

SUBSISTENCE

BILL DRAFTS

AND

LETTERS OF
INTENT (FILE 1)

4/25/85

BY

Halford

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents in rural areas for personal and family consumption by reasonable economic means is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a fish population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Fisheries shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62).

*Sec. 3. AS 16. 05. 251 is amended by adding new subsections to read:

(c) If the harvestable surplus of a fish population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

EXISTING
LAW

proposal, or 30 days after receiving the request for an explanation, whichever is later.

EXISTING
LAW

Sec. 4. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

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

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

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

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

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

(9) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of

permits and registrations between registration areas and game management units or subunits is allowed.

↑
(b) Wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(e) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

and cost effective (23) "subsistence uses" means the customary ~~and~~ traditional taking and use by Alaska residents in rural areas of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

~~(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.~~

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V.FISCHER

2

SENATE BILL NO. 39

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
7 lish a personal use fishery."

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

9 * Section 1. AS 16.05.251 is amended by adding a new subsection to
10 read:

11 (c) The Board of Fisheries shall adopt regulations in accordance
12 with the Administrative Procedure Act (AS 44.62) permitting personal
13 use fishing unless the board determines, in accordance with the Admin-
14 istrative Procedure Act, that adoption of such regulations will jeop-
15 ardize or interfere with the maintenance of fish stocks on a sus-
16 tained-yield basis. Whenever it is necessary to restrict the taking
17 of fish to assure the maintenance of fish stocks on a sustained-yield
18 basis, or to assure the continuation of the personal use fishing of
19 such resources, personal use fishing shall be the second priority use
20 after subsistence use.

21 * Sec. 2. AS 16.05.940 is amended by adding a new paragraph to read:

22 (30) "personal use fishing" means the taking, fishing for,
23 or possession of fish, shellfish, or other fishery resources for
24 personal use and not for sale, barter, or trade, with gill net, seine,
25 fish wheel, long line, or other means defined by the Board of Fisher-
26 ies.

hook
+line

Introduced: 1/18/83
Referred: Resources and
Judiciary

1 IN THE SENATE

BY V. FISCHER

2

SENATE BILL NO. 5

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing a residents' priority for the
7 taking of big game animals."

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

9 * Section 1. FINDINGS. The legislature finds that

10 (1) in recent years the number of nonresidents ~~and nonresident~~
11 ~~aliens~~ hunting big game in the state has significantly increased, and this
12 trend is expected to continue;

13 (2) nonresidents ~~and nonresident aliens~~ hunt big game in the
14 state primarily for sport and recreation, and for trophy value, while
15 residents hunt big game in the state primarily to obtain meat for personal
16 and family use; and

17 (3) the conservation, use, and development of the state's big
18 game populations in the best interests of the state and the nation require
19 the establishment of a limit on the taking of big game by nonresidents ~~and~~
20 ~~nonresident aliens~~ so that state residents have an opportunity to obtain
21 big game meat for personal and family use.

22 * Sec. 2. AS 16.05.256 is amended to read:

23 Sec. 16.05.256. NONRESIDENT ~~AND NONRESIDENT ALIEN~~ PERMITS.
24 Whenever it is necessary to restrict the taking of big game so that
25 the opportunity for Alaska residents to take big game can be reason-
26 ably satisfied in accordance with sustained yield principles, the
27 Board of Game shall [MAY], through a permit system, limit the taking
28 of big game by nonresidents ~~and nonresident aliens~~ to accomplish that
29 purpose.

DIFFERENCES BETWEEN THE SENATE DRAFT AND THE GOVERNOR'S BILL

MAJOR DIFFERENCES

- 1) Avoids possible constitutional problems with equal protection provisions that may develop as a result of "resident domiciled in a rural area of the state" language of HB 288. (See discussion below)
- 2) Requires Boards to establish mandatory allocations to provide all Alaskans a reasonable opportunity for sport and personal use unless such an allocation would jeopardize or interfere with the maintenance of a fish stock or game population or the continuance of subsistence.
- 3) Is specific that all uses, at all times, are subject to limitations based on sustained yield and reasonable regulation of seasons, bag limits, and methods and means.

OTHER DIFFERENCES

- 1) Adds cost effective as requirement of taking for subsistence use.
- 2) Small difference in definition of rural area
- 3) Allows Board of Fish to provide for catch and release fishing
- 4) Allows Board of Fish to classify fish as subsistence fish as well as commercial fish, sport fish, predators (existing law), and personal fish (both bills).
- 5) Allows Board of Game to regulate sport and subsistence hunting.
- 5) Adds "or for personal use or family consumption" to definition of sport fishing.

DISCUSSION OF SUBSISTENCE DEFINITION

The subsistence definition in this bill is designed to comply with the spirit and intent of ANILCA without possible violations of the equal protection sections of the Alaska Constitution. It does this by specifying that subsistence uses are open to all Alaska residents if they comply with several fairly stringent requirements:

- 1) subsistence hunting or fishing may be done only in rural areas; defined as a traditional hunting or fishing area associated with a community or area where the taking fish or game for personal use or consumption is a significant characteristic of the economy.
- 2) fish or game taken for subsistence purposes must be used, including consumed, in the same rural area it was taken.
- 3) taking must be done in a customary, traditional, and cost effective manner.

These criteria are designed to limit subsistence taking and use to the rural areas of the state where alternatives to subsistence use are limited. Any resident of the state who is in these areas may participate in subsistence taking and use but they may not remove fish or game taken for subsistence uses to another part of the state where there is not a need for subsistence uses.

DRAFT LETTER OF INTENT

5/11/85

SENATE CS for HB 288

It is the intent of the legislature in enacting this legislation, to comply with the intent and spirit of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article 1, Section 1 and Article VIII, Section 15 of the Alaska Constitution.

This legislation maintains subsistence use as a priority use of Alaska's wild, renewable resources in accordance with ANILCA, and establishes a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations based on the sustained yield principle and to reasonable regulations as to seasons, catch or bag limits, and methods and means without requiring that uses of lower priority be eliminated first.

If the harvestable surplus of a fish stock or game population is not large enough to provide a reasonable opportunity for all subsistence uses, individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Subsistence uses in rural Alaska by Alaska residents who, in a customary, traditional and cost effective manner, use, including consume, their take in the same rural area it was taken, have the next highest priority of use. The legislature finds that the need for subsistence exists in the rural areas of the state because of the lack of alternative resources in those areas. The legislature further finds that when Alaska residents are in a rural area, they are situated equally in respect to access to alternative resources. The taking of fish and wildlife for subsistence by any Alaska resident is therefor allowed in rural areas designated by the Boards of Fish and Game, however, the fish or game taken for subsistence use may not be removed to another area where there are alternative resources to subsistence hunting and fishing.

It is intended that the boards shall have the authority to determine cost effectiveness, considering methods and means of harvest characterized by efficiency and economy of effort and cost, and conditioned by local circumstances. Customary and traditional refers to methods, means and uses that have been common in Alaska in the last half century.

Whenever it is necessary to restrict the taking of a fish stock or game population to assure the maintenance of that stock or population, taking by Alaska residents for personal and family consumption shall be a priority use. To implement this priority, the boards must establish a mandatory allocation that ensures all Alaskans a reasonable opportunity for sport or personal use fishing or hunting where there is an

established use of the resource, unless such regulations would jeopardize or interfere with the maintenance of a fish stock or game population or with the continuance of subsistence.

The harvestable surplus of fish or game in excess of this mandatory allocation shall be allocated among uses by the boards as they find appropriate. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial, sport, personal use and subsistence uses, while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for the full range of beneficial uses.

April 3, 1985

APR 08 1985

Honorable Governor Bill Sheffield
Honorable Senate President Don Bennett
Honorable Speaker of the House Ben

Gentlemen:

Our sportfishing groups are deeply concerned as the potential ^{chaos} ~~caes~~, damage to the resource, concern for public safety and a user group impact in the event there is no legislation protecting the fisheries in 1985.

The attached suggested 'bandaid' bill as a substitute for Senate Bill #231 endeavors to accomplish three basic purposes:

1. Returns the authority to manage fish and game to the status quo that existed prior to the Madison decision of February 21, 1985.
2. Provides a "sunset" clause for this legislation of March 31, 1986. We feel that the legislative and the executive branch will not have the time to deal with this very complicated subject as there is less than 40 days remaining in this session. We hope and encourage the legislature ^{use} ~~to~~ to hold state wide hearings during the balance of this year and develop a permanent long term solution to this very sensitive issue. The ^{section by section} ~~exhibit~~ ^{analysis &} ~~as~~ attached, illustrates some of the questions that we feel will need to be answered in the long term legislation to be enacted next year.
3. Our bill refers to criteria that establish rural ^{subsistence} ~~uses~~ as has been done historically in the past by ADF&G regulations numbers 5 AAC 99.010, 5 AAC 01.597. These criteria are attached as an exhibit for your reference.

Section 3 is proposed to allow the Commissioner of Fish and Game to reinstate as an emergency provision the regulations that were allowed in 1984. We have suggested this section to assure that statutory time limitations do not preclude implementation of such a law. We are available for public discussion. We respectfully request your consideration.

Draft Substitute for S.B 231
Suggested by the Kenai River Sportfishing Association
and
The Alaska Sportfishing Association
April 3, 1986

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

(1) the continuation of the opportunity for non-wasteful subsistence uses by many rural Alaskans is important and in many cases essential to their physical, traditional, cultural, and social existence, and that in certain instances no practical alternative resources or means are available to replace food, supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(2) in order to protect subsistence users most dependent on subsistence, and in order to protect sport and commercial uses of fish and wildlife, and in order to maintain healthy fish and wildlife populations available to subsistence, sport and

commercial users, it is necessary for the Board of Fisheries and the Board of Game to have authority, only for the 1985 fishing and hunting seasons and until March 31, 1986, to regulate subsistence fishing and hunting in the manner in which they were regulated in 1984.

(3) conservation of fish and wildlife during the 1985 season and thereafter will be furthered if the legislature is unhurried in its consideration of complicated social, political, and biological questions related to subsistence; by March 31, 1986 the legislature should be able to consider, after statewide hearings, more complicated subsistence issues that cannot be adequately considered in the remaining days of the first session of the fourteenth legislature.

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

Sec. 16.5.258. SUBSISTENCE CRITERIA. Until March 31, 1986, and in accordance with the Administrative Procedure Act (A.S. 44.62), the Board of Fisheries and the Board of Game may adopt regulations in order to identify customary and traditional subsistence uses by rural Alaskans by using the criteria set forth in the regulations in effect in 1984 and found at 5 AAC 99.010 and 5 AAC 01.597, and those criteria are hereby established for the 1985 fishing and hunting seasons, ~~until the Boards have an opportunity to consider those criteria.~~

* Sec. 3. For the 1985 fishing and hunting seasons, the Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 5. This Act shall take effect immediately in accordance AS 01.10.070(c).

Section by Section Analysis
of
Draft Substitute for S.B. 231
Proposed by Kenai River Sportfishing Association
and
the Alaska Sportfishing Association
April 3, 1985

INTRODUCTION

The recent decision of the Alaska Supreme Court, in Madison v. Alaska Board of Fisheries, has resulted in opening several subsistence fisheries to all Alaskans and the ^{opinion} widespread perception that subsistence everywhere in the state, for both fish and game, is open ^{new} to all Alaskans. Because of the Madison decision, the Board of Fisheries has ^{already} opened to all Alaskans the subsistence fisheries on the Kenai Peninsula, in the Iliamna and Lake Clark areas, on the Naknek River, on the Copper River, and at Angoon. Those subsistence fisheries will be opened to all Alaskans unless the legislature acts quickly to maintain the status quo until ~~the~~ ^{there is} ~~legislature and the public have a~~ ^{enough} opportunity ~~for~~ ^{public input.} assess possible changes to the subsistence laws.

The impact of the Madison decision, and the need for legislative remedies ^{probably} cannot be adequately assessed in the remaining days of the current legislative session. Therefore, the substitute bill proposed by the Kenai River Sportfishing Association and the Alaska Sportfishing Association is designed ~~solely~~ as a temporary "band-aid", in order to maintain subsistence, sport and commercial uses generally as they occurred in 1984. This "band-aid" approach will protect the resources and protect subsistence users most dependent on those resources, until the legislature and the public have had an opportunity to consider more long-term solutions necessary to protect subsistence and yet provide for sport and commercial uses. The substitute allows a year for the legislature to hold statewide hearings and to act.

SECTION BY SECTION ANALYSIS

Section 1 --

Section 1 of the draft substitute contains the following findings which justify this temporary solution of maintaining the status quo for one year:

(1) that rural subsistence by those individuals who are dependent on the resources is ~~most~~ important to protect;

(2) that in order to protect subsistence, sport and commercial uses, and in order to protect the health of the fish and wildlife resources that are so important to all Alaskans, it

is necessary to regulate those uses in generally the same manner as occurred in 1984.

(3) that the remaining days of this legislative session are ^{probably} insufficient to allow reasonable consideration of longterm ~~changes~~ ^{solutions} to the subsistence ~~laws~~ ^{issues}. This last finding is particularly important because it recognizes that complicated issues related to subsistence deserve thorough, unhurried examination. Among those questions, which the legislature and the public ^{may wish to} ~~should~~ consider, are: ~~questions such as:~~

(a) whether the subsistence priority should be defined in terms of being available to rural Alaskans only;

(b) whether the legislature should give guidance to the Board of Fisheries and the Board of Game in order to assist them in defining the use of the word "rural";

(c) whether better legislative language exists -- rather than the restriction of subsistence to an undefined rural population -- in order to more adequately protect subsistence users dependent on the resources, while thereby providing more opportunity for sport and commercial users; ~~if such a solution could be found, then there might be less conflict~~ ^{will reduce} ~~over~~ ^{between} sport, commercial and subsistence users,

(d) whether the legislature should give ^{additional} guidance to the Board of Fisheries and the Board of Game in order to assist them in defining "customary and traditional subsistence uses", as they are protected but not defined in state and federal statutes related to Alaska subsistence;

(e) whether in some circumstances it may be appropriate ^{to} ~~or inappropriate to allow or prohibit~~ subsistence use of certain ^{specific} species or stocks of wildlife, ~~such as hatchery fish, such as transplanted game populations, steelhead or rainbow trout, or other species or stocks which in many circumstances might not be essential to the physical, cultural, traditional, and social existence of subsistence users.~~

(f) whether the legislature ^{should} ~~might~~ give guidance to the boards to establish criteria for focusing subsistence on more abundant stocks of fish and wildlife.

These are ^{some of} the ~~types of~~ questions that need to be answered after thorough public and legislative consideration, which can only occur if more time is available. Sport, commercial, Native, rural and urban interests will all need to participate. We also urge the Department of Fish and Game to take an active role in suggesting ~~improvements~~ ^{long term solutions} to the state's subsistence ~~laws~~ ^{issues}.

Section 2 --

This section ratifies, for the 1985 fishing and hunting seasons and until March 31, 1986, the previous criteria ~~that have been used by~~ ^{that have been used by} existing regulations at 5 AAC 99.010 and 5 AAC 01.597, ~~adopted by~~ ^{for determining} the Boards ^{for determining} customary and traditional subsistence use. This will protect rural subsistence as it was managed in 1984. ~~from urban subsistence competition.~~

Section 3 --

This section ^{requires} ~~directs~~ the Commissioner of Fish and Game to use his emergency regulatory authority to protect rural subsistence, ~~and~~ sport and commercial uses ~~and users~~, as ^{they were managed} ~~advised~~ in 1984. This is temporary authority for the 1985 season only.

Section 4 --

This section provides that the legislation takes effect immediately.

4/2/85

OPTION A

1) Subsistence use remains the ~~priority~~ ^{professional} use.

→ 2) Neither ~~personal use~~ ^{sport} nor commercial use is assigned a priority over the other.

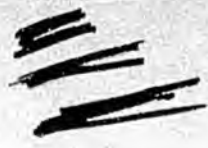
3) Boards set ~~resident personal use~~ ^{add personal use fishery} hunts and fisheries throughout state by stock and by area or sub area. ~~Personal use category includes former sport hunting and sport fishing categories.~~ ^{sport} Boards set regulations for seasons, bag limits and gear types.

4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:

- a) customary and direct dependence on the stock,
- b) local residency, and
- c) lack of available alternative resources,

And that these ^{specified} needs are not being met by a particular ~~personal use~~ ^{sport} hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of sustained yield.



OPTION B

4/2/85

idea
Sub Comm
→ food uses
part numbers
larger
for Dept

1) Subsistence use remains the priority use.

preference

2) Personal use is assigned a priority over commercial use.

3) Boards set resident personal use hunts and fisheries throughout state by stock and by area or sub area. Personal use category includes former sport hunting and sport fishing categories. Boards set regulations for seasons, bag limits and gear types. All personal use open to

all Alaskan residents

4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:

- a) customary and direct dependence on the stock,
- b) local residency, and
- c) lack of available alternative resources,

particular



And that these needs are not being met by a particular personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of sustained yield.

to meet specified needs

for subs pop

~~Sport species - meat preference~~

- 1. Uses not used
- 2. Individual
- 3) define

larger by community

- personal use over
- commercial

that subsistence can be limited to reasonable opportunity before everyone else is eliminated

4/11/85

OPTION A

- 1) Subsistence use is the preferred use, subject to conditions below.
- 2) Neither sport, personal use, nor commercial use is assigned a priority over the other.
- 3) Boards set resident sport hunts and fisheries throughout state by stock and by area or sub area. Boards set regulations for seasons, bag limits and gear types.
- 4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:
 - a) customary and direct dependence upon the (specific fish and wildlife) populations as the mainstay of livelihood,
 - b) local residency, and
 - c) availability (lack) of alternative resources,

And that these specified needs can not be met by a particular sport or personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of maximum sustained yield.

April 3, 1985

Honorable Bill Sheffield, Governor
Honorable Don Bennett, President of the Senate
Honorable Ben Grussendorf, Speaker of the House
Juneau, Alaska
99811

Gentlemen:

Our sportfishing groups are deeply concerned about the potential chaos, damage to the resource, public safety and user group impacts in the event there is no legislation passed for protecting the fisheries in 1985. The potential exists for a resource calamity.

The attached suggested "band-aid" bill as a substitute for Senate Bill #231 endeavors to accomplish three basic purposes:

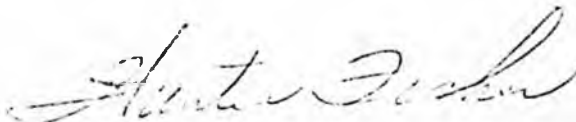
1. Returns the authority to manage fish and game to the status quo that existed prior to the Madison decision of February 21, 1985.
2. Provides a "sunset" clause for this legislation of March 31, 1986. We feel that the legislative and the executive branch will not have the time to deal with this very complicated subject as there is less than 40 days remaining in this session. We hope and encourage the legislature to hold state wide hearings during the balance of this year and develop a permanent long term solution to this very sensitive issue. The section-by-section analysis attached, illustrates some of the questions that we feel will need to be answered in the long term legislation to be enacted next year.
3. Our bill refers to criteria that establish rural subsistence uses as has been done historically in the past by ADF&G regulations numbers 5 AAC 99.010, 5 AAC 01.597. These criteria are attached as an exhibit for your reference.

