside of the subsistence use area is qualified to participate in a subsistence fishery

1 or hunt in that subsistence use area only upon certification by the commissioner that the person
2 meets the requirements for qualification under (i) of this section.

3 (i) The boards shall jointly, by regulation, adopt procedures by which the commissioner
4 shall determine the qualification of a person to subsistence fish or hunt in a specific subsistence
5 use area. The commissioner shall provide recommendations to the boards on qualification
6 procedures. The boards shall jointly adopt the regulations required by this subsection after the
7 receipt of the commissioner's recommendations. The boards shall adopt, by regulation, a
8 weighted point system to determine a person's eligibility. The boards shall structure the point
9 system so that the minimum points required for qualification exceed the total points received for
10 meeting the mandatory minimum requirements in (1) - (4) of this subsection. The point system
11 shall be based on the following criteria and restrictions:

12 (1) the quantity of fish and game consumed by the person in the preceding 12
13 months, with a mandatory minimum of 125 pounds consumed in that period;

14 (2) the number of species and groups of species of fish and game from the
15 subsistence area consumed by the person in the preceding 12 months, with a mandatory minimum
16 number of species, or groups of species, as determined jointly by the boards by regulation; the
17 mandatory minimum number, and any grouping of species, may vary by geographical region of
18 the state, based on the diversity of species in a region;

19 (3) the number of days in the preceding 12 months that the person engaged in the
20 taking of fish or game in the subsistence use area, or the processing of that fish or game, with
21 a mandatory minimum of 30 days in that period;

22 (4) the number of months in the preceding 12 months in which the person
23 engaged in the taking of fish or game in the subsistence use area, with a mandatory minimum
24 of four months in that period;

25 (5) the number of weeks in the preceding 12 months during which the taking or
26 processing of fish or game was the person's principal work effort, with no additional
27 consideration given beyond a maximum of 26 weeks;

28 (6) the number of households, other than the person's household, with which the
29 person shared or from which the person received fish and game in the preceding 12 months, with
30 no additional consideration given beyond a maximum of 10 households; and

31 (7) whether the person's taking of fish and game occurred solely in the

1 subsistence use area.

2 (j) A person who does not meet the mandatory minimum requirements of each of (i) (1) -
3 (4) of this section does not meet the requirements for qualification under (i) of this section.

4 (k) For the purposes of (h) and (i) of this section, the taking or processing of the fish and
5 game must have been legal, noncommercial, and characterized by efficiency and economy of
6 effort, cost, and transportation. For the purposes of (i)(1), (2), and (6) of this section, the fish
7 and game may not have been purchased for money. The boards shall jointly adopt regulations
8 allowing a person who has been unable to meet the criteria of (h) or (i) of this section because
9 of hospitalization, or military service or full-term attendance at an educational institution outside
10 the relevant subsistence use area to base responses on the 12 months immediately preceding the
11 commencement of the circumstance.

12 (l) The commissioner shall provide, by regulation, for an expedited review procedure for
13 a person who is determined by the department not to meet the qualifications as a subsistence
14 user.

15 (m) Fish stocks and game populations, or portions of fish stocks and game populations
16 not identified under (a) of this section may be taken only under nonsubsistence regulations.

17 (n) Taking and use of fish and game authorized under this section are subject to
18 regulations regarding open and closed areas, seasons, methods and means, marking and
19 identifications requirements, quotas, bag limits, harvest levels, and sex, age, and size limitations.
20 Takings and uses of resources authorized under this section are subject to AS 16.05.831 and
21 AS 16.30.010.

22 (o) For purposes of

23 (1) subsection (b) of this section, "reasonable opportunity" is an opportunity, as
24 determined by the appropriate board,

25 (A) allowing a subsistence user to participate in a subsistence hunt or
26 fishery that provides a normally diligent participant with a reasonable expectation of
27 success of taking of fish or game, but does not guarantee the taking of fish or game; the
28 conditions of the hunt or fishery; or the taking of all the fish and game that the participant
29 wants or needs; and

30 (B) based on the findings of the appropriate board on each of the
31 following factors:

- 1 (i) resource population and management objectives;
- 2 (ii) estimated harvest per unit of effort by participants in the
- 3 fishery or hunt;
- 4 (iii) patterns and levels of customary and traditional taking and use
- 5 of the fish or game;
- 6 (iv) migratory patterns and availability of fish or game;
- 7 (v) competition for the fish or game from other subsistence and
- 8 nonsubsistence uses; and
- 9 (vi) other factors that the appropriate board considers relevant.