Section 3 is proposed to allow the Commissioner of Fish and Game to reinstate as an emergency provision the regulations that were allowed in 1984. We have suggested this section to assure that statutory time limitations do not preclude implementation of such a law. We are available for public discussion. We respectfully request your consideration.

Very truly yours,



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cc: Legislators

Original

Draft Substitute for S.B. 231
Suggested by the Kenai River Sportfishing Association
and
The Alaska Sportfishing Association
April 3, 1986

IN THE SENATE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

* Section 1. FINDINGS. The legislature finds that

(1) the continuation of the opportunity for non-wasteful subsistence uses by many rural Alaskans is important and in many cases essential to their physical, traditional, cultural, and social existence, and that in certain instances no practical alternative resources or means are available to replace food, supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

(2) in order to protect subsistence users most dependent on subsistence, and in order to protect sport and commercial uses of fish and wildlife, and in order to maintain healthy fish and wildlife populations available to subsistence, sport and

commercial users, it is necessary for the Board of Fisheries and the Board of Game to have authority, only for the 1985 fishing and hunting seasons and until March 31, 1986, to regulate subsistence fishing and hunting in the manner in which they were regulated in 1984.

(3) conservation of fish and wildlife during the 1985 season and thereafter will be furthered if the legislature is unhurried in its consideration of complicated social, political, and biological questions related to subsistence; by March 31, 1986 the legislature should be able to consider, after statewide hearings, more complicated subsistence issues that cannot be adequately considered in the remaining days of the first session of the fourteenth legislature.

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

Sec. 16.05.258. SUBSISTENCE CRITERIA. Until March 31, 1986, and in accordance with the Administrative Procedure Act (A.S. 44.62), the Board of Fisheries and the Board of Game may adopt regulations in order to identify customary and traditional subsistence uses by rural Alaskans by using the criteria set forth in the regulations in effect in 1984 and found at 5 AAC 99.010 and 5 AAC 01.597, and those criteria are hereby established for the 1985 fishing and hunting seasons.

* Sec. 3. For the 1985 fishing and hunting seasons, the Commissioner of Fish and Game shall use his authority, in AS 16.05.060, to issue emergency regulations in order to provide

for subsistence as it occurred in 1984; provided however, that in this instance a biological emergency need not exist as is otherwise required by AS 16.05.060.

* Sec. 4. This Act shall take effect immediately in accordance AS 01.10.070(c).

Section by Section Analysis
of
Draft Substitute for S.B. 231
Proposed by Kenai River Sportfishing Association
and
the Alaska Sportfishing Association
April 3, 1985

INTRODUCTION

The recent decision of the Alaska Supreme Court, in Madison v. Alaska Board of Fisheries, has already resulted in opening several subsistence fisheries to all Alaskans, and there is a widespread opinion that subsistence everywhere in the state, for both fish and game, is now open to all Alaskans. Because of the Madison decision, the Board of Fisheries has opened to all Alaskans the subsistence fisheries on the Kenai Peninsula, in the Iliamna and Lake Clark areas, on the Naknek River, on the Copper River, and at Angoon. Those subsistence fisheries will be opened to all Alaskans unless the legislature acts quickly to maintain the status quo until there is a better opportunity for public input.

The impact of the Madison decision, and the need for legislative remedies probably cannot be adequately assessed in the remaining days of the current legislative session. Therefore, the substitute bill proposed by the Kenai River Sportfishing Association and the Alaska Sportfishing Association is designed as a temporary "band-aid", in order to maintain subsistence, sport and commercial uses generally as they occurred in 1984. This "band-aid" approach will protect the resources and protect subsistence users most dependent on those resources, until the legislature and the public have had an opportunity to consider more long-term solutions necessary to protect subsistence and yet provide for sport and commercial uses. The substitute allows a year for the legislature to hold statewide hearings and to act.

SECTION BY SECTION ANALYSIS

Section 1 --

Section 1 of the draft substitute contains the following findings which justify this temporary solution of maintaining the status quo for one year:

(1) that rural subsistence by those individuals who are dependent on the resources is important to protect;

(2) that in order to protect subsistence, sport and commercial uses, and in order to protect the health of the fish and wildlife resources that are so important to all Alaskans, it

is necessary to regulate those uses in generally the same manner as occurred in 1984.

(3) that the remaining days of this legislative session probably are insufficient to allow reasonable consideration of long-term solutions to subsistence issues. This last finding is particularly important because it recognizes that complicated issues related to subsistence deserve thorough, unhurried examination. Among those questions, which the legislature and the public may wish to consider, are:

(a) whether the subsistence priority should be defined in terms of being available to rural Alaskans only;

(b) whether the legislature should give guidance to the Board of Fisheries and the Board of Game in order to assist them in defining the use of the word "rural";

(c) whether better legislative language exists -- rather than the restriction of subsistence to an undefined rural population -- in order to more adequately protect subsistence users dependent on the resources, while thereby providing more opportunity for sport and commercial users; such a solution will reduce conflict between sport, commercial and subsistence users;

(d) whether the legislature should give additional guidance to the Board of Fisheries and the Board of Game in order to assist them in defining "customary and traditional subsistence uses", as they are protected but not defined in state and federal statutes related to Alaska subsistence;

(e) whether in some circumstances it may be appropriate to prohibit subsistence use of certain fragile species or stocks of wildlife.

(f) whether the legislature should give guidance to the boards to establish criteria for focusing subsistence on more abundant stocks of fish and wildlife.

These are the some of questions that need to be answered after thorough public and legislative consideration, which can only occur if more time is available. Sport, commercial, Native, rural and urban interests will all need to participate. We also urge the Department of Fish and Game to take an active role in suggesting long-term solutions to the state's subsistence issues.

Section 2 --

This section ratifies, for the 1985 fishing and hunting seasons and only until March 31, 1986, the previous criteria, in existing regulations at 5 AAC 99.010 and 5 AAC 01.597, that have been used by the boards until now and prior to the Madison

decision for determining customary and traditional subsistence use. This section takes the situation back to the status quo and will protect rural subsistence as it was managed in 1984.

Section 3 --

This section directs the Commissioner of Fish and Game to use his emergency regulatory authority to protect rural subsistence, and sport and commercial uses, as they were managed in 1984. This is temporary authority for the 1985 season only.

Section 4 --

This section provides that the legislation takes effect immediately.

SUBSISTENCE CRITERIA USED PRIOR TO THE RECENT SUPREME COURT DECISION

JOINT BOARD'S SUBSISTENCE POLICY

**CHAPTER 99.
SUBSISTENCE USES.**

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the Board of Fisheries and the Board of Game will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principal and compatible with the public interest;

(2) each board will identify subsistence uses of fish and game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and in which that pattern of subsistence uses provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion, adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting non-subsistence harvest before subsistence uses are restricted. If all available restrictions for non-subsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who

(1) live closest to the resource;

(2) have fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

Authority: AS 16.05.251(b)
AS 16.05.255(b)

FINFISH

COOK INLET AREA

4,200 king salmon may be taken in the Tyonek subdistrict during the period March 15 through June 30.

(b) The daily bag and possession limit for halibut is two. No person may possess sport taken and subsistence taken halibut on the same day.

Authority: AS 16.05.060
AS 16.05.251(a) (3), (7),
(10) and (b)

5 AAC 01.597. CHARACTERISTICS OF SUBSISTENCE FISHERIES. (a) The Board of Fisheries finds that certain customary and traditional practices and procedures associated with the utilization of fish in the Cook Inlet Area can be used to identify subsistence uses. Based on testimony to the board, the following characteristics are those that should be evaluated in the identification of subsistence fisheries:

(1) a long-term, stable, reliable pattern of use and dependency, excluding interruption generated by outside circumstances, e.g., regulatory action or fluctuations in resource abundance;

(2) a use pattern established by an identified community, subcommunity or group having preponderant concentrations of persons showing past use;

(3) a use pattern associated with specific stocks and seasons;

(4) a use based on the most efficient and productive gear and economical use of time, energy and money;

(5) a use pattern occurring in reasonable geographic proximity to the primary residence of the community, group or individual;

(6) a use pattern occurring in locations with easiest and most direct access to the resources;

(7) a use pattern which includes a history of traditional modes of handling, preparing and storing the product without precluding recent technological advances;

(8) a use pattern which includes the intergenerational transmission of activities and skills;

(9) a use pattern in which the effort and products are distributed on a community and family basis including trade, barter, sharing and gift-giving; and

(10) a use pattern which includes reliance on subsistence taking of a range of wild resources in proximity to the community or primary residency.

(b) The board will identify established geographic communities which may be participating in a subsistence system. The board will then apply all of the characteristics in (a) of this section to the communities and subcommunities, groups and individuals within the communities to determine which uses are customary and traditional and therefore, which communities are eligible for the subsistence priority.

Sec. ____ AS 16.05.251 is amended by adding a new subsection to read:

(d) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting a reasonable opportunity for the taking of fish for sport and personal use by Alaska residents, unless the board determines, in accordance with the Administrative Procedure Act, that the regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuation of subsistence uses. Takings authorized under this subsection are subject to reasonable regulation of seasons, bag limits, and methods and means.

Sec. ____ AS 16.05.260 is amended by adding a new subsection to read:

(b) The Board of Fisheries and the Board of Game shall adopt a regulatory proposal recommended by a regional fish and game council concerning the subsistence use of fish or game within its region, unless the board determines that the recommendation is not supported by substantial evidence presented during the course of the board's administrative proceedings, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence uses. The Board of Fisheries shall adopt a regulatory proposal recommended by a regional fish and game council which would result in a reallocation of anadromous fish species to sport or personal use fishing, unless the board determines that it is not supported by substantial evidence presented during the course of the board's administrative proceedings, violates recognized principles of fish conservation, or would be detrimental to the satisfaction of subsistence, sport or personal uses. If a recommendation is not adopted by a board, it shall set forth in writing the factual basis and the reasons for its decision.

This is an explanation of
where the draft substitute
originated - some background.

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PURPOSE

To provide for a special and differentiated Board of Fisheries regulatory process for the consideration of reallocation of anadromous fish to personal and sportfish uses.

BACKGROUND

This special process is a generalized and adapted form of the process described in Section 805 of ANILCA which deals with the interaction of regional advisory councils and the Secretary of Interior with regard to subsistence uses. In the process described below the Alaska Board of Fisheries is substituted for Secretary as is the case when the state is in compliance with the act and it is dealing with subsistence uses.

This special process, associated with allocation decisions regarding personal and sportfishing uses, is intended to build upon and enhance the role of the extensive grass roots local public participation system currently in place in this state. This system is broadly recognized as the most extensive such program involving the public in the development of fish and wildlife regulation existing in the United States. There are currently 72 local fish and game advisory committees, with five to fifteen members each,

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distributed across the state. This system is funded by the state, with the members of the advisory committees being authorized to receive reimbursement for travel and per diem.

The chairman of the local fish and game advisory committees in each of the state's six resource regions constitute the regions regional advisory council.

PROCESS

The special allocative process would work thus:

THE BOARD OF FISHERIES WOULD BE OBLIGATED TO ADOPT A REGULATORY PROPOSAL, IF IT WERE RECOMMENDED BY A REGIONAL ADVISORY COUNCIL AND WOULD RESULT IN A REALLOCATION OF ANADROMOUS FISH SPECIES TO PERSONAL OR SPORTFISHING USES. THE BOARD MAY CHOOSE NOT TO ADOPT THE RECOMMENDATION ONLY IF IT DETERMINES THAT IT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, VIOLATES RECOGNIZED PRINCIPLES OF FISH CONSERVATION OR WOULD BE DETRIMENTAL TO THE SATISFACTION OF PERSONAL USE, SPORTFISHING, OR SUBSISTENCE NEEDS. IF A RECOMMENDATION IS NOT ADOPTED BY THE BOARD OF FISHERIES, IT SHALL SET FORTH, IN A WRITTEN FINDING, THE FACTUAL BASIS AND THE REASONS FOR ITS DECISION.

The Board of Fisheries would continue to deliberate and pass upon all other regulatory proposals which deal with personal



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use or sportfishing allocations, or other related issues, in accordance with their existing procedures.

5/7/85

1 IN THE SENATE

BY V.FISCHE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 personal and family consumption and for subsistence
8 uses; and providing for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) nonresidents visiting Alaska take fish and game primarily
12 for commercial, trophy, and recreational purposes; state residents who take
13 fish and game for noncommercial purposes use the stocks and populations for
14 personal and family consumption;

15 (2) because of its importance to their health, safety and
16 general well-being, the taking of fish and game by residents for personal
17 and family consumption is a priority use of the state's fish and game
18 resources;

19 (3) because of residents' proximity to fish stocks and game
20 populations, their dependence on fish and game as a mainstay of livelihood,
21 and the lack of alternative food resources, the taking of fish and game for
22 personal and family consumption is essential to the health, safety, and
23 general well-being of residents domiciled in communities and areas in which
24 the taking of fish and game for personal and family consumption in a cost-
25 effective manner constitutes a significant characteristic of the economy of
26 the community or area;

27 (4) the taking of fish and game for commercial, recreational,
28 and other uses by both residents and nonresidents is important to the
29 economy of the state and particularly to the economies of communities

1 dependent on commercial fishing.

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

3 (a) The Board of Fisheries may adopt regulations it conside
4 advisable in accordance with the Administrative Procedure Act (AS 44
5 62) for

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

9 (2) establishing open and closed seasons and areas for th
10 taking of fish;

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

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

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

17 (6) classifying as commercial fish, sport fish, residen
18 net-fish, or predators or other categories essential for regulator
19 purposes;

20 (7) watershed and habitat improvement, and management
21 conservation, protection, use, disposal, propagation and stocking o
22 fish;

23 (8) investigating and determining the extent and effect o
24 disease, predation, and competition among fish in the state, exercis
25 ing control measures considered necessary to the resources of th
26 state;

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

29 (10) establishing seasons, areas, quotas and methods of

1 harvest for aquatic plants;

2 (11) establishing the times and dates during which the
3 issuance of fishing licenses, permits and registrations and the trans-
4 fer of permits and registrations between registration areas
5 allowed; however, this paragraph does not apply to permits issued or
6 transferred under AS 16.43;

7 (12) resident net, sport, and commercial fishing.

8 * Sec. 3. AS 16.05.251(b) is amended to read:

9 (b) The Board of Fisheries shall adopt regulations in accordance
10 with the Administrative Procedure Act (AS 44.62) permitting the taking
11 of fish for subsistence uses unless the board determines, in accor-
12 dance with the Administrative Procedure Act, that adoption of th-
13 regulations will jeopardize or interfere with the maintenance of fis-
14 stocks on a sustained-yield basis. Subsistence fishing authorize
15 under this subsection shall be subject to reasonable regulation o
16 seasons, harvest levels, and methods and means of taking. Whenever it
17 is necessary to restrict the taking of fish to assure the maintenanc-
18 of fish stocks on a sustained-yield basis, or to assure the continua-
19 tion of subsistence uses of such resources, subsistence use shall be
20 the priority use. If further restriction is necessary, the board
21 shall establish restrictions and limitations on and priorities for
22 these consumptive uses on the basis of the following criteria:

23 (1) customary and direct dependence upon the resource as
24 the mainstay of one's livelihood;

25 (2) local residency; and

26 (3) availability of alternative resources.

27 * Sec. 4. AS 16.05.251 is amended by adding new subsections to read:

28 (d) Regulations adopted under (a) of this section shall provide
29 that, consistent with the provisions of (b) of this section, resident

1 net, sport, and commercial fishermen are provided a fair and reason
2 able opportunity to participate in the harvest of fish. The regula
3 tions shall provide that, regardless of the type of gear used in each
4 fishery, the taking of fish by residents for personal and family
5 consumption is a priority use of fish.

6 (e) In allocating access to fish among persons engaged in resi-
7 dent net, sport, and commercial fishing, the Board of Fisheries shall
8 consider the following factors:

9 (1) the history of each personal use, sport, and commercial
10 fishery;

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

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

17 (4) the availability of alternative fisheries resources;

18 (5) the importance of each fishery to the economy of the
19 State of Alaska;

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

22 (7) the importance of each fishery in providing recreation-
23 al opportunities for residents and nonresidents.

24 * Sec. 5. AS 16.05.255(b) is repealed and reenacted to read:

25 (b) Whenever it is necessary to restrict the taking of a game
26 population to assure the maintenance of the population on a sustained-
27 yield basis, the taking of game from the population by residents for
28 personal and family consumption shall be the priority use of the
29 harvestable surplus of the population and the Board of Game shall

1 adopt regulations authorizing the taking in accordance with the Admin
2 istrative Procedure Act (AS 44.62).

3 * Sec. 6. AS 16.05.255 is amended by adding a new subsection to read:

4 (d) If the harvestable surplus of a game population is not large
5 enough to provide a reasonable opportunity for the taking of game from
6 the population by residents in accordance with regulations adopted
7 under (a) and (b) of this section, the Board of Game shall adopt
8 regulations in accordance with the Administrative Procedure Act
9 (AS 44.62) that create a priority for the taking of game from the
10 population for subsistence uses over other consumptive uses of the
11 population. Takings authorized under this subsection shall be subject
12 to reasonable regulation of seasons, bag limits, and methods and
13 means. If the harvestable surplus of the population is not large
14 enough to provide a reasonable opportunity for the taking of game from
15 the population for subsistence uses, the board shall adopt regulations
16 that establish restrictions and limitations on the taking of game from
17 the population for subsistence uses on the basis of the following
18 criteria:

19 (1) customary and direct dependence upon the game resource
20 as the mainstay of one's livelihood;

21 (2) local residency; and

22 (3) availability of alternative game resources.

23 * Sec. 7. AS 16.05.940(21) is amended to read:

24 (21) "sport fishing" means the taking of or attempting to
25 take for personal use or for personal or family consumption, and not
26 for sale or barter, any fresh water, marine, or anadromous fish by
27 hook and line held in the hand, or by hook and line with the line
28 attached to a pole or rod which is held in the hand or closely attend-
29

1
2 * Sec. 8. AS 16.05.940(23) is amended to read:

3 (23) "subsistence uses" means the customary and traditional
4 noncommercial uses [IN ALASKA] of wild, renewable resources by
5 resident domiciled in a rural area of the state for direct personal or
6 family consumption as food, shelter, fuel, clothing, tools, or
7 transportation, for the making and selling of handicraft articles or
8 of nonedible by-products of fish and wildlife resources taken for
9 personal or family consumption, and for the customary trade, barter
10 or sharing for personal or family consumption; in [FOR THE PURPOSES
11 OF] this paragraph [,]

12 (A) "family" means all persons related by blood
13 marriage, or adoption, and any person living within the household
14 on a permanent basis;

15 (B) "rural area" means a community or area of the
16 state in which the taking of fish or wildlife for personal or
17 family consumption is a significant characteristic of the economy
18 of the community or area;

19 * Sec. 9. AS 16.05.940 is amended by adding a new paragraph to read:

20 (28) "resident net fishing" means the taking, fishing for,
21 or possession of finfish, shellfish, or other fishery resources, by a
22 resident for personal or family consumption and not for sale or bar-
23 ter, with gillnet, dipnet, seine, fish wheel, longline, or other
24 similar means defined by the Board of Fisheries.

25 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).
27
28
29

HEADINGS TITLE 16.

Fish and Game.

CHAPTER 05.

Fish and Game Code.

ARTICLE 2.

Boards of Fisheries and Game.

Sec. 16.05.251. REGULATIONS OF THE BOARD OF FISHERIES.

(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;

(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 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.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) ^{the reasonable opportunity for} permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(c) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 16.05.255. REGULATIONS OF THE BOARD OF GAME.

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

(1) setting apart game reserve areas, refuges and sanctuaries in the water or on the land 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 game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

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

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

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

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

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

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

(b) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the

taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis.

Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct

dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(c) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the

request for an explanation, whichever is later.

Sec. 16.05.257. SUBSISTENCE HUNTING REGULATIONS.

(a) The Board of Game, at its regularly scheduled annual meeting and other meetings held under authority of AS 16.05.300(a), shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

(1) recommendation of the department, based on biological evidence;

(2) the recommendation of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;

(3) the written petition of not less than 100 interested residents of that game management unit or subunit;
or

(4) the written petition of not less than 25 interested residents of an area which is requested for establishment as a subsistence area within a game management unit or subunit.

(b) The regulations may include but are not limited to the

following:

- (1) the establishment of subsistence hunting areas;
 - (2) the regulation of transportation methods and means to protect subsistence hunting within subsistence hunting areas, including the prohibition or limitation of pack animals, mechanized vehicles and aircraft, other than watercraft or wheeled vehicles operating on a road maintained by public funds;
 - (3) the establishment of open and closed seasons and areas to protect subsistence hunting;
 - (4) the limitation of hunting to only one sex of the animal.
- (c) Regulations may not be adopted by the Board of Game under (a), (b) or (f) of this section unless, in addition to the requirements of AS 44.62.180 44.62.290, the department

- (1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

- (2) presents at the hearings the information provided

for in (e) of this section;

(3) makes the information provided for in (e) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a)(3) or (4) of this section; comments shall be received by the board until 10 days before any adoption of regulations.

(d) A petition submitted under (a)(3) -- (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or recommendation made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the meeting of the board at which the petition or recommendation is to be considered.

(e) The department shall investigate, by collecting existing data, and, when necessary, conducting new studies, every petition or recommendation made under (a)(2), (3) or (4) of this section to the extent practicable within the time available and provide the following information:

(1) the concentration of the species to be affected and carrying capacity of the area to be affected;

(2) the current hunting practices in the area, including numbers of animals taken and by what methods and means and whether the take is subsistence or recreational;

(3) the dependence of persons in the area for subsistence use of a species;

(4) the population trends of the affected fish and game in the area;

(5) whether the affected fish and game population is able to support a nonsubsistence harvest; and

(6) other information considered necessary by the section of subsistence hunting and fishing.

(f) The Board of Game at any time may review and change the boundaries of a subsistence area upon

(1) the recommendation of the department, based on biological evidence;

(2) the written petition of not less than 25 interested residents of that area; or

(3) the majority vote of the active local advisory committees for that area.

(g) The department shall submit a report to the legislature during the first 10 days of each legislative session beginning after January 1, 1977. The report shall include, but is not limited to, a listing of the specific subsistence areas established or modified during the preceding year and the species subject to subsistence use within those areas.

(h) In this section

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game;

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

(i) The Board of Game may not make a decision denying, creating or changing a subsistence hunting area unless the decision is based on specific written findings of fact regarding all the information provided in accordance with (e) of this section.

Sec. 16.05.930. EXEMPTED ACTIVITIES.

(a) This chapter does not prevent the collection or

exportation of fish and game, a part of fish or game or a nest or egg of a bird for scientific or educational purposes, or for propagation or exhibition purposes under a permit which the department may issue and prescribe the terms thereof.

- (b) This chapter does not prohibit a person from taking fish or game during the closed season, in case of dire emergency, as defined by regulation adopted by the appropriate board.
- (c) AS 16.05.920 does not prohibit rearing and sale of fish from private ponds, the raising of wild animals in captivity for food or the raising of game birds for the purpose of recreational hunting on game hunting preserves, under regulations adopted by the appropriate board. In this subsection, "animals" includes all animal life, including insects and bugs.
- (d) Nondomestic animals of any species may not be transferred or transported from the state under (a) of this section unless approved by the Board of Game in regular or special meeting. Animals transferred or transported under (a) of this section shall be animals that are certified by the department to be surplus and unnecessary to the sustained yield management of the resource. Each application for a permit under (a) of this section shall be accompanied by a statement prepared by the Department of Fish and Game examining the probable environmental impact of the action.

- (e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.
- (f) A permit may not be required for possessing, importing or exporting mink and fox for fur farming purposes.

Sec. 16.05.940. DEFINITIONS.

In AS 16.05 - AS 16.40

(1) "aquatic plant" means any species of plant, excluding the rushes, sedges and true grasses, growing in a marine aquatic or intertidal habitat;

(2) "barter" means the exchange or trade of fish or game, or their parts, taken for subsistence uses

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items other

than money if the exchange is of a limited and noncommercial nature;

(3) "a board" means either the Board of Fisheries or the Board of Game;

(4) "commercial fisherman" means an individual who fishes commercially for, takes, or attempts to take fish, shellfish, or other fishery resources of the state by any means, and includes every individual aboard a boat operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, whether participation is on shares or as an employee or otherwise; however, this definition does not apply to anyone aboard a licensed vessel as a visitor or guest who does not directly or indirectly participate in the taking; and the term "commercial fisherman" includes the crews of tenders or other floating craft used in transporting fish;

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

possession of fish, shellfish, or other fish resources;

(6) "commissioner" means the commissioner of fish and game unless specifically provided otherwise;

(7) "department" means the Department of Fish and Game unless specifically provided otherwise;

(8) "domestic mammals" include musk oxen, bison, and reindeer, if they are lawfully owned;

(9) "fish" means any species of aquatic finfish, invertebrate, or amphibian, in any stage of its life cycle, found in or introduced into the state, and includes any part of such aquatic finfish, invertebrate, or amphibian;

(10) "fish derby" means a contest in which prizes are awarded for catching fish;

(11) "fishing derby association" means a civic, service, or charitable organization in the state, not for pecuniary profit, whose primary purpose is to promote interest in fishing for recreational purposes and which has been in existence for five years before applying for a permit under this chapter, but does not include an organization formed or operated for gaming or gambling purposes;

(12) "fish or game farming" means the business of propagating, breeding, raising, or producing fish or game in captivity for the purpose of marketing the fish or game or their products, and "captivity" means having the fish or game under positive control, as in a pen, pond, or an area of land or water which is completely enclosed by a generally escape-proof barrier;

(13) "fur dealing" means engaging in the business of buying, selling, or trading in animal skins, but does not include the sale of animal skins by a trapper or hunter who has legally taken the animal, or the purchase of animal skins by a person, other than a fur dealer, for the person's own use;

(14) "game" means any species of bird, reptile, and mammal, including a feral domestic animal, found or introduced in the state, except domestic birds and mammals; and game may be classified by regulation as big game, small game, fur bearers or other categories considered essential for carrying out the intention and purposes of AS 16.05 - AS 16.40;

(15) "hunting" means the taking of game under AS 16.05 - AS 16.40 and the regulations adopted under those chapters;

(16) "nonresident" means a person who is not a resident

of the state;

(17) "nonresident alien" means a person who is not a citizen of the United States and whose permanent place of abode is not in the United States;

(18) "operator" means the individual by law made responsible for the operation of the vessel;

(19) "resident" means a person who for 12 consecutive months has maintained a permanent place of abode in the state and who has continually maintained a voting residence in the state; and in the case of a partnership, association, joint stock company, trust, or corporation, "resident" means one that has its main office or headquarters in the state; however, a member of the military service who has been stationed in the state for the preceding 12 consecutive months is a resident for the purposes of this paragraph, and the dependent of a resident member of the military service, who has been living in the state for the preceding year is a resident for the purposes of this paragraph, and a person who is an alien but who for one year has maintained a permanent place of abode in the state is a resident for the purposes of this paragraph;

(20) "seizure" means the actual or constructive taking or possession of real or personal property subject to seizure

under AS 16.05 - AS 16.40 by an enforcement or investigative officer charged with enforcement of the fish and game laws of the state;

(21) "sport fishing" means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries;

(22) "subsistence fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the

household on a permanent basis;

(24) "take" means taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game;

(25) "taxidermy" means tanning, mounting, processing, or other treatment or preparation of fish or game, or any part of fish or game, as a trophy, for monetary gain, including the receiving of the fish or game or parts of fish or game for such purposes;

(26) "trapping" means the taking of mammals declared by regulation to be fur bearers;

(27) "vessel" means a floating craft powered, towed, rowed, or otherwise propelled, which is used for delivering, landing, or taking fish within the jurisdiction of the state, but does not include aircraft.

A M E N D M E N T

Offered in the HOUSE

By Larson

TO: CSHB 288(Jud)

Page 3, after line 18, delete section 5 and insert new bill sections to read:

"* Sec. 5. 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;

(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, [PERSONAL USE 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) PERSONAL USE FISHING].

* Sec. 6. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the customary and traditional [NONCOMMERCIAL] uses in Alaska of wild, renewable resources [BY A RESIDENT DOMICILED IN A RURAL AREA OF THE STATE] for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in this paragraph

[(A)] "family" means all persons related by blood,

marriage, or adoption, and any person living within the household on a permanent basis;

[(B) "RURAL AREA" MEANS A COMMUNITY OR AREA OF THE STATE IN WHICH THE TAKING OF FISH OR WILDLIFE FOR PERSONAL OR FAMILY CONSUMPTION IS A SIGNIFICANT CHARACTERISTIC OF THE ECONOMY OF THE COMMUNITY OR AREA;]

* Sec. 7. Section 1 of this Act and AS 16.05.940(28) are repealed.

* Sec. 8. Sections 1 - 4 of this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 9. Sections 5 - 7 of this Act take effect ^{March 31} ~~January 1~~, 1986."

INTRODUCTION OF BILLS (House)

HB 286. (cont'd)

require the Commissioner of Natural Resources to ensure practical access to the parcel. A homestead permit holder would be required to submit an aliquot parts description in order to receive patent to the land.

Would repeal language in current law that allows the Director of the Division of Lands to waive monumentation of all individual section corner positions and substitute an official control survey with control points being monumented and shown on control survey plats approved by the state. Repeals AS 38.09.040(b): "If the commissioner determines that a permit holder has made a good faith effort to obtain a plat of survey, the commissioner may extend the time required for completion of the plat of survey for not more than three years after the issuance of the permit." Does not provide effective date.

Not. Rep. Koponen described aliquot parts as the process of subdividing any parcel of land in equal parts and he said that aliquot parts lines are also used to signify right-of-ways. He said that traditionally land was subdivided into equal areas called townships, then into equal areas called sections.

Introduced March 13 and referred to Resources, Finance.

Golden Valley
Royalty Sale
(approving &
ratifying)

HOUSE BILL NO. 287. by the Rules Committee by Request of the Governor. Approves and ratifies the sale of Prudhoe Bay royalty oil by the State of Alaska to the Golden Valley Electric Association. Identical to SB 232, page 430. Takes effect immediately.

Introduced March 13 and referred to the House Special Committee on Oil and Gas, Resources and Finance.

Subsistence
Laws
(amending)

HOUSE BILL NO. 288. by the Rules Committee by request of the Governor. See Senate Bill No. 231, page 428, identical.

Introduced March 13 and referred to Resources and Judiciary.

Teachers Tenure
Rights,
Evaluations &
RIF's

HOUSE BILL NO. 289. by Rep. Fuller. See Senate Bill 230, page 428, identical.

Introduced March 13 and referred to Health, Education & Social Services, Finance.

Bd. of Barbers
& Hairdressers
(extending)

HOUSE BILL NO. 290. by Reps. Taylor and Sund. Would extend the Board of Barbers and Hairdressers to June 30, 1989 (currently set to expire June 30, 1984). Also see SB 218, page 390 - extends Board among other things. Provides Act takes effect immediately.

Introduced March 13 and referred to Labor & Commerce, Finance.

COMMITTEE-REPORTS (House)(cont'd)

Student Loans
(revising)

HOUSE-BILL-NO.-185, (see pages 244;418;500). Reported back to the House April 18 by Finance recommending it do pass. Concurring: Adams (Chair), Ringstad, Duncan, Larson, Pourchot, Uehling, Rieger, Binkley and Cotten. Not concurring: Szymanski and Frank have no recommendation. To Rules.

Child Care in
State Bldgs.

HOUSE-BILL-NO.-262, (see page 403). Reported back to the House April 15 from State Affairs with a majority of the committee recommending it be replaced with a State Affairs CS and that it do pass. Concurring: Hurley (chair), Collins, M.M. Miller, Navarre and Boucher. Cato and Jenkins had no recommendation. To Finance.

The State Affairs adds a new section stating the law would apply only to buildings for which construction, expansion, or major renovation plans are developed on or after the law takes effect, and buildings for which construction, expansion or major renovation plans have been developed, but have not begun before the law takes effect. Also states the requirements for child care centers do not apply to a leased building if it cannot meet or reasonably be renovated.

Golden Valley
Royalty Sale
(approving &
ratifying)

HOUSE-BILL-NO. 287, (see pages 450;630). Reported back to the House April 15 from Resources with a majority of the committee recommending do pass. Concurring: Shultz (co-chair), Herrmann, Wallis, M.W. Miller and Sund. Thompson recommended do not pass. Jenkins and Pearce had no recommendation. To Finance.

Subsistence
Laws
(amending)

HOUSE-BILL-NO. 288, (see page 450). Reported back to the House April 15 from Resources recommending it be replaced with a substitute and reporting it back as follows: Herrmann (co-chair), Cato, Thompson, Sund and Wallis recommended do pass. M.W. Miller and Jenkins recommended do not pass. Pearce signed do not pass without amendment. Shultz signed do not pass unless amended. To Judiciary.

The Resources committee attached a letter of intent which states:

"The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal and family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities and rural areas in Alaska is significantly dependent participation by the residents of these communities in the taking of fish stocks and game populations for personal and family consumption. Further, the Legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries

COMMITTEE REPORTS (House)(cont'd)

HB-288 (cont'd)

and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;
- (5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;
- (6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;
- (7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and
- (8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

This legislation establishes that the commercial sale of fish and game taken for personal and family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal and family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks."

The Resources substitute changes the definition of "subsistence uses" under AS 16.05.940(23) [definition section for AS 16.05 - AS 16.40: Fish and Game Code (16.05), Fisheries and Fishing Regulations (16.10), Fisheries Experimental Laboratory (16.15), Conservation and Protection of Alaskan Wildlife (16.20), Stocking of Public Lands (16.25), Destruction of Big Game Animals and Wild

Letter of Intent for CSHB 288 (Jud)
an act relating to the taking of fish and game for subsistence and
personal use
by the House Rules Committee
5/2/85

The purpose of this bill is to authorize the Alaska Board of Fisheries and the Alaska Board of Game to adopt regulations identifying "subsistence uses" of fish stocks and game populations as the boards did from May 30, 1982 until February 22, 1985.

Pursuant to this bill the boards will limit the identification of "subsistence uses" of fish stocks and game populations to the taking of such stocks and populations by Alaska residents who are domiciled in rural communities and rural areas in which the taking of fish stocks or game populations for personal or family consumption is a significant characteristic of the economy of the community or area, as determined by the boards.

This limitation of the definition of "subsistence uses" recognizes that Alaska is unique, and unlike any of the other forty-nine states, the economy of many rural communities and rural areas in Alaska is significantly dependent upon participation by the residents of these communities in the taking of fish stocks and game populations for personal or family consumption. Further, the Legislature finds that the general health and welfare of these citizens is significantly tied to their participation in these activities.

The boards will be authorized to adopt regulations for identifying customary and traditional uses by Alaska residents of those rural communities and rural areas. It is the intent of the Legislature to preserve the approach to implementing the state's subsistence law embodied in 5 AAC 99.010, (as adopted by the Joint Boards of Fisheries and Game on May 30, 1982), for identifying subsistence uses on a community or area basis.

The Legislature finds that implementing the subsistence law is consistent with the intent of the definition of subsistence hunting and fishing and personal use fishing contained in House Bill 288 when criteria such as those outlined below are used to identify customary and traditional uses of the resource:

- (1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;
- (2) a use pattern recurring in specific seasons of each year;
- (3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;
- (4) the consistent harvest and use of fish or game which is near, or reasonably accessible from, the user's residence;

Letter of Intent for CSHB 288 (Jud)
by the House Rules Committee (Continued)

(5) the means of handling, preparing, preserving, and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving; customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community may include specific villages or towns, with a historical preponderance of subsistence users, and encompasses individuals, families, or groups who in fact meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social, and nutritional elements of the subsistence user's life.

This legislation establishes that the commercial sale of fish and game taken for personal or family consumption is prohibited, but does not preclude the sale of handicraft articles made from the non-edible by products taken for such uses. Accordingly, the Legislature intends that barter, sharing and customary trade of fish or game taken for personal or family consumption be of a non-commercial nature. This restriction however, does not apply to the existing limited sale of animal furs by subsistence users of the resource.

The bill also establishes a statutory definition of "personal use fishing." Although sport, commercial and personal use fishing are not afforded a statutory priority over each other, the inclusion of a definition of "personal use" is to indicate that the intent of the Legislature is to delegate to the Alaska Board of Fisheries adequate regulatory authority to provide all persons engaged in sport, commercial, and personal use fishing a reasonable opportunity to participate in the harvest of Alaska's fish stocks.

The Legislature recognizes that personal use of fish and wildlife is a valuable part of Alaskan life. Therefore, it is the intent of the Legislature that the Board of Fisheries provides fairly and adequately for these personal uses. For example, the Board must provide a fair and adequate allocation for the fishery at Chitina, on the Copper River, in which Fairbanks residents and other Alaskans participate using dipnets and fishwheels to harvest salmon for personal use.

Letter of Intent for CSHB 288 (Jud)
by the House Rules Committee (Continued)

Mike W. Miller, Chairman
House Rules Committee
5/2/85

5/2/85

BY

IN THE HOUSE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents, who take fish stocks and game populations for non-commercial purposes, use such stocks and populations primarily for food for personal or family consumption;

(2) The taking of fish stocks and game populations by such residents for personal or family consumption is important to the health, safety and general wellbeing of all Alaska residents;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant

characteristic of the economy of many Alaskan communities and areas because it is cost effective and important to the health safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding two new sections to read:

(12) regulating selected stocks in selected nonrural waters for catch and release sport fishing and regulating selected stocks in selected waters in rural areas for subsistence and catch and release sport fishing.

(13) regulating commercial, sport, personal use, and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuance of subsistence, the Board of Fisheries shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for sport or personal use fishing for such stock by Alaska residents, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such

population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the stock as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

(10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis or with the continuance of subsistence, the Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of such population by Alaska residents for personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary, traditional and cost effective taking and use by Alaska residents, in rural areas, of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a historic hunting or fishing area associated with a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

DRAFT LETTER OF INTENT

4/30/85

CS for HB 288(Rule -)

Applies to

5/2/85 draft also

It is the intent of the legislature in enacting this legislation, to comply with the spirit and intent of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article 1, Section 1 and Article VIII, Section 15 of the Alaska Constitution.

This legislation maintains subsistence use as a priority use of Alaska's wild, renewable resources in accordance with ANILCA, and establishes a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations based on the sustained yield principle and to reasonable regulation ~~of~~ ^{of} seasons, catch or bag limits, and methods and means without requiring that ~~uses of~~ lower priority ^{uses} be eliminated first.

^{where}
If the harvestable surplus of a fish stock or game population is not large enough to provide a reasonable opportunity for all subsistence uses, individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Why this category?
This is a second level of subsistence.

Subsistence uses in rural Alaska by Alaska residents who, in a cost effective manner, use, including consume, their take in the same rural area it was taken, have the next highest priority of use. It is intended that the boards shall have the authority to determine cost effectiveness, considering methods and means of harvest characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.

The boards must establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of fish stocks and game populations for personal use or personal or family consumption, unless such regulations would jeopardize or interfere with the maintenance of a fish stock or game population or with the continuance of subsistence. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial, sport, personal use and subsistence uses, while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for the full range of beneficial uses.

Kie - This "mandatory authorization" will sink this legislation, at best it is confusing at worst it gives impression of doubletalk.

5/2/85

BY

IN THE HOUSE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents, who take fish stocks and game populations for non-commercial purposes, use such stocks and populations primarily for food for personal or family consumption;

(2) The taking of fish stocks and game populations by such residents for personal or family consumption is important to the health, safety and general wellbeing of all Alaska residents;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant

hard to substantiate?

characteristic of the economy of many Alaskan communities and areas because it is cost effective and important to the health, safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding two new sections to read:

(12) regulating selected stocks ~~[in selected nonrural waters]~~ for catch and release sport fishing and regulating selected stocks ~~[in selected waters in rural areas]~~ for subsistence and catch and release sport fishing.

"nonrural waters" is a worse con of worms than all that have gone before.

"selected stocks" in above should achieve your intent. To say, "selected stocks in selected waters" is probably redundant.

(13) regulating commercial, sport, personal use, and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuance of subsistence, the Board of Fisheries shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for sport or personal use fishing ~~for such stock~~ by Alaska residents, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulation^{of} ~~of~~ seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks^{in historic quantities from specific stocks} for subsistence uses unless the board determines that ^{such use} ~~adoption of such regulations~~ will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. ^{Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulation^{of} ~~of~~ seasons, bag limits, and methods and means.}

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such

population for subsistence uses, the board shall adopt regulations that establish ~~restrictions and limitations on the taking of such population~~ ^{such harvests} ~~for subsistence uses~~ on the basis of the following criteria:

- (1) customary and direct dependence upon the stock as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

- (10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis or with the continuance of subsistence, The Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of ^{game} ~~such~~ population by Alaska residents for personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations ^{in historic quantities from specific populations} for subsistence uses unless the board determines that ^{such harvests} ~~adoption of such regulations~~ will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary, traditional and cost effective taking and use by Alaska residents, in rural areas, of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a historic hunting or fishing area associated with a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking ~~of~~, or attempting to take, for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other ~~gear~~ means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

DRAFT LETTER OF INTENT

4/30/85

CS for HB 288(Rules)

It is the intent of the legislature, in enacting this legislation, to comply with the spirit and intent of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article I, Section 1 and Article VIII, Section 15 of the Alaska Constitution.

This legislation maintains subsistence use as a priority use of Alaska's wild, renewable resources in accordance with ANILCA, and establishes a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations based on the sustained yield principle and to reasonable regulations as to seasons, catch or bag limits, and methods and means, without requiring that uses of lower priority be eliminated first.

If the harvestable surplus of a fish stock or game population is not large enough to provide a reasonable opportunity for all subsistence uses, individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Subsistence uses in rural Alaska by Alaska residents who, in a cost effective manner, use, including consume, their take in the same rural area it was taken, have the next highest priority of use. It is intended that the boards shall have the authority to determine cost effectiveness, considering methods and means of harvest characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.

The boards must establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of fish stocks and game populations for personal use or personal or family consumption, unless such regulations would jeopardize or interfere with the maintenance of a fish stock or game population or with the continuance of subsistence. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial, sport, personal use and subsistence uses, while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for the full range of beneficial uses.

4/30/85

BY

IN THE HOUSE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for subsistence and personal use; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents, who take fish stocks and game populations for non-commercial purposes, use such stocks and populations primarily for food for personal and family consumption;

(2) The taking of fish stocks and game populations by such residents for personal or family consumption is important to the health, safety and general wellbeing of all Alaska residents;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant

characteristic of the economy of many Alaskan communities and areas because it is cost effective and important to the health safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding a new section to read:

(12) regulating commercial, sport, personal use, sport and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis or with the continuance of subsistence, the Board of Fisheries shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of such stock by Alaska residents for

personal use or personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the stock as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

(10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Unless such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis or with the continuance of subsistence, the Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of such population by Alaska residents for personal or family consumption, and shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) 1. Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking

of game populations for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary, traditional and cost effective taking and use by Alaska residents, in rural areas, of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish

and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a historic hunting or fishing area associated with a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of, or attempting to take, for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter,

with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

4/29/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations primarily for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal or family consumption is a priority use of stocks and populations;

(3) The customary and traditional use of local fish stocks and game populations in rural areas of Alaska is a significant characteristic of the economy of many Alaskan communities and areas because it is cost effective and essential to the health safety and general well being of Alaskans.

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

*Section 2. AS 16.05.251 (a) (6) is amended to read:

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

*Section 3. AS 16.05.251 (a) is amended by adding a new section to read:

(12) regulating commercial, sport, personal use, sport and subsistence fishing

*Section 4. AS 16.05.251 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, the Board of Fishery shall establish a mandatory authorization

that ensures all Alaskans a reasonable opportunity for the taking of such stock by Alaska residents for personal and family consumption, and the Board of Fisheries shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, catch limits, and methods and means.

*Sec. 5. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained yield basis. Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the stock as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

*Section 6. AS 16.05.255 (a) is amended by adding a new section to read:

(10) regulating sport and subsistence hunts;

*Section 7. AS 16.05.255 (b) is repealed and reenacted to read:

(b) Whenever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the Board of Game shall establish a mandatory authorization that ensures all Alaskans a reasonable opportunity for the taking of such population by Alaska residents for personal and family consumption, and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62). Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

*Sec. 8. AS 16. 05. 251 is amended by inserting new subsections to read and relettering following sections accordingly:

(c) The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a game population on a sustained yield basis. Whenever it is necessary to further restrict the taking of a game population to assure the maintenance of such population on a sustained yield basis, or to assure the continuation of subsistence uses of such population, subsistence uses shall be the priority use. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the population as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence hunting authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

Sec. 9. AS 16.05.940 (23) is amended to read:

(23) "subsistence uses" means the customary, traditional and cost effective taking and use by Alaska residents in rural areas of wild, renewable resources for direct personal or family consumption as

food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a historic hunting or fishing area associated with a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "personal use fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska

residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

CS for HB 288(Rules)

It is the intent of the legislature in enacting this legislation, to comply with the spirit and intent of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article 1, Section 1 and Article VIII, Section 15 of the Alaska Constitution, ~~which might be caused by a reproduction in this legislation of the language of Title VIII of ANILCA.~~

This legislation maintains [the two tiers of] subsistence use as a priority use of ~~the~~ Alaska's wild, renewable resources in accordance with ANILCA, and establishes ^{two tier} a system of preferences of beneficial uses of these resources. All uses are subject at all times to limitations ^{to ensure} [based on the] sustained yield, [principle] ^{including} [and to] reasonable regulations as to seasons, catch or bag limits, and methods and means without requiring ~~the limitation of~~ ^{reasonable limitations} uses of lower priority. *1st be restricted or eliminated.*

Paragraph ANILCA language

Subsistence uses, in times of ^{relative} resource shortages, by individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their [livelihood] and who lack available alternative resources have the highest, [and if necessary exclusive,] priority of use.

could this argue for commercial fishing priority in rural area? It is not quite the same as food/sustenance.

> ↑

Subsistence uses in rural Alaska by Alaska residents ^{who in a cost effective} using reasonably ^{Rural} economic means, ~~who~~ use, including consume, their take in the same ^{Area}

it was taken, have the next highest priority of use.

~~The authority to determine cost effectiveness considering methods of means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.~~ ^{The Boards have} ~~to be interpreted as traditional hunting or fishing area for game unit or subunit as found appropriate by the Boards of Fish and Game.~~ ^{area is intended}

Whenever it is necessary to restrict the taking of a fish stock or game population, the use and taking of fish stocks and game populations by Alaska residents for personal use or for personal ^{or} family consumption, whether by sport or personal use methods or means, is the highest priority of use after subsistence uses. This priority is intended to give Alaska residents a reasonable opportunity for the taking of fish and game populations and is not an absolute priority over commercial uses. In making allocation decisions, the Boards of Fish and Game shall continue to strive to ensure the health and prosperity of commercial ^{personal and subsistence} uses while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for ^{the full range of uses} personal use or personal or family consumption.

^{if necessary} ^{other than the I subsistence uses in time of severe resource shortage,} No priority is intended to be absolute but only as a means to provide a reasonable opportunity for harvest.

It is the intent of the Leg to ~~to~~ establish that the Boards shall establish a mandatory ^{authorization} that ensures all Alaskans a reasonable opportunity ~~for~~ for the taking of fish stocks and game populations.

murky

methods of means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances.

4/25/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations ^{primarily} for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of stocks and populations;

Section 1 Findings:

(3) This paragraph is exceptionally ambiguous.

Recommend: ~~Complete amendment.~~ Delete ~~as is~~ and insert:

(3) The customary and traditional use of local fish stock and game population in rural Alaska is a significant characteristic of the economy of many Alaskan communities because it is ^{cost effective and} essential to the health, safety and general well being of those Alaskans.

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents in rural areas for personal and family consumption by reasonable economic means is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing; and

(5) commercial fishermen often use a portion of their catch for personal use.

16.05. 251 a (6) ~~add~~ personal use ~~add~~ *new section 12*
add personal use from draft #2

*Section 2. AS 16.05.251 (b) is repealed and reenacted to read:

Letter of Intent
Handwritten Substitution

~~stock~~ (b) Whenever it is necessary to restrict the taking of ~~fish~~ *stock* population to assure the maintenance of such ~~population~~ *stock* on a ~~sustained-yield~~ *reasonable opportunity* basis, ~~the taking of such population~~ *stock* by Alaska residents for personal and family consumption, shall be ~~the~~ *9* priority use of the harvestable surplus of such ~~population~~ *stock* and the Board of Fisheries shall adopt regulations ~~authorizing~~ *providing a reasonable opportunity for* such taking in accordance with the Administrative Procedure Act (AS 44.62). *Reasonable Regs*

*Sec. 3. AS 16. 05. 251 is amended by adding new subsections to read:

Insert 1st sentence from (d) draft II
1st sentence from (e) draft II

(c) If the harvestable surplus of a fish population is not large enough to provide a reasonable opportunity for the taking of such ~~population~~ ^{stock} by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, ~~The~~ ^{The} Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of ~~such population~~ ^{fish stocks} for subsistence uses ~~a~~ ^{priority} over other ~~consumptive~~ ^{stock} uses of such ~~population~~. ^{stock} Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

~~(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or~~

~~proposal, or 30 days after receiving the request for an explanation,
whichever is later.~~

(b)
Sec. 4. AS 16.05.255 is repealed and reenacted to read:

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

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

~~(2) establishing open and closed seasons and area for
the taking of game;~~

~~(3) establishing the means and methods employed in the
pursuit, capture and transport of game;~~

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

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

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

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

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

~~(9) establishing the times and dates during which the
issuance of game licenses, permits and registrations and the transfer of~~

permits and registrations between registration areas and game management units or subunits is allowed.

(b) Wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be ⁹ ~~the~~ priority use~~s~~ of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the

Administrative Procedure Act (AS 44.62)

Reasonable Regulations
AS 16.05.255 is amended by adding new sections ~~and~~ to read:

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

re number following sections accordingly

existing language
(e) ~~If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.~~

repealed and re-enacted
Sec. 4. AS 16.05.940 (23) is ~~amended~~ to read:

and cost effective
(23) "subsistence uses" means the customary and traditional ~~means~~ *means* taking and use by Alaska residents in rural areas of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

historic hunting or fishing area associated with a
(a) "rural area" means a ~~community~~ *community* or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

1
Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940. ~~(22)~~ is amended by adding a new paragraph to read:

"personal use fishing"
(28) "~~resident-net fishing~~" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

The use and taking of fish stocks and game populations by Alaska residents for personal use or for personal and family consumption, whether by sport or personal use methods or means, is the third highest priority of use. This priority is intended to give Alaska residents a reasonable opportunity for the taking of fish and game populations and is not an absolute priority over commercial uses. In making allocation decisions, the Boards of Fish and Game shall strive to ensure the health and prosperity of commercial uses while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for personal use or personal or family consumption.

It is the legislature's intention that in times of normal resource availability that all uses exist. w/ - - -

Clear reference needed that priority uses are associated with various tiers or category. There are not classifications w/in a tier or category.

LETTER OF INTENT CS HB 288(RLS)

IT IS THE INTENT OF THE LEGISLATURE THAT FOR PURPOSES OF MANAGING THE STATE'S FISH AND GAME RESOURCES THERE EXIST FOUR TIERS FOR DETERMINING THE ALLOCATION LEVELS OF FISH AND GAME THROUGHOUT THE STATE.

THE FOUR ALLOWABLE TIERS ARE: 1. "ABOVE SUSTAINED YIELD" WHICH ALL CATEGORIES: COMMERCIAL FISHERIES, SUBSISTENCE, NON-SUBSISTENCE, RESIDENT OR NON-RESIDENT RECEIVE FULL ALLOCATION FROM BOARD OF FISH OR GAME. 2. "PERSONAL AND FAMILY CONSUMPTIVE USE": ALL PERSONS WHO HUNT AND FISH AND EAT THE RESOURCE RECEIVE PRIORITY USE. 3. "SUBSISTENCE USERS": ALL SUBSISTENCE USERS WHO CONSUME THE RESOURCE WHERE THEY CATCH IT IN RURAL ALASKA AND MEET AN ECONOMIC MEANS TEST RECEIVE PRIORITY USE. 4. "ANILCA SUBSISTENCE USERS": ALL SUBSISTENCE USERS WHO MEET THE THREE ANILCA PROVISIONS FOR THE TAKING OF FISH AND GAME WHICH ARE A. CUSTOMARY AND DIRECT DEPENDENCE UPON THE RESOURCE AS THE MAINSTAY OF ONE'S LIVELIHOOD, B. LOCAL RESIDENCY AND C. AVAILABILITY OF ALTERNATIVE RESOURCES RECEIVE PRIORITY USE.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARDS OF FISH AND GAME USE A "REASONABLE OPPORTUNITY" METHOD TO PROVIDE ACCESS TO THE FISH AND GAME RESOURCE FOR EACH CLASS OF USER WITHIN A TIER LEVEL.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT WHEN THE BOARDS OF FISH AND GAME DETERMINE THE RESOURCE ALLOCATION AMOUNTS FOR EACH CATEGORY OF USER, TIMELY ACCESS TO THE RESOURCE SHALL BE PROVIDED TO EACH CATEGORY OF USER REGARDLESS OF THE RESOURCE ALLOCATION AMOUNTS TO THE OTHER CATEGORY OF USERS.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT SUBSISTENCE USE AS DEFINED IN EACH CATEGORY CONTINUES TO BE THE TOP PRIORITY FOR THE TAKING OF FISH AND GAME.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT THE BOARD MAY CONSIDER USING A PRE-REGISTRATION SYSTEM TO DETERMINE THE NUMBER OF POTENTIAL USERS IN A CATEGORY. HOWEVER, NO PRE-REGISTRATION SYSTEM MAY BE USED THAT WILL PRECLUDE EXISTING SUBSISTENCE USERS.

FURTHER, IT IS THE INTENT OF THE LEGISLATURE THAT NON-RESIDENTS RECEIVE THE LOWEST PRIORITY IN ANY RESOURCE ALLOCATION SCHEME.

4/25/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption by reasonable economic means constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

(5) (commercial fishermen often use a portion of their catch for personal use;)

Sec. 2. AS 16.05.251 is repealed and reenacted 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;

(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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provision of subsection (d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

- (1) the history of each personal use, sport, and commercial fishery;
- (2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing Alaska residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fish stock and other resources;
- (5) the importance of each fishery to the economy of the State of Alaska;
- (6) the importance of each fishery to the economy of the local area in which the fishery is located;
- (7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors]

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained-yield basis. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e) Whenever it is necessary to further restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(f) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in

addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 3. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(d) If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means.

(e) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

(23) "subsistence uses" means the customary and traditional taking and use by Alaska residents in rural areas of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the noncommercial customary trade, barter, or sharing for personal or family

consumption. Wild and renewable resources taken for subsistence uses must be used in the same area in which they are taken. For the purposes of this paragraph,

(a) "rural area" means a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, pot, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS
01.10.070(c).

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.


Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

No  Amends the definition of "subsistence uses" to indicate that the identification of such uses is ~~limited to the taking of fish and game by residents domiciled in a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area.~~

This section also incorporates a statutory definition of "resident net fishing" defined as taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption in a cost-effective manner constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

Sec. 2. AS 16.05.251 is repealed and reenacted 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;

(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, resident net 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) ~~resident net, sport, and commercial fishing.~~

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

← (c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

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

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

(4) the availability of alternative fish stock and other resources;

(5) the importance of each fishery to the economy of the State of Alaska;

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons; and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained-yield basis. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means.

(e)

Whenever it is necessary to ^{Further} restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. ^(e) If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

- Reasonable regs still apply.

(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 3. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means. If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and

limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

⁽³⁾ ~~Responsible~~ ^{res} availability of alternative resources.

(d) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

~~Paragraph~~ (23) "subsistence uses" means the ^{taking and use} ~~customary and traditional~~ ^{in rural areas} uses by ~~Alaska residents~~ of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of edible by-products of fish and wildlife resources taken for personal or family consumption, ^{non commercial} and for the ~~customary trade~~, barter, or sharing for personal or family consumption; ~~for the purposes of this~~

~~Paragraph~~ ^{for purposes of this section wild and renewable resources} "rural Alaska residents" means persons domiciled in a ^{rural areas means} community or area ^{must be used in the same area in which} in which the taking of fish stocks and game ^{are taken. R}

populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

suggested
amendments

PS 4
PS 5
PS 7
PS 8
PS 9

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.
Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area.

This section also incorporates a statutory definition of "resident net fishing" defined as taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption in a cost-effective manner constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

Sec. 2. AS 16.05.251 is repealed and reenacted 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;

(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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among [persons engaged in] resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

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

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

(4) the availability of alternative fish stock and other resources;

(5) the importance of each fishery to the economy of the State of Alaska;

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of ^{subsistence} fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained-yield basis. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means. Whenever it is necessary ^{to} ~~to~~ ^{further} restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 3. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) wherever it is necessary to restrict the taking of a ^{subistence} game population ~~to~~ ^{beyond reasonable regulations on bag limits, seasons and methods of taking} assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a ^{subistence} game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means. If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and

limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(d) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

(23) "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ^{non commercial} trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) "rural Alaska residents" means persons domiciled in a community or area in which the taking of fish stocks and game

populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, ^{pot,} long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Subsistence game (fish) species are ~~defined~~ those species identified by the Board in regulation as subsistence species. The identification shall be by area or sub area and shall be based on findings of traditional use and lack of available alternative resources.

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing †

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

No
Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area.

This section also incorporates a statutory definition of "resident net fishing" defined as taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption ^{by reasonably economic means} in a cost-effective manner constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

Sec. 2. AS 16.05.251 is repealed and reenacted 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;

(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, resident net 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) resident net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), resident net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

← (c) In allocating access to fish stocks among persons engaged in resident net, sport, and commercial fishing, the Board shall consider the following factors:

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

(2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future:

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

(4) the availability of alternative fish stock and other resources;

(5) the importance of each fishery to the economy of the State of Alaska;

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines that adoption of such regulations will jeopardize or interfere with the maintenance of a fish stock on a sustained-yield basis. Subsistence fishing authorized pursuant to this subsection shall be subject to reasonable regulation as to seasons, bag limits, and methods and means. Whenever it is necessary to ^{Further} restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

(e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request ^{from} ~~from~~ the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 3. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

(b) wherever it is necessary to restrict the taking of a game population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means. If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and

limitations on the taking of such population for subsistence uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

(d) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

(23) "subsistence uses" means the ^{taking and use} ~~customary and traditional~~ ^{in rural areas} ~~uses by rural Alaska residents~~ of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of edible by-products of fish and wildlife resources taken for personal or family consumption, ~~and for the customary trade~~ ^{delete} barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) "rural Alaska residents" means persons domiciled in a community or area in which the taking of fish stocks and game

populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

(28) "resident net fishing" means the taking, fishing for, possession of finfish, shellfish, o. other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other similar means defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Findings Comm. Fish
eat their fish also
that parting should remain
a priority

4-19-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.-
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and resident net fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and resident net fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for resident net, sport, and commercial fishing.

Subsection (d) is basically the same as existing law but includes language authorizing the Board to adopt reasonable regulations as to seasons, bag limits, and methods and means.

Subsection (e) is basically the same as existing law.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents. New language added to subsection (c) authorizes the Board to adopt reasonable regulation of subsistence use including setting seasons, bag limits, and methods and means.
Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to indicate that the identification of such uses is limited to the taking of fish and game by residents domiciled in a community or area in which the taking of fish stocks and game populations for personal and family consumption is a significant characteristic of the economy of the community or area.

This section also incorporates a statutory definition of "resident net fishing" defined as taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, [with gill or dip net, seine, fish wheel, long line, or other similar] means defined by the Board of Fisheries.

The section also amends the definition of "sport fishing" to include fishing with a rod and reel for personal and family consumption.

4/19/85

IN THE SENATE

Kie - comments aimed at clarifying & simplifying but ignores the "rural" issue. ~~Common~~ suggestion in context of subsistence being a component ^{BY} of personal use & set at historic level. 2

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

as hard to define
as "rural".
Will include group
charters of aircraft,
personal aircraft,
when it is only
transportation available,
tracked vehicles,
off-road vehicles,
boats on motor
etc.

(?) because of their local proximity to fish stocks and game populations, their dependence upon such stocks and populations as a mainstay of livelihood, and the lack of alternative food resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption by reasonably economic means in a cost-effective manner constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

Sec. 2. AS 16.05.251 is repealed and reenacted 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;

(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, resident net 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) resident ^{personal use} net, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection

(d), ^{personal use} resident ~~[net, sport]~~ and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks. Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among persons engaged in resident ^{personal use} ~~[net, sport]~~ and commercial fishing, the Board shall consider the following factors:

- (1) the history of each personal use, ~~sport~~, and commercial fishery;
- (2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future;
- (3) the importance of each fishery for providing Alaska residents the opportunity to obtain fish for personal and family consumption;
- (4) the availability of alternative fish stock and other resources;
- (5) the importance of each fishery to the economy of the State of Alaska;
- (6) the importance of each fishery to the economy of the local area in which the fishery is located;
- (7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons; and
- (3) other relevant factors

The Boards need to establish better records of discussions leading to their decisions. However, these criteria can be debated and infinity of will nearly always have a point that may be litigated. Kind of a catch-22 in that you ~~must~~ delineate further specifics for each factor the process becomes infinitely more cumbersome. For example, establishing the "importance" of each fishery in 3, 5, 6, 7, could entail a major economic analysis for each point.

~~not to be~~
~~part of~~

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) ^{at historic levels of aggregate annual harvest of specified stocks,} permitting the taking of fish stocks for subsistence uses, unless the board determines that ~~adoption of such regulations~~ ^{will} jeopardize or interfere with the maintenance of a fish stock on a sustained-yield basis. Subsistence fishing authorized pursuant to this subsection shall be regulated by ~~subject to~~ reasonable regulation ~~as to~~ seasons, bag limits, and methods and means. Whenever it is necessary to ^{further} restrict the taking of a fish stock to assure the maintenance of such stock on a sustained-yield basis, or to assure the continuation of subsistence uses of such stock, subsistence uses shall be the priority use. If the harvestable surplus of such stock is not large enough to provide a reasonable opportunity for the taking of such stock for subsistence uses ^{at historic levels}, the board shall adopt regulations that establish restrictions and limitations on the taking of such stock for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

↙ (e) If the Board of Fisheries denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or

The Boards already do this & I believe there is some existing regulatory requirement in this regard. This new statute does not create a problem, but may be somewhat redundant.

proposal, or 30 days after receiving the request for an explanation, whichever is later.

Sec. 3. AS 16.05.255 is repealed and reenacted to read:

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

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the cause and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to

promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of permits and registrations between registration areas and game management units or subunits is allowed.

Tried to bring into line with first section

The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of game populations for subsistence uses, at historic levels of aggregate, sustained yield basis, the taking of such population by Alaska residents annual, subsistence harvests of specified populations, unless such uses for personal and family consumption, shall be the priority uses of the will jeopardize the maintenance of a game population on a sustained-yield harvestable surplus of such population and the Board of Game shall adopt basis. Subsistence use authorized by this subsection shall be the priority regulations authorizing such taking in accordance with the use & shall be regulated by seasons, bag limits, & methods & means. Administrative Procedure Act (AS 44.62)

(c) If the harvestable surplus of a game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. Takings authorized pursuant to this subsection shall be subject to reasonable regulations as to seasons, bag limits, and methods and means. If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and

delete

limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

(d) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

(23) "subsistence uses" means the customary and traditional ^{taking of} uses by rural Alaska residents ^{in rural areas} of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of ~~inedible~~ by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ^{no commercial} trade~~d~~ barter, or sharing for personal or family consumption; for the purposes of this paragraph,

(a) ^{AS 16.05.940} "rural Alaska residents" means ~~persons domiciled in a~~ community or area in which the taking of fish stocks and game

populations for personal and family consumption is a significant characteristic of the economy of the community or area;

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 (21) is amended to read:

(21) "sport fishing" means the taking of or attempting to take for personal use or for personal or family consumption, and not for sale or barter, any fresh water, marine, or anadromous fish by ^{any} ~~hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other~~ means ^{authorized} defined by the Board of Fisheries."

Sec. 6. AS 16.05.940.(28) is amended by adding a new paragraph to read:

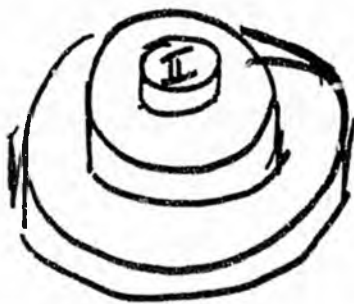
(28) "^{personal use fishing} ~~resident net fishing~~" means the ~~taking, fishing for,~~ possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal or family consumption and not for sale or barter, ~~[with gill or dip net, seine, fish wheel, long line, or other similar]~~ ^{by any} ~~means~~ ^{authorized} defined by the Board of Fisheries.

Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

SB 83

Greenmain

- 2 pts at entry
- ch in at pt at end
- post 500 a bond
- 30 days released



4-13-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and personal use fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and personal use fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

all Alaska residents for personal use is a priority use of such stocks.

Subsection (c) delineates the factors to be considered by the board in allocating resources for personal use, sport, and commercial fishing.

Subsections (d) and (e) are basically the same as existing law, although subsection (d) has been tightened in a nonsubstantive manner to give a clearer indication to the board as to how the regulatory system is to work.

Section 3. Hunting

Subsection (a) is the same as existing law.

Subsection (b) establishes a resident hunting priority for all Alaskans to hunt for personal and family consumption.

Subsection (c) is the existing priority for subsistence uses of game; the subsistence priority only comes into play in situations in which the harvestable surplus of a particular game population is not large enough to safely sustain a harvest by all Alaska residents.

Subsection (d) is existing law.

(The two tier resident hunting priority established by subsections (b) and (c) maintains the Madison decision as it applies to hunting.)

Section 4. Definitions

Amends the definition of "subsistence uses" to define the phrase "customary and traditional uses" according to the criteria set forth in 5 AAC 99.010. (This is a suggestion that is incorporated in the draft bill developed by Anchorage sport fishermen. However, unlike the sport fishing bill that merely references the regulation, this draft sets forth the criteria in the bill). Under the revised definition, subsistence applies essentially to residents of rural communities.

The section also incorporates a statutory definition of "personal use fishing" that includes the use of hook and line among other means.

Note: The bill draft includes additions to existing statutes but does not indicate language deleted.

BY _____

IN THE SENATE

A bill

For an Act entitled: "An Act relating to the taking of fish and game for personal and subsistence uses; and providing for an effective date."

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

Section 1. FINDINGS. The legislature finds that:

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations ^{primarily} for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because ^{the} ~~of~~ their local proximity to fish stocks and game populations, ^{the} ~~their~~ dependence upon such stocks and populations as a

NEW

Alaska Residents who harvest and use these resources in a cost-effective manner in areas where alternative resources are unavailable shall have the highest preference for their harvest and use.

mainstay of livelihood, and the lack of alternative [food] resources, the taking of fish stocks and game populations for personal and family consumption by Alaska residents domiciled in communities and areas in which the taking of fish stocks and game populations for personal and family consumption constitutes a significant characteristic of the economy of the community or area is essential to the health, safety, and general well being of such residents;

NEW

Delete
insert

(4) the taking of fish stocks and game populations for commercial, recreational and other uses by both residents and nonresidents is also important to the economy of the State of Alaska and particularly to the economies of communities dependent upon commercial fishing.

Sec. 2. AS 16.05.251 is repealed and reenacted to read:

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

OLD

(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;

(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, personal use 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) personal use, sport, and commercial fishing.

(b) Regulations adopted pursuant to subsection (a) of this section shall assure that, consistent with the provisions of subsection (d), personal use, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish stocks.

Such regulations shall recognize that regardless of the type of gear used in each fishery, the taking of fish stocks by Alaska residents for personal and family consumption is a priority use of such stocks.

(c) In allocating access to fish stocks among [persons engaged in] personal use, sport, and commercial fishing, the Board shall consider the following factors:

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

(2) the number of Alaska residents and other persons who have participated in each fishery in the past and the number of such residents and persons who can reasonably be expected to participate in the future:

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

(4) the availability of alternative fish stock and other resources;

(5) the importance of each fishery to the economy of the State of Alaska;

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

(7) the importance of each fishery in providing recreational opportunities for Alaska residents and other persons: and

(8) other relevant factors

(d) The Board of Fisheries shall adopt regulations in accordance with Administrative Procedure Act (AS 44.62) permitting the taking of fish stocks for subsistence uses unless the board determines

Subsistence

NEW

REVISED

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

(2) establishing open and closed seasons and area for the taking of game;

(3) establishing the means and methods employed in the pursuit, capture and transport of game;

(4) setting quotas and bag limits on the taking of game;

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

(6) investigating and determining the extent and effect of predation and competition among game in the state, exercising control measures considered necessary to the resources of the state and designating game management units or parts of game management units in which bounties for predatory animals shall be paid;

(7) engaging in biological research, watershed and habitat improvement, and game management, protection, propagation and stocking;

(8) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote game research, management, education, and information and to train persons for game management;

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

(10) establishing the times and dates during which the issuance of game licenses, permits and registrations and the transfer of

OLD

OLD

permits and registrations between registration areas and game management units or subunits is allowed.

other than ~~customary~~ to ~~establish~~ ~~and~~ reasonable restrictions on bag limits, seasons and methods of taking

(b) wherever it is necessary to restrict the taking of a game

NEW

population to assure the maintenance of such population on a sustained-yield basis, the taking of such population by Alaska residents for personal and family consumption, shall be the priority uses of the harvestable surplus of such population and the Board of Game shall adopt regulations authorizing such taking in accordance with the Administrative Procedure Act (AS 44.62)

Restriction wording needs work



REVISED

(c) If the harvestable surplus of a ^{subistence} game population is not large enough to provide a reasonable opportunity for the taking of such population by Alaska residents pursuant to regulations adopted pursuant to subsections (a) and (b) of this section, the Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) that afford the taking of such population for subsistence uses a priority over other consumptive uses of such population. If the harvestable surplus of such population is not large enough to provide a reasonable opportunity for the taking of such population for subsistence uses, the board shall adopt regulations that establish restrictions and limitations on the taking of such population for subsistence uses on the basis of the following criteria:

- (1) customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

OLD

(d) If the Board of Game denies a petition or proposal to amend, adopt, or repeal a regulation, the board, upon receiving a

Any taking of game under this paragraph is subject to ~~wanted~~ ~~waste~~ ~~restrictions~~ ~~and~~ reasonable regulations regarding bag limits, seasons and methods of taking.

OLD

written request from the sponsor of the petition or proposal, shall in addition to the requirements of AS 44.62.230 provide a written explanation for the denial to the sponsor not later than 30 days after the board has officially met and denied the sponsor's petition or proposal, or 30 days after receiving the request for an explanation, whichever is later.

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

(23) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of edible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ^{non commercial} trade, barter, or sharing for personal or family consumption; for the purposes of this paragraph,

trade or barter

NEW

(a) "customary and traditional uses" means:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest that are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

in a cost effective manner as compared to available alternative resources
(4) the consistent harvest and use of fish stocks or game populations located near, or that are reasonably accessible from, the user's residence;

(5) a use carried out by persons domiciled in a [rural community or] rural area in which the taking of fish stocks and game populations for personal and family consumption *is a significant characteristic of the economy of the community or area;* *or traditional sharing*

[(6) the means of handling, preparing, preserving, and storing fish or game that has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(7) a use pattern that includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;]

[(8) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing, and gift-giving, customary trade may include limited exchanges for cash, but does not include significant commercial enterprises;]

[(9) a use pattern that includes reliance upon a wide diversity of fish stocks and game populations within an area, and that provides substantial economic, cultural, social, and nutritional benefits to persons engaged in such uses.]

(b) "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

Sec. 5. AS 16.05.940 is amended by adding a new paragraph to read:

(23) "personal use fishing" means the taking, fishing for, possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, ^{pots,} hook and line, or other similar means defined by the Board of Fisheries.

Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

Subsistence game species are defined

as: moose, caribou, deer and other species identified as subsistence species by particular area by the Board of Game based on findings of traditional use and lack of available alternative resources

Subsistence fish species are defined

as:

14-1107
Hein
4/24/85✓

1
2 IN THE SENATE

BY STURGULEWSKI

3 SENATE BILL NO.

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

7 For an Act entitled: "An Act relating to subsistence hunting and fishing;
8 and providing for an effective date."

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

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

11 (b) The Board of Fisheries shall adopt regulations in accordance
12 with the Administrative Procedure Act (AS 44.62, permitting the taking
13 of fish for subsistence uses unless the board determines, in accor-
14 dance with the Administrative Procedure Act, that adoption of the
15 regulations will jeopardize or interfere with the maintenance of fish
16 stocks on a sustained-yield basis. Whenever it is necessary to
17 restrict the taking of fish to assure the maintenance of fish stocks
18 on a sustained-yield basis, or to assure the continuation of subsis-
19 tence uses of such resources, subsistence use shall be the priority
20 use. If [FURTHER] restriction is necessary, the board may [SHALL]
21 establish restrictions and limitations on seasons, harvest levels, and
22 methods and means of fishing for any or all types of users, including
23 subsistence users. If restriction is necessary, the board may provide
24 for the issuance of subsistence fishing permits and may establish
25 special seasons or areas for subsistence fishing. Eligibility for
26 subsistence fishing shall be [AND PRIORITIES FOR THESE CONSUMPTIVE
27 USES] on the basis of the following criteria:

28 (1) customary and direct dependence upon the resource as
29 the mainstay of one's livelihood;

(2) local residency; and

1
2 (3) availability of alternative resources.

3 * Sec. 2. AS 16.05.255(b) is amended to read:

4 (b) The Board of Game shall adopt regulations in accordance with
5 the Administrative Procedure Act (AS 44.62) permitting the taking of
6 game for subsistence uses unless the board determines, in accordance
7 with the Administrative Procedure Act, that adoption of the regula-
8 tions will jeopardize or interfere with the maintenance of game
9 resources on a sustained-yield basis. Whenever it is necessary to
10 restrict the taking of game to assure the maintenance of game
11 resources on a sustained-yield basis, or to assure the continuation of
12 subsistence uses of such resources, subsistence use shall be the
13 priority use. If [FURTHER] restriction is necessary, the board may
14 [SHALL] establish restrictions and limitations on seasons, bag limits,
15 and methods and means of hunting for any or all types of users,
16 including subsistence users. If restriction is necessary, the board
17 may provide for the issuance of subsistence hunting permits and may
18 establish special subsistence hunts. Eligibility for subsistence
19 hunting shall be [AND PRIORITIES FOR THESE CONSUMPTIVE USES] on the
20 basis of the following criteria:

21 (1) customary and direct dependence upon the resource as the
22 mainstay of one's livelihood;

23 (2) local residency; and

24 (3) availability of alternative resources.

25 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).

4/27/85

DRAFT LETTER OF INTENT

CS for HB 288(Rules)

It is the intent of the legislature in enacting this legislation, to comply with the spirit and intent of The Alaska National Interest Lands Conservation Act, P.L. 96-487 while avoiding possible violations of the equal protection guarantees of Article I, Section 1 and Article VIII, Section 15 of the Alaska Constitution which might be caused by a reproduction in this law of the language of Title VIII of ANILCA.

This legislation establishes a system of preferences of beneficial uses of Alaska's wild, renewable resources, with all uses subject at all times to limitations based on the sustained yield principle and to reasonable regulations as to seasons, catch or bag limits, and methods and means without requiring the limitation of uses of lower priority.

Subsistence uses in times of resource shortages by individual local residents who have a direct and customary dependence upon fish or game populations as a mainstay of their livelihood and who lack available alternative resources have the highest priority of use.

Subsistence uses in rural Alaska by Alaska residents using reasonably economic means, who use, including consume, their take in the same area it was taken, have the second highest priority of use. "Area" is intended to be interpreted as traditional hunting or fishing area or game unit or subunit as deemed appropriate by the Boards of Fish and Game.

The use and taking of fish stocks and game populations by Alaska residents for personal use or for personal and family consumption, whether by sport or personal use methods or means, is the third highest priority of use. This priority is intended to give Alaska residents a reasonable opportunity for the taking of fish and game populations and is not an absolute priority over commercial uses. In making allocation decisions the Boards of Fish and Game shall strive to ensure the health and prosperity of commercial uses while guaranteeing Alaskans a reasonable opportunity to take and use fish stocks and game populations for personal use or personal or family consumption.

It is the legislature's intention that in times of normal resource availability that all uses exist.

McKie CAMPBELL
4907

4/23/85

OPTION A

- 1) Subsistence use is the preferred use, subject to conditions below.
- 2) Neither sport, personal use nor commercial use is assigned a priority over the other.
- 3) Boards set resident sport hunts and fisheries throughout state by stock and by area or sub area. Boards set regulations for seasons, bag limits and gear types.
- 4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:
 - a) customary and direct dependence upon the (specific fish and wildlife) populations as the mainstay of livelihood,
 - b) local residency, and
 - c) availability (lack) of alternative resources,

And that these specified needs can not be met by a particular sport or personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of maximum sustained yield.

Subsistence hunts and fisheries would be subject to reasonable regulations as to seasons, bag limits and methods and means.

4/11/85

OPTION A

- 1) Subsistence use is the preferred use, subject to conditions below.
- 2) Neither sport, personal use, nor commercial use is assigned a priority over the other.
- 3) Boards set resident sport hunts and fisheries throughout state by stock and by area or sub area. Boards set regulations for seasons, bag limits and gear types.
- 4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:
 - a) customary and direct dependence upon the (specific fish and wildlife) populations as the mainstay of livelihood,
 - b) local residency, and
 - c) availability (lack) of alternative resources,

And that these specified needs can not be met by a particular sport or personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, if that can be done in accordance with principles of maximum sustained yield. ~~by limits based on~~

~~need of~~ ~~reasonable~~ ~~subsistence~~ ~~needs~~
Reasonable eggs.

Clarity

RICK

Subsistence Harvest is subject to reasonable regulation as to seasons, bag limits methods & means of taking. Other uses need not be eliminated before subsistence uses can be reasonably regulated to traditional seasons and bag limits.

4-13-85

DRAFT BILL - Taking of fish and game for personal and subsistence uses.

The attached bill is designed to resolve problems and concerns raised by the Madison decision. It clarifies and confirms the rights of Alaskans to fish and game, and at the same time provides authorities and directions to the Boards of Fisheries and Game to manage resources for the benefit of all subsistence, personal use, sports, and commercial users.

SECTIONAL ANALYSIS

Section 1. Findings

1. Nonresidents hunt and fish primarily for commercial and recreational purposes, while Alaska residents (urban and rural) primarily hunt and fish for food.
2. Hunting and fishing for sustenance is important for all Alaskans and, consequently, is a priority use.
3. Hunting and fishing for sustenance is particularly important for people in the bush.
4. Hunting and fishing is also important to Alaskans for commercial and recreational purposes, and particularly for residents who live in communities dependent upon commercial fishing.

Section 2. Fishing

Subsection (a) adds a new paragraph (12) to indicate that the Board of Fisheries is being delegated authority to adopt regulations that provide for sport, commercial, and personal use fishing.

Subsection (b) is new. It establishes specific criteria that the Board of Fisheries is to consider when allocating fishing opportunities among sport, commercial, and personal use fishermen. The criteria recognize that it is the intent of the legislature that the Board of Fisheries understand that regardless of the type of gear used (i.e., hook and line, nets), the taking of fish stocks by

Clarify that subsistence applies to - Subsistence species only: defined as Moose, Caribou, Deer, Salmon, Halibut, Whitefish, Sheepshead, Bowfoot, Char and Pike - The Board of Fish & Game may by regulation include other species under subsistence preference by regulation in a specific area based on traditional use, and available alternative resource.

*Federal Whales }
Seals }*

(1) Nonresidents visiting Alaska take fish stocks and game populations primarily for commercial, trophy, and recreational purposes. Alaska residents who take fish stocks and game populations for non-commercial purposes use such stocks and populations for food for personal and family consumption;

(2) because of its importance to the health, safety and general wellbeing of all Alaska residents, the taking of fish stocks and game populations by such residents for personal and family consumption is a priority use of such stocks and populations;

(3) because of ^{The} ~~their~~ local proximity to fish stocks and game populations, ^{and the} ~~their~~ dependence upon such stocks and populations as a mainstay of livelihood and the lack of available alternative resources. Alaska residents who harvest and use these resources in a cost-effective manner in areas where alternative resources ~~are available~~ shall have

the highest preference for their harvest and use.

NEW

Sec. 16.05.250. Regulations. [Repealed, § 40 ch 206 SLA 1975.]

Sec. 16.05.251. Regulations of the Board of Fisheries. (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;

(3) setting quotas and bag limits 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 or predators or other categories essential for regulatory purposes;

(7) engaging in biological research, watershed and habitat improvement, fish management, protection, propagation and stocking;

(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) entering into cooperative agreements with educational institutions and state, federal, or other agencies to promote fish research, management, education and information and to train persons for fish management;

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

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

(12) 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

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

Seeking for out of state fishermen?

SECTION CHANGED: This section as changed provides for a criteria-based subsistence fishery and also provides for subsistence priority.

(b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for subsistence uses based on subsistence use criteria unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or ~~to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of~~ subsistence uses of such resources, subsistence use shall be the priority use.

*Change from
Title I - Section II
to I = Section II
from Section II*

NEW SECTION: This section would provide for a personal use fishery.

(c) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedures Act (AS 44.62) permitting the taking of fish for personal use unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis.

NEW SECTION: This section defines subsistence use criteria. This criteria formerly applied only in the case of restriction of the fishery. As proposed, this section would apply for all subsistence fisheries.

AS 16.10.940 (28) "subsistence use criteria" means

- (1) ^{greatest} customary and direct dependence upon the resource as the mainstay of one's livelihood;
- (2) local residency; and *(live closest to the resource)*
- (3) availability of alternative resources. *(fewer available alternative resources)*

NEW SECTION: This section defines personal use fishery and takes the place of the former section which defined sports fishing. The means of taking is specified.

AS 16.05.940 (21) is repealed and reenacted to read: "personal use fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for personal consumption and not for sale or barter with a gill net, seine, fish wheel, long line, hook and line held in the hand, or by hook and line with the line attached to a pole or rod which is held in the hand or closely attended, or by other means as defined by the Board of Fisheries.

NEW SECTION: This section defines personal use fishing and takes the place of the former section which defined sports fishing. The means of taking is left to the discretion of the Board of Fisheries.

AS 16.05.940 (21) "personal use fishing" means the taking of, fishing for, or possession of fish, shellfish, or other fisheries resources for *any* personal ^{use} [consumption] and not for sale, or barter by means as defined in regulation by the Board of Fisheries.

for any commercial purpose,

*NOTES =
ingua
lego
Morgan*

*Scientific vs to mean
Personal use
sports fishing
together*

*Business model
discretion to
Bd Fisheries*

REVISED SECTION: This section as revised would create a personal use fishery within which subsistence uses would be included. As proposed, personal use would be the first priority and subsistence use would be of the most priority.

AS 16.05.251 (b) The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) permitting the taking of fish for [SUBSISTENCE USES] personal use unless the board determines, in accordance with the Administrative Procedure Act, that adoption of the regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield basis, or to assure the continuation of [SUBSISTENCE USES] personal uses shall be the priority use. If further restriction is necessary subsistence use shall be the priority use.

*Subsistence &
personal use*
"personal use" see earlier page.

1) Subsistence use remains the priority use.

2) Neither personal use nor commercial use is assigned a priority over the other.

3) Boards set resident personal use hunts and fisheries throughout state by stock and by area or sub area. Personal use category includes former sport hunting and sport fishing categories. Boards set regulations for seasons, bag limits and gear types.

4) If the Boards judge that local residents have subsistence needs, based on ANILCA criteria of:

- a) customary and direct dependence on the stock,
- b) local residency, and
- c) lack of available alternative resources,

And that these needs are not being met by a particular personal use hunt or fishery;

The boards shall establish a special subsistence hunt or fishery for that particular stock, ~~and for that local group of residents.~~

*subistence areas
and not areas*

*Follows Anilca
criteria*

Sec. 14.43.700. DEFINITION.

In AS 14.43.600 - 14.43.700, "rural" means

(1) a community in the second, third, or fourth judicial district of the state with a population of 4,500 or less that is not connected by road or rail to Anchorage or Fairbanks; or

(2) a community in the first judicial district of the state with a population of 4,500 or less.

Sec. 14.56.240 "RURAL COMMUNITY" DEFINED.

In AS 14.56.200 - 14.56.230, "rural community" means any community except a first class city of over 2,000 population.

Sec. 18.55.997. RESIDENTIAL LOANS.

(a) In addition to the powers authorized to a regional housing authority under AS 18.55.996, a regional housing authority may, in accordance with procedures and policies adopted and approved by the division of housing assistance in the Department of Community and Regional Affairs, make loans for the purchase or development of residential housing in rural areas of the state, other than in an area where the division of housing assistance has a loan office. A loan shall be secured by collateral in an amount acceptable to the division of housing assistance in the Department of Community and Regional Affairs. The rate of interest on a loan authorized by this section may not exceed the

interest rate on a loan originated or purchased under AS 44.47.360 - 44.47.560.

(b) In this section,

(1) "development" means the construction of a new residence or the repair, remodeling, rehabilitation or expansion of an existing home;

(2) "rural" means

(a) a community in the second, third, or fourth judicial district of the state with a population of 4,500 or less that is not connected by road or rail, Anchorage or Fairbanks; or

(b) a community in the first judicial district of the state with a population of 4,500 or less.

Sec. 44.47.560. DEFINITIONS.

In AS 44.47.360 - 44.47.560,

(1) "director" means the director of the division of housing assistance;

(2) "division" means the division of housing assistance;

(3) "housing" means owner-occupied, single-family housing and owner-occupied duplexes;

(4) "nonconforming housing" means housing that does not conform to minimum building standards under any state or federal program that provides loans for housing purchases;

(5) "rural" means

(A) a community with a population of 4,500 or less in the first or second judicial district of the state;

(B) a community with a population of 4,500 or less in the third judicial district of the state that is more than 100 nautical miles from the conforming boundary of jurisdiction of the Municipality of Anchorage; or

(C) a community with a population of 4,500 or less in the fourth judicial district of the state that is more than 35 nautical miles from the conforming boundary of jurisdiction of the City of Fairbanks;

(6) "rural housing" means housing, whether or not it is nonconforming housing, that is located in a rural area of the state.

14-1465
Hein
01/23/86

MASTER DRAFT
1/30/86

House
IN THE [SENATE]

BY THE STATE AFFAIRS COMMITTEE

SCS from House [SENATE] BILL NO. 288

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL
the taking of

game for subsistence
and personal use

For an Act entitled: "An Act relating to fishing and hunting; and providing for an effective date."

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

* Section 1. AS 16.05.251(a)(6) is amended to read:

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

~~* Sec. 2. AS 16.05.251(a)(7) is amended to read:~~

~~DELETE~~

~~(7) protecting, maintaining, and improving watersheds [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management, conservation, protection, use, disposal, propagation, and stocking of fish;~~

* Sec. 2A. As 16.05.251(a) is amended by adding new paragraphs to read:

(12) designating and regulating special fishing areas, including personal use areas, trophy management areas, catch-and-release areas, and children's fishing areas, and designating stocks in those areas for which special management is appropriate;

(13) regulating commercial, sport, subsistence, and personal use fishing as needed for the conservation, development, and utilization of fisheries.

~~* Sec. 4. AS 16.05.255(a)(7) is amended to read:~~

~~DELETE~~

~~(7) protecting, maintaining, and improving watersheds [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management, conservation, protection, use, disposal, propagation, and~~

1 ~~[stocking of game,]~~

2 * Sec. 3X. AS 16.05.255(a) is amended by adding a new paragraph to read:

3 (10) regulating sport hunts and subsistence hunts as needed
4 for the conservation, development, and utilization of game ~~[and nongame]~~
5 species.

6 * Sec. 4X. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION ^{OF} FISH AND GAME.

8 (a) The Board of Fisheries and the Board of Game shall

9 (1) identify the fish stocks and game populations, or
10 portions of stocks and populations, that are important to the subsis-
11 tence economy and culture of the area in which they are located; and

12 (2) estimate the amount of fish and game needed from each
13 stock or population identified under (1) of this subsection to provide
14 a reasonable opportunity to satisfy the subsistence uses of those
15 stocks and populations.

16 (b) Consistent with sustained yield, sound management, and the
17 maintenance of healthy fish stocks and game populations, the boards
18 shall determine

19 (1) whether there exists a harvestable surplus of the
20 stocks and populations identified under (a)(1) of this section; and

21 (2) how much of the surplus is needed to provide a reason-
22 able opportunity to satisfy the subsistence uses of those stocks and
23 populations.

24 (c) The boards shall adopt subsistence fishing and subsistence
25 hunting regulations for each stock and population for which a harvest-
26 able surplus is determined to exist under ^{(b)(1)} this section. If a surplus
27 is not sufficient to accommodate ^{all} consumptive uses of the surplus, but
28 is sufficient to accommodate subsistence uses of the surplus, then
29 subsistence uses shall be accorded a preference over other consumptive

(e) Fish stocks and game populations, ~~that are not identified~~ or portions of stocks and populations, that are not identified under (a)(1) of this section may be taken only under nonsubsistence regulations.

1 uses, and the regulations shall provide a reasonable opportunity to
 2 satisfy subsistence uses of the surplus, and may provide opportunities
 3 to satisfy other consumptive uses of the surplus. If it is necessary
 4 to restrict subsistence fishing or subsistence hunting in order to
 5 assure sound management or protect future subsistence fishing or
 6 subsistence hunting, then the preference shall be limited, and the
 7 boards shall distinguish among subsistence users, by applying the
 8 following criteria:

9 (1) customary and direct dependence on the fish stock or
 10 game population as the mainstay of livelihood;

11 (2) local residency; and

12 (3) availability of alternative resources.

13 (d) The boards may adopt regulations consistent with this sec-
 14 tion that authorize taking for nonsubsistence uses a stock or popula-
 15 tion identified under (a)(1) of this section.

16 (e) ~~[A board may provide that a fish stock or game population not~~
 17 ~~identified under (a)(1) of this section may not be taken under subsis-~~
 18 ~~tence regulations, but may be taken under other regulations.] (f)~~

19 The Board of Fisheries may shift subsistence use of a fish stock to a
 20 suitable prior or contemporaneous stock of the same or a different
 21 species that is readily available. The Board of Game may shift sub-
 22 sistence use of a game population to another population if a suitable
 23 alternative population of the same or a different species is readily
 24 available.

25 (f) The subsistence preference shall provide a reasonable oppor-
 26 tunity for subsistence fishing or subsistence hunting. The preference
 27 may vary, may be graduated, and may be balanced against the degree of
 28 economic and traditional dependence on the resource in question. If
 29 dependence on the resource in question is high, the preference shall

(c) In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence uses.

~~provide a full opportunity for satisfaction of subsistence uses, including potentially exclusive ^{DELETED} subsistence use when a resource shortage occurs. If dependence on the resource in question is low, the preference may provide a lesser opportunity for satisfaction of subsistence uses and need not be potentially exclusive. As the degree of dependence varies, the degree of the preference may vary accordingly.~~

(g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. ^{(h) ↑}

(i)(x) The implementation of a subsistence preference under this section does not affect the eligibility of active duty military personnel, while stationed in the state for more than 30 days, to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671.

^{boards, after consultation w/ the department}
 (j)(x) The ~~[commissioner of fish and game]~~ shall adopt regulations defining ~~["maintenance of healthy populations of fish and game,"]~~ "sound management principles," ~~[and]~~ "sustained yield," and "harvestable surplus."

^{NEW TITLE}
 Sec. 16.05.259. ~~[ADMINISTRATIVE APPEALS]~~ ^{may} (k) The Board of Fisheries and the Board of Game, acting jointly, ~~[shall]~~ establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a fishing or hunting regulation. (b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of the regulation. (c) ↑

* Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

(c) The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating and monitoring the subsistence harvest of fish and game. The boards shall adopt these regulations

The ~~provisions~~ wanton waste provisions of AS 16.05.831 and AS 16.30.010 -- AS 16.30.030 apply to takings and use authorized under this section.

1 when the subsistence preference requires a reduction in the harvest of
2 a fish stock or game population by nonsubsistence users, ~~or when~~
3 ~~special seasons, bag limits or other provisions are necessary, to~~
4 ~~provide a reasonable opportunity for subsistence takings. A permit~~
5 ~~program need not be established in any particular area of the state or~~
6 ~~for any particular fish stock or game population unless circumstances~~
7 ~~warrant.]~~

8 (d) With the assistance of the department, the boards shall
9 provide reasonable public notice of the following information to users
10 of a group, community, village, or area subsistence permit:

11 (1) the terms of the permit;

12 (2) the fish stocks and game populations authorized to be
13 taken under the permit;

14 (3) the subsistence use areas covered by the permit.

15 (e) The Board of Fisheries and the Board of Game may use village
16 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
17 Native Claims Settlement Act) and community, postal, media, or other
18 services appropriate for providing notice under (d) of this section.

19 (f) The commissioner shall administer subsistence permit pro-
20 grams that may be established. The commissioner may appoint state
21 employees or other persons to take applications and issue permits and
22 tags. A person appointed by the commissioner may administer oaths for
23 permit and tag applications. The commissioner or the appropriate
24 board may require a report from persons using a permit concerning the
25 time, manner, and place of taking fish and game, the kinds and quanti-
26 ty taken, and other information helpful in administering the fish and
27 game resources of the state. Except for state employees, a person
28 appointed by the commissioner under this subsection is entitled to
29 compensation of \$50 per year or \$1 for each permit or tag issued,

domiciled and/or durational residency requirement?
If durational residency requirement is constitutional:

12 mo. in a rural area
no disqualification if:

- 90 days leave for any reason.
- extended leave for military, medical, educational, reasons or exceptional circumstances beyond users control.

whichever is greater.

* Sec. 8. AS 16.05.940(22) is amended to read:

(22) "subsistence fishing" means the ~~nonwasteful~~ taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

* Sec. 9. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the ~~nonwasteful~~ noncommercial, customary and traditional uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handi-craft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons related by blood, marriage, or adoption, and a [ANY] person living in [WITHIN] the household on a permanent basis;

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

(28) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit; ~~that, at any time during any season of the year, may be found in water subject to state jurisdiction;~~

(29) "game population" means a group of game animals of a single species or subgroup whose members in whole or in part ^{are manageable as a unit} ~~use, or may be found at any time or during any season of the year in or on, land, air, or water subject to state jurisdiction;~~

~~(30) "nonwasteful" means making reasonable use of a~~

1 ~~harvested fish or game animal or most of its parts;~~

2 (31) "rural area" means a community or area of the state in
3 ~~nonecommercial, customary and traditional~~ which the taking of fish or game ~~[for personal or family consumption]~~ is
4 ~~and use~~ a significant characteristic of the economy of the community or area;

5 (32) "subsistence hunting" means the ~~[nonwasteful]~~ taking of,
6 ~~hunting fox, or possession of~~ game animals by a resident domiciled in a rural area of the state for
7 subsistence uses by means defined by the Board of Game.

8 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

9 * Sec. 12. This Act takes effect June 1, 1986.

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14-1465
Hein
01/23/86

MASTER DRAFT
1/30/86

1 IN THE ^{HOUSE} [SENATE] BY THE STATE AFFAIRS COMMITTEE

2 SCS for HOUSE [SENATE] BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL ^{game for subsistence}
6 For an Act entitled: "An Act relating to ^{the taking of} fishing and ^{and personal use} hunting; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 16.05.251(a)(6) is amended to read:

10 (6) classifying as commercial fish, sport fish, personal
11 use fish, subsistence fish, or predators or other categories essential
12 for regulatory purposes;

13 * ~~Sec. 2. AS 16.05.251(a)(7) is amended to read:~~

14 ~~(7) protecting, maintaining, and improving watersheds
15 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
16 ment, conservation, protection, use, disposal, propagation, and stock-
17 ing of fish;~~

18 * Sec. 2A. As 16.05.251(a) is amended by adding new paragraphs to read:

19 (12) designating and regulating special fishing areas,
20 including personal use areas, trophy management areas, catch-and-
21 release areas, and children's fishing areas, and designating stocks in
22 those areas for which special management is appropriate;

23 (13) regulating commercial, sport, subsistence, and personal
24 use fishing as needed for the conservation, development, and utiliza-
25 tion of fisheries.

26 * ~~Sec. 4. AS 16.05.255(a)(7) is amended to read: DELETE~~

27 ~~(7) protecting, maintaining, and improving watersheds
28 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation, and~~

1 ~~stocking of game,~~

2 * Sec. 3X. AS 16.05.255(a) is amended by adding a new paragraph to read:
3 (10) regulating sport hunts and subsistence hunts as needed
4 for the conservation, development, and utilization of game ~~and nongame~~
5 species.

6 * Sec. 4X. AS 16.05 is amended by adding new sections to read:

7 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION ^{OF} FISH AND GAME.

8 (a) The Board of Fisheries and the Board of Game shall

9 (1) identify the fish stocks and game populations, or
10 portions of stocks and populations, that are important to the subsis-
11 tence economy and culture of the area in which they are located; and

12 (2) estimate the amount of fish and game needed from each
13 stock or population identified under (1) of th subsection to provide
14 a reasonable opportunity to satisfy the subsistence uses of those
15 stocks and populations.

16 (b) Consistent with sustained yield, sound management, and the
17 maintenance of healthy fish stocks and game populations, the boards
18 shall determine

19 (1) whether there exists a harvestable surplus of the
20 stocks and populations identified under (a)(1) of this section; and

21 (2) how much of the surplus is needed to provide a reason-
22 able opportunity to satisfy the subsistence uses of those stocks and
23 populations.

24 (c) The boards shall adopt subsistence fishing and subsistence
25 hunting regulations for each stock and population for which a harvest-
26 able surplus is determined to exist under ^{(b)(1)} this section. If a surplus
27 is not sufficient to accommodate ^{all} consumptive uses of the surplus, but
28 is sufficient to accommodate subsistence uses of the surplus, then
29 subsistence uses shall be accorded a preference over other consumptive

(e) Fish stocks and game populations, ~~that are not~~
~~identified~~ or portions of stocks and populations, that
 are not identified under (a)(1) of this section
 may be taken only under nonsubsistence regulations.

1 uses, and the regulations shall provide a reasonable opportunity to
 2 satisfy subsistence uses of the surplus, and may provide opportunities
 3 to satisfy other consumptive uses of the surplus. If it is necessary
 4 to restrict subsistence fishing or subsistence hunting in order to
 5 assure sound management or protect future subsistence fishing or
 6 subsistence hunting, then the preference shall be limited, and the
 7 boards shall distinguish among subsistence users, by applying the
 8 following criteria:

- 9 (1) customary and direct dependence on the fish stock or
- 10 game population as the mainstay of livelihood;
- 11 (2) local residency; and
- 12 (3) availability of alternative resources.

13 (d) The boards may adopt regulations consistent with this sec-
 14 tion that authorize taking for nonsubsistence uses a stock or popula-
 15 tion identified under (a)(1) of this section.

16 (e) ~~A board may provide that a fish stock or game population not~~
 17 ~~identified under (a)(1) of this section may not be taken under subsis-~~
 18 ~~tence regulations, but may be taken under other regulations.] (f)~~

19 The Board of Fisheries may shift subsistence use of a fish stock to a
 20 suitable prior or contemporaneous stock of the same or a different
 21 species that is readily available. The Board of Game may shift sub-
 22 sistence use of a game population to another population if a suitable
 23 alternative population of the same or a different species is readily
 24 available.

Why

25 (f) The subsistence preference shall provide a reasonable oppor-
 26 tunity for subsistence fishing or subsistence hunting. The preference
 27 may vary, may be graduated, and may be balanced against the degree of
 28 economic and traditional dependence on the resource in question. If
 29 dependence on the resource in question is high, the preference shall

DE 2676

not separate subsistence regs - ~~and use~~

deer snagging

anti Etluska language
Deer hunter no Kadivite
poaching

(c) In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence uses.

poaching & snagging don't lead to

fit in with wine management.

~~provide a full opportunity for satisfaction of subsistence uses, including potentially exclusive **DEWITTE** use when a resource shortage occurs. If dependence on the resource in question is low, the preference may provide a lesser opportunity for satisfaction of subsistence uses and need not be potentially exclusive. As the degree of dependence varies, the degree of the preference may vary accordingly.~~

(g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. (h) ↑

(i)(x) The implementation of a subsistence preference under this section does not affect the eligibility of active duty military personnel, while stationed in the state for more than 30 days, to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671.

(j)(x) The ^{boards, after consultation w/ the department} ~~commissioner of fish and game~~ shall adopt regulations defining ~~"maintenance of healthy populations of fish and game,"~~ "sound management principles," ~~and~~ "sustained yield," and ^{surplus} "harvestable surplus."

Sec. 16.05.259. ^{NEW TITLE} ~~ADMINISTRATIVE APPEALS~~ (4) The Board of Fisheries and the Board of Game, acting jointly, ^{may} ~~shall~~ establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a fishing or hunting regulation. (b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of the regulation. (c) ↑

* Sec. 7. AS 16.05.330 is amended by adding new subsections to read:
(c) The Board of Fisheries and the Board of Game may adopt regulations providing for the issuance and expiration of subsistence permits for areas, villages, communities, groups, or individuals as needed for authorizing, regulating and monitoring the subsistence harvest of fish and game. The boards shall adopt these regulations

The ~~provisions~~ wanton waste provisions of AS 16.05.831 and AS 16.30.010 -- AS 16.30.030 apply to takings and use authorized under this section.

1 when the subsistence preference requires a reduction in the harvest of
2 a fish stock or game population by nonsubsistence users, ~~or when~~
3 ~~special seasons, bag limits or other provisions are necessary, to~~
4 ~~provide a reasonable opportunity for subsistence takings. A permit~~
5 ~~program need not be established in any particular area of the state or~~
6 ~~for any particular fish stock or game population unless circumstances~~
7 ~~warrant.]~~

8 (d) With the assistance of the department, the boards shall
9 provide reasonable public notice of the following information to users
10 of a group, community, village, or area subsistence permit:

11 (1) the terms of the permit;

12 (2) the fish stocks and game populations authorized to be
13 taken under the permit;

14 (3) the subsistence use areas covered by the permit.

15 (e) The Board of Fisheries and the Board of Game may use village
16 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
17 Native Claims Settlement Act) and community, postal, media, or other
18 services appropriate for providing notice under (d) of this section.

19 (f) The commissioner shall administer subsistence permit pro-
20 grams that may be established. The commissioner may appoint state
21 employees or other persons to take applications and issue permits and
22 tags. A person appointed by the commissioner may administer oaths for
23 permit and tag applications. The commissioner or the appropriate
24 board may require a report from persons using a permit concerning the
25 time, manner, and place of taking fish and game, the kinds and quanti-
26 ty taken, and other information helpful in administering the fish and
27 game resources of the state. Except for state employees, a person
28 appointed by the commissioner under this subsection is entitled to
29 compensation of \$50 per year or \$1 for each permit or tag issued,

domiciled and/or durational residency requirement?
 If durational residency requirement is constitutional:

12 mo. in a rural area

no disqualification if:

- 90 days leave for any reason.
- extended leave for military, medical, educational, reasons or exceptional circumstances beyond users control.

whichever is greater.

* Sec. 8. AS 16.05.940(22) is amended to read:

(22) "subsistence fishing" means the ~~nonwasteful~~ taking of, fishing for, or possession of fish, shellfish, or other fisheries resources by a resident domiciled in a rural area of the state for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

* Sec. 9. AS 16.05.940(23) is amended to read:

(23) "subsistence uses" means the ~~nonwasteful~~ noncommercial, customary and traditional uses [IN ALASKA] of wild, renewable resources by a resident domiciled in a rural area of the state for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary trade, barter, or sharing for personal or family consumption; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons related by blood, marriage, or adoption, and a [ANY] person living in [WITHIN] the household on a permanent basis;

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

(28) "fish stock" means a species, subspecies, geographic grouping or other category of fish manageable as a unit; ~~that, at any time during any season of the year, may be found in water subject to state jurisdiction;~~

(29) "game population" means a group of game animals of a single species or subgroup whose members ^{are manageable as a unit} in whole or in part; ~~use, or may be found at any time or during any season of the year in or on, land, air, or water subject to state jurisdiction;~~

~~(30) "nonwasteful" means making reasonable use of a~~

~~harvested fish or game animal or most of its parts;~~

(31) "rural area" means a community or area of the state in ~~noncommercial, customary and traditional~~ which the ~~taking~~ of fish or game ~~[for personal or family consumption]~~ ^{and use} is a significant characteristic of the economy of the community or area;

^{hunting for, or possession of} (32) "subsistence hunting" means the ~~[nonwasteful]~~ taking of, game animals by a resident domiciled in a rural area of the state for subsistence uses by means defined by the Board of Game.

* Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

* Sec. 12. This Act takes effect June 1, 1986.

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RESIDES IN THE STATE FOR A LEAST ONE YEAR IMMEDIATELY
PRECEDING (APPLICATION) FOR SUBSISTENCE UNDER THIS CHAPTER
MAY APPLY TO THE COMMISSIONER OF/BOARD OF/ FISH & GAME ?? FOR
QUALIFICATION

SHALL NOTIFY WHEN EXPECTS TO BE ABSENT FROM THE STATE FOR A
CONTINUOUS PERIOD THAT EXCEEDS 30 DAYS.

WHENEVER THE ABSENCE IS FOR A CONTINUOUS PERIOD THAT EXCEEDS
90 DAYS THE PERSON SHALL BE DISQUALIFIED FOR THE NEXT 12
CALENDAR MONTHS AFTER RETURNING TO THE STATE.

HOWEVER, WHEN THE COMMISSIONER DETERMINES A PERIOD OF ABSENCE
IS BEYOND THE CONTROL OF THE RECIPIENT, THE RECIPIENT MAY NOT
BE DISQUALIFIED IF THE RECIPIENT STILL OTHERWISE QUALIFIES
UPON RETURNING TO THE STATE. CONTINUAL ABSENCES FROM THE
STATE, EVEN THOUGH REPORTED / FAILURE TO NOTIFY OF EXPECTED
ABSENCE MAY BE GROUNDS FOR DISQUALIFICATION.

AS 47.45.030

Dean
3428

Insert a new bill section to read:

"* Sec. 3. AS 16.05 is amended by adding a new section to article 2 to read:

(a)

Sec. 16.05.258. SUBSISTENCE DEFENSE. In a prosecution for the taking of fish or game in violation of a statute or regulation, it is not a defense to the charge that the taking was done for subsistence uses, ~~or in the belief that the taking was done for subsistence uses unless the defendant establishes that the defendant exhausted all administrative remedies through the Board of Fisheries or the Board of Game in an effort to assure continuation of the defendant's subsistence uses of fish or game resources.~~"

Renumber remaining bill sections accordingly.

(b) In a prosecution

~~It is an affirmative defense, as defined in AS 11.81.900(b)(1), that the person intended only to provide emergency necessities for his immediate family.~~

(X)

S.R.C.

WORK DRAFT

2/7/86

Offered: 2/5/86
Referred: Resources and Judiciary

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

10 * Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec. 2. AS 16.05.251(a) is amended by adding ^a new paragraph~~s~~ to read:

15 [~~(12) designating and regulating special fishing areas,~~
16 ~~including personal use areas, trophy management areas, catch and~~
17 ~~release areas, and children's fishing areas, and designating stocks in~~
18 ~~those areas for which special management is appropriate.]~~

19 (13) regulating commercial, sport, subsistence, and personal
20 use fishing as needed for the conservation, development, and utiliza-
21 tion of fisheries.

22 * Sec. 3. AS 16.05.255(a) is amended by adding a new paragraph to read:

23 (10) regulating sport hunt^{ing} and subsistence hunt^{ing} as needed
24 for the conservation, development, and utilization of game [~~and nongame~~
25 ~~species.]~~

26 * Sec. 4. AS 16.05 is amended by adding new sections to read:

27 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

28 (a) The Board of Fisheries and the Board of Game shall identify the
29 fish stocks and game populations, or portions of stocks and

1 populations, that are customarily and traditionally taken and used in
2 the subsistence economy and culture of the area in which they are
3 located.

4 (b) Consistent with sustained yield, ~~[sound management, and the~~
5 ~~maintenance of healthy fish stocks and game populations]~~ the boards
6 shall determine

7 (1) ^{If a portion} ~~[whether there exists a harvestable surplus]~~ of the
8 stocks and populations identified under (a) of this section; ^{may be harvested} and

9 (2) how much of the ^{harvestable portion} ~~[surplus]~~ is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If
15 a ^{harvestable portion} ~~[surplus]~~ is not sufficient to accommodate all consumptive uses of the
16 ^{harvestable portion} ~~[surplus]~~ but is sufficient to accommodate subsistence uses of the
17 ^{harvestable portion} ~~[surplus]~~ then subsistence uses shall be accorded a preference over
18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the ^{harvestable portion} ~~[surplus]~~.
21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting in order to assure sound management or protect future subsis-
23 tence fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria:

- 26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;
28 (2) local residency; and
29 (3) availability of alternative resources.

1 (d) The boards may adopt regulations consistent with this sec-
2 tion that authorize taking for nonsubsistence uses a stock or popula-
3 tion identified under (a) of this section.

4 (e) Fish stocks and game populations, or portions of fish
5 stocks and game populations, not identified under (a) of this section
6 may be taken only under nonsubsistence regulations.

7 ~~[(f) In making allocation decisions the boards may apportion~~
8 ~~subsistence use among species, stocks, and populations that are simi-~~
9 ~~lar and reasonably available.]~~

10 (g) Takings authorized under this section are subject to reason-
11 able regulation of seasons, catch or bag limits, and methods and
12 means. Takings and uses of resources authorized under this section
13 are subject to AS 16.05.831 and AS 16.30.

14 FIX (h) Active duty military personnel, while stationed in the
15 state for more than 30 days, are eligible to fish, hunt, or trap on
16 military installations and facilities in the state under 10 U.S.C.
17 2671 to the same extent as other nonsubsistence users.

18 ~~[(i) The boards, after consulting with the department, shall~~
19 ~~adopt regulations defining "maintenance of healthy populations of fish~~
20 ~~and game," "sound management principles," "sustained yield," and~~
21 ~~"harvestable surplus."]~~

22 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
23 and the Board of Game, acting jointly, may establish by regulation an
24 appeal procedure for persons aggrieved by the adoption or repeal of a
25 ~~[subsistence or personal use]~~ regulation.

26 * Sec. 5. AS 16.05 is amended by adding a new section to read:

27 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
28 the taking of fish or game in violation of a statute or regulation, it
29 is not a defense that the taking was done for subsistence uses.

1 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

2 (c) The Board of Fisheries and the Board of Game may adopt
3 regulations providing for the issuance and expiration of subsistence
4 permits for areas, villages, communities, groups, or individuals as
5 needed for authorizing, regulating and monitoring the subsistence
6 harvest of fish and game. The boards shall adopt these regulations
7 when the subsistence preference requires a reduction in the harvest of
8 a fish stock or game population by nonsubsistence users.

9 ~~[(d) With the assistance of the department, the boards shall
10 provide reasonable public notice of the following information to users
11 of a group, community, village, or area subsistence permit:~~

12 ~~(1) the terms of the permit;~~

13 ~~(2) the fish stocks and game populations authorized to be
14 taken under the permit;~~

15 ~~(3) the subsistence use areas covered by the permit.~~

16 (e) The Board of Fisheries and the Board of Game may use village
17 and regional corporations formed under 43 U.S.C. 1601-1628 (Alaska
18 Native Claims Settlement Act) and community, postal, media, or other
19 services appropriate for providing notice under (d) of this section.

20 (f) ~~The commissioner shall administer subsistence permit pro-
21 grams that may be established. The commissioner may appoint state
22 employees or other persons to take applications and issue permits and
23 tags. A person appointed by the commissioner may administer oaths for
24 permit and tag applications. The commissioner or the appropriate
25 board may require a report from persons using a permit concerning the
26 time, manner, and place of taking fish and game, the kinds and quanti-
27 ty taken, and other information helpful in administering the fish and
28 game resources of the state. Except for state employees, a person
29 appointed by the commissioner under this subsection is entitled to~~

1 ~~compensation of \$50 per year or \$1 for each permit or tag issued,~~
2 ~~whichever is greater.]~~

3 * Sec. 7. AS 16.05.940(22) is amended to read:

4 (22) "subsistence fishing" means the taking of, fishing for,
5 or possession of fish, shellfish, or other fisheries resources by a
6 resident domiciled in a rural area of the state for subsistence uses
7 with gill net, seine, fish wheel, long line, or other means defined by
8 the Board of Fisheries;

9 * Sec. 8. AS 16.05.940(23) is amended to read:

10 (23) "subsistence uses" means the noncommercial, customary
11 and traditional uses [IN ALASKA] of wild, renewable resources by a
12 resident domiciled in a rural area of the state for direct personal or
13 family consumption as food, shelter, fuel, clothing, tools, or trans-
14 portation, for the making and selling of handicraft articles out of
15 nonedible by-products of fish and wildlife resources taken for per-
16 sonal or family consumption, and for the customary trade, barter, or
17 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
18 this paragraph, "family" means [ALL] persons related by blood, mar-
19 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
20 hold on a permanent basis;

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

22 (28) "domicile" means the true and permanent home of a
23 person from which the person has no present intention of moving and to
24 which the person intends to return whenever the person is away; domi-
25 cile may be proved by presenting evidence of having had a permanent
26 home in a particular location for the preceding 12 consecutive months
27 or other evidence acceptable to the boards of fisheries and game;

28 (29) "fish stock" means a species, subspecies, geographic
29 grouping or other category of fish manageable as a unit;

1 (30) "game population" means a group of game animals of a
2 single species or subgroup manageable as a unit;

3 (31) "rural area" means a community or area of the state in
4 which the noncommercial, customary, and traditional taking and use of
5 fish or game for personal or family consumption is a significant
6 characteristic of the economy of the community or area;

7 (32) "subsistence hunting" means the taking of, hunting for,
8 or possession of game [animals] by a resident domiciled in a rural area
9 of the state for subsistence uses by means defined by the Board of
10 Game.

11 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

12 * Sec. 11. This Act takes effect June 1, 1986.

ADD definitions of:
SUSTAINED YIELD
PERSONAL USE Fishing

Bill Number	Subject	Date POC	
1	SB 150	Water Rights	1-27-86
2	SB 164	Fish Bond	2-05-86
3	SB 349	Delta Debt	2-06-86
4	SB 309	Royalty Gas	2-19-86
5	SB 338	Railbelt Energy	2-21-86
6	SR 8	Alaskan Wood	3-10-86
7	SCSCSHB 288	Subsistence	3-12-86
8	SB 410	CFAB	3-12-86
9	SB 375	Hazardous Substances	3-12-86
10	SB 353	Duck Stamp	3-14-86
11	SB 405	Grain Reserve	3-14-86
12	SB 409	Right to Farm	3-14-86
13	SB 294	Guides	3-17-86
14	SB 430	Royalty Oblig.	3-17-86
15	SB 418	AK. Mineral Comm.	3-19-86
16	HJR 53	Boundary Dispute	3-21-86
17	HCR 8	Intrastate Gas	3-21-86
18	HB 281	Trapping Cabins	3-21-86
19	HB 31	Hunt Hindering	3-21-86
20	SJR 47	High Seas Intercept.	3-24-86
21	SB 343	Rangelands	3-24-86
22	SB 462	Access	3-24-86
23	HJR 51	CG User Fees	3-26-86
24	HCR 18	Bristol Bay Salmon	4-02-86
25	HJR 67	Satellite	4-02-86
26	SB 460	Water Quality	4-02-86
27	SCR 18	Guide Licensing	4-02-86
28	SB 468	Railbelt Energy	4-02-86
29	HB 559	Kuparuk/PetroStar	4-04-86
30	SJR 48	Inst.Northern Forestry	4-09-86
31	SB 271	Local Hire	4-14-86
32	SB 472	Mental Health Trust	4-14-86
33	SB 510	Game Farming	4-14-86
34	SB 334	Hatcher Pass	4-18-86
35	HB 355	On-Board Observer	4-18-86
36	HB 561	Public Use Cabins	4-18-86
37	SB 475	Woolly Mammoth	4-23-86

S.R.C.

WORK DRAFT

2/7/86

Offered: 2/5/86
Referred: Resources and Judiciary

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

10 * Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec. 2. AS 16.05.251(a) is amended by adding^a new paragraph^s to read:

15 [~~(12) designating and regulating special fishing areas,~~
16 ~~including personal use areas, trophy management areas, catch and~~
17 ~~release areas, and children's fishing areas, and designating stocks in~~
18 ~~those areas for which special management is appropriate;~~]

19 (13) regulating commercial, sport, subsistence, and personal
20 use fishing as needed for the conservation, development, and utiliza-
21 tion of fisheries.

22 * Sec. 3. AS 16.05.255(a) is amended by adding a new paragraph to read:

23 (10) regulating sport hunt^{ing} and subsistence hunt^{ing} as needed
24 for the conservation, development, and utilization of game [~~and nongame~~
25 ~~species.~~]

26 * Sec. 4. AS 16.05 is amended by adding new sections to read:

27 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

28 (a) The Board of Fisheries and the Board of Game shall identify the
29 fish stocks and game populations, or portions of stocks and

*Does this
limit?*

*Does this
limit?*

1 populations, that are customarily and traditionally taken and used in
2 the subsistence economy and culture of the area in which they are
3 located.

4 (b) Consistent with sustained yield, ~~[sound management, and the~~
5 ~~maintenance of healthy fish stocks and game populations]~~ the boards
6 shall determine

7 (1) ^{If a portion} ~~[whether there exists a harvestable surplus]~~ of the
8 stocks and populations identified under (a) of this section; ^{may be harvested} and

9 (2) how much of the ^{harvestable portion} ~~[surplus]~~ is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If

15 a ^{harvestable portion} ~~[surplus]~~ is not sufficient to accommodate all consumptive uses of the
16 ^{harvestable portion} ~~[surplus]~~ but is sufficient to accommodate subsistence uses of the
17 ^{harvestable portion} ~~[surplus]~~ then subsistence uses shall be accorded a preference over

18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the ^{harvestable portion} ~~[surplus]~~.

21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting in order to assure sound management or protect future subsis-
23 tence fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria:

26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;

28 (2) local residency; and

29 (3) availability of alternative resources.

*add
rather
than
individuals*

1 (d) The boards may adopt regulations consistent with this sec-
2 tion that authorize taking for nonsubsistence uses a stock or popula-
3 tion identified under (a) of this section.

4 (e) Fish stocks and game populations, or portions of fish
5 stocks and game populations, not identified under (a) of this section
6 may be taken only under nonsubsistence regulations.

7 ~~[(f) In making allocation decisions the boards may apportion~~
8 ~~subsistence use among species, stocks, and populations that are simi-~~
9 ~~lar and reasonably available.]~~

10 (g) Takings authorized under this section are subject to reason-
11 able regulation of seasons, catch or bag limits, and methods and
12 means. Takings and uses of resources authorized under this section
13 are subject to AS 16.05.831 and AS 16.30.

14 **FIX** (h) Active duty military personnel, while stationed in the }
15 state for more than 30 days, are eligible to fish, hunt, or trap on }
16 military installations and facilities in the state under 10 U.S.C. }
17 2671 to the same extent as other nonsubsistence users.

18 ~~[(i) The boards, after consulting with the department, shall~~
19 ~~adopt regulations defining "maintenance of healthy populations of fish~~
20 ~~and game," "sound management principles," "sustained yield," and~~
21 ~~"harvestable surplus."]~~

22 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
23 and the Board of Game, acting jointly, may establish by regulation an
24 appeal procedure for persons aggrieved by the adoption or repeal of a
25 ~~[subsistence or personal use]~~ regulation.

26 * Sec. 5. AS 16.05 is amended by adding a new section to read:

27 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
28 the taking of fish or game in violation of a statute or regulation, it
29 is not a defense that the taking was done for subsistence uses.

Henry Min

1 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

2 (c) The Board of Fisheries and the Board of Game may adopt
3 regulations providing for the issuance and expiration of subsistence
4 permits for areas, villages, communities, groups, or individuals as
5 needed for authorizing, regulating and monitoring the subsistence
6 harvest of fish and game. The boards shall adopt these regulations
7 when the subsistence preference requires a reduction in the harvest of
8 a fish stock or game population by nonsubsistence users.

9 ~~[(d) With the assistance of the department, the boards shall
10 provide reasonable public notice of the following information to users
11 of a group, community, village, or area subsistence permit:~~

12 ~~(1) the terms of the permit;~~

13 ~~(2) the fish stocks and game populations authorized to be
14 taken under the permit;~~

15 ~~(3) the subsistence use areas covered by the permit.~~

16 (e) The Board of Fisheries and the Board of Game may use village
17 and regional corporations formed under 43 U.S.C. 1601-1628 (Alaska
18 Native Claims Settlement Act) and community, postal, media, or other
19 services appropriate for providing notice under (d) of this section.

20 ~~(f) The commissioner shall administer subsistence permit pro-
21 grams that may be established. The commissioner may appoint state
22 employees or other persons to take applications and issue permits and
23 tags. A person appointed by the commissioner may administer oaths for
24 permit and tag applications. The commissioner or the appropriate
25 board may require a report from persons using a permit concerning the
26 time, manner, and place of taking fish and game, the kinds and quanti-
27 ty taken, and other information helpful in administering the fish and
28 game resources of the state. Except for state employees, a person
29 appointed by the commissioner under this subsection is entitled to~~

1 ~~compensation of \$50 per year or \$1 for each permit or tag issued,~~
2 ~~whichever is greater.]~~

3 * Sec. 7. AS 16.05.940(22) is amended to read:

4 (22) "subsistence fishing" means the taking of, fishing for,
5 or possession of fish, shellfish, or other fisheries resources by a
6 resident domiciled in a rural area of the state for subsistence uses
7 with gill net, seine, fish wheel, long line, or other means defined by
8 the Board of Fisheries;

9 * Sec. 8. AS 16.05.940(23) is amended to read:

10 (23) "subsistence uses" means the noncommercial, customary
11 and traditional uses [IN ALASKA] of wild, renewable resources by a
12 resident domiciled in a rural area of the state for direct personal or
13 family consumption as food, shelter, fuel, clothing, tools, or trans-
14 portation, for the making and selling of handicraft articles out of
15 nonedible by-products of fish and wildlife resources taken for per-
16 sonal or family consumption, and for the customary trade, barter, or
17 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
18 this paragraph, "family" means [ALL] persons related by blood, mar-
19 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
20 hold on a permanent basis;

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

22 (28) "domicile" means the true and permanent home of a
23 person from which the person has no present intention of moving and to
24 which the person intends to return whenever the person is away; domi-
25 cile may be proved by presenting evidence of having had a permanent
26 home in a particular location for the preceding 12 consecutive months
27 or other evidence acceptable to the boards of fisheries and game;

28 (29) "fish stock" means a species, subspecies, geographic
29 grouping or other category of fish manageable as a unit;

1 (30) "game population" means a group of game animals of a
2 single species or subgroup manageable as a unit;

3 (31) "rural area" means a community or area of the state in
4 which the noncommercial, customary, and traditional taking and use of
5 fish or game for personal or family consumption is a significant
6 characteristic of the economy of the community or area;

7 (32) "subsistence hunting" means the taking of, hunting for,
8 or possession of game ~~[animals]~~ by a resident domiciled in a rural area
9 of the state for subsistence uses by means defined by the Board of
10 Game.

11 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

12 * Sec. 11. This Act takes effect June 1, 1986.

ADD definitions of:
SUSTAINED YIELD
PERSONAL USE Fishing

Hein ✓

A M E N D M E N T

#1

Offered in the SENATE

By V.Fischer

TO: SCS CSHB 288(Resources) (3/4/86 draft)

Page 1, after line 17, insert a new bill section to read:

"* Sec. 3. AS 16.05.251 is amended by adding new subsections to read:

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

(e) The Board of Fisheries shall establish criteria for the allocation of fishery resources among personal use, sport, and commercial fishing. The criteria may include factors such as

(1) the history of each personal use, sport, 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."

Renumber remaining bill sections accordingly.

A M E N D M E N T

by Coghill

TO: SCS CSHB 288 (Resources) (2/26 draft)

Page 1 line 15 delete (12) insert (13)

Page 1 line 19 delete (10) insert (11)

Page 1 after line 26:

*Sec 4 AS 16.05.258] SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall identify fish stocks and game populations, or portions of stocks and populations, that are customarily and traditionally used for subsistence purposes in each rural area identified by the boards.] is amended by adding a new subsection to read:

(1)The Boards shall also identify fish game species that are not in a subsistence category which would include but not be limited to bison and mountain sheep.

Page 2 after line 19:

...by applying the following criteria:]

(1) household users who were domiciled in rural areas prior to January 1, 1986 shall have a priority for subsistence use.
(sections 1, 2, and 3 should be renumbered 2, 3, and 4)

Page 5 after line 9:

*Sec. 11. AS 16.30.010 WANTON WASTE OF BIG GAME ANIMALS AND WILD FOWL

(a) It is a class A misdemeanor for a person who kills a big game animal, a subsistence game animal, or a species of water fowl...

Definitions need to be made for the following terms: mainstay of livelihood; customary and traditional uses; method and means

Proposed Wording (Amendments) to Bill No. 288
As Passed by Senate
State Affairs
Committee

Page 1: Sec. 3 AS 16.05.255(a)

(10) regulating sport hunts and subsistence hunts and commercial trapping and sport trapping and subsistence trapping as needed for the conservation, development and utilization of game, nongame and fur bearer species.

Discussion: The Bill should specifically address the different types of trapping as with fishing and hunting; i.e., subsistence hunting, sport hunting, commercial fishing, sport fishing, personal use fishing, subsistence fishing. Need to similarly address commercial trapping, sport or recreational trapping and subsistence trapping. Bill No. 288 does not currently.

Some wording in ANILCA's legislative history highlights the different forms of trapping (page 307, Senate Report No. 96-413).

"In allowing trapping to continue within preserves, it was not the intent of the Committee to allow exploitative forms of commercial trapping to occur. The intent of the Committee is to allow individual Alaskans to continue to operate their own trap lines within the preserves, even though those individuals might not qualify as subsistence users. The Committee clearly does not intend that the preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the trapping operation. The Secretary, through the National Park Service is expected to monitor trapping operations within the preserves and the associated wildlife populations and issue appropriate regulations to insure that exploitive forms of trapping do not take place and that there is no substantial or permanent harm to the wildlife population."

Page 2: Sec. 4 AS 16.05.258

(b) Consistent with sustained yield, sound management, the maintenance of healthy fish stocks, game populations and furbearer populations and consistent with varying management objectives, policies and legal authorities of the different federal conservation system units, the boards shall determine:

Discussion: The various policies, authorities and directives of the various land managers may require different interpretations and application of the "healthy population" concept. See Discussion for Sec. 4 AS 16.05.258(i).

Page 2: Sec. 4 AS 16.05.258

(b) (1) whether the subsistence needs of an area can reasonably be met, and,

(b) (2) whether adequate quantities of fish stocks and animal populations exist to allow for additional harvest by sport hunters/fishermen, commercial trappers.

Discussion: (1, and (2) would need to be reworded to discount use of word "surplus"...There is NO surplus in Parks, for example.

Page 2: Sec. 4 AS 16.05.258

(c) The boards shall adopt subsistence fishing, subsistence hunting and subsistence trapping regulations for each stock and population where subsistence needs of an area can be reasonably met under (b) (1) above. Subsistence uses shall be accorded a preference over other consumptive uses, and the regulation shall provide a reasonable opportunity to satisfy subsistence uses for the permanent rural residents domiciled in the rural area, and may provide opportunities to satisfy other consumptive uses based upon the health of the fish stock or animal population as defined consistent with the management objectives for the area's fish stock or animal population. (Management objectives as dictated by either the federal or state land managing agency.)

If it is necessary to restrict subsistence fishing, subsistence hunting, or subsistence trapping in order to assure sound management or protect subsistence fishing, subsistence hunting or subsistence trapping, then the preference shall be limited, and the boards, in conjunction with the recommendation of the regional council representing the affected area, shall distinguish among subsistence users, by applying the following criteria:

Discussion: The National Park Service feels that use of the term "surplus" in this section will prove to be misleading in the future and should, therefore, be stricken from usage in the law.

The Senate Committee Report No. 96-413, pages 268-270, provided some clarification of the Congressional intent for Section 803 and 804 of ANILCA. These discussions indicate that the Regional Councils are to provide recommendations to the State's rule-making authorities on issues concerning subsistence preference. Therefore, the National Park Service believes the above wording concerning the Regional Councils is appropriate in the state's subsistence law.

Page 2: Sec. 4 AS 16.05.258

(c) (2) Permanent, local, rural residency.

Discussion: should refer to local rural residency as being local to the hunt area or the particular herd or species area in question and be a Permanent, 12 month per year resident of the area. See Discussion for Sec. 9 AS 16.05.940 (31).

Page 3: Sec. 6 AS 16.05.258

(3) (b) availability of alternative, wild, subsistence resources.

Discussion: There have been lengthy discussions in the past (by the Board of Game and ADF&G), on whether or not Congress intended this to mean the availability of super markets. We believe it to mean wild resources and not the availability of a village grocery store! Clarification in the state statute at this time may save time and money later.

Page 3: Sec. 4 AS 16.05.258

(i) The boards, after consultation with the Alaska Department of Fish and Game, shall adopt regulations defining sound management principles, sustained yield, healthy populations of fish, game and fur bearers and customary and traditional. The boards shall adopt (for federal conservation system units) regulations defining sound management principles, healthy and natural, and healthy populations of fish, game and furbearers as provided by the Department of Interior.

Discussion: This portion of law needs to address the differences that exist between USFWS, BLM, NPS, and the State in the definition of healthy populations. These differences must be reflected in the establishment of hunting, fishing and trapping seasons and bag limits.

"The Committee (pg. 233, Senate Report No. 96-413), recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretation and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and manipulation of the components of the ecosystem."

"...the Committee substituted language to clarify that nothing in the subsistence management and use title is intended to permit the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with "the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations of fish and wildlife. The reference to "natural and healthy population" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation units (pg. 235 Senate Report No. 96-413).

Page 5: Sec. 8 AS 16.05.940

Discussion: This section refers to the phrase "customary and traditional" but the bill fails to define the phrase. The National Park Service feels that the bill should incorporate the procedures for determination as outlined by the Joint Boards of Fisheries and Game, i.e., Part 8 - Subsistence Hunting, Fishing, and Trapping; Chapter 99 -

Subsistence Uses; Article 1 - General Provision; 5 AAC 99.010 (see attached).

Page 6: Sec. 9 AS 16.05.940(31)

Discussion: The concept of "Local rural residency" is