- 10 (2) subsection (i) of this section, "preceding 12 months" means
- 11 (A) for a person described in (h)(1) of this section, the 12 months
- 12 preceding the taking of the fish or game resource;
- 13 (B) for a person described in (h)(2) of this section, the 12 months
- 14 preceding the date of signing of the required statement;
- 15 (C) for a person described in (h)(3) of this section, the 12 months
- 16 preceding the date of signing the application to the commissioner.

17 * Sec. 3. AS 16.05.940(29) is amended to read:

18 (29) "subsistence fishing" means the taking [OF, FISHING FOR,] or possession,

19 by a qualified resident, of fish, shellfish, or other fisheries resources [BY A RESIDENT

20 DOMICILED] in a subsistence use [RURAL] area of the state, in accordance with regulations

21 adopted under AS 16.05.268, for subsistence uses with gill net, seine, fish wheel, long line, or

22 other means defined by the Board of Fisheries, except for rod and reel;

23 * Sec. 4. AS 16.05.940(30) is amended to read:

24 (30) "subsistence hunting" means the taking [OF, HUNTING FOR,] or possession,

25 by a qualified resident, of game [BY A RESIDENT DOMICILED] in a subsistence use

26 [RURAL] area of the state, in accordance with regulations adopted under AS 16.05.268, for

27 subsistence uses by means defined by the Board of Game;

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

29 (31) "subsistence [USES]" means the noncommercial, customary and traditional

30 taking and uses of fish and game [WILD, RENEWABLE RESOURCES] by a resident

31 [DOMICILED] in a subsistence use [RURAL] area of the state for direct personal or family

1 consumption as food[, SHELTER, FUEL], clothing, [TOOLS,] or transportation, for the making
2 and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken
3 for personal or family consumption, for sharing, and for barter and [THE] customary trade of
4 a portion of fish or game resources harvested primarily [, BARTER, OR SHARING] for
5 personal or family consumption; in this paragraph, "family" means persons related by blood,
6 marriage, or adoption, and a person living in the same household on a permanent basis;

7 * **Sec. 6.** AS 16.05.940 is amended by adding new paragraphs to read:

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

12 (37) "customary trade" means the limited, noncommercial exchange, for minimal
13 amounts of cash, as restricted by the appropriate board, of fish or game resources harvested
14 primarily for personal or family consumption; "customary trade" does not include sales in
15 commercial channels; the terms of this paragraph do not apply to money sales of furs or
16 furbearers;

17 (38) "game management unit" means a management area of the state established
18 by the Board of Game under AS 16.05.255;

19 (39) "sustained yield" means the management principle of utilization,
20 development, and maintenance, applied to naturally occurring fish and game resources, that
21 provides beneficial consumptive uses in perpetuity, subject to preferences among such uses, and
22 seeks to provide for desired population increases and prevent undesired declines, for the purpose
23 of maintaining healthy, self-perpetuating stocks or populations.

24 * **Sec. 7.** AS 16.05.258 and AS 16.05.940(26) are repealed.

25 * **Sec. 8.** REGULATIONS. Notwithstanding the provisions of AS 16.05.258, the Board of Fisheries,
26 Board of Game, and Department of Fish and Game may adopt regulations necessary to implement the
27 provisions of this Act.

28 * **Sec. 9.** TRANSITION. (a) It is the intent of the legislature that the Board of Fisheries and the
29 Board of Game expeditiously adopt regulations necessary to implement this Act.

30 (b) Any regulations adopted by the Board of Fisheries, Board of Game, or Department of Fish
31 and Game after June 1, 1992, may not be inconsistent with the provisions of this Act.

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

4 * Sec. 10. REVIEW. (a) The legislature acknowledges and recognizes that this Act deals with a
5 subject of vital concern and that the subject merits review. Therefore, it is the intent of the legislature
6 that the operation of this Act and the regulations adopted under this Act be fully reviewed by the
7 governor no later than June 1, 1994.

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

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

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

17 * Sec. 11. Sections 8 and 9 of this Act take effect immediately under AS 01.10.070(c).

18 * Sec. 12. Sections 1 - 7 and 10 of this Act take effect on the effective date of regulations first
19 adopted under this Act by the Board of Fisheries and the Board of Game, acting jointly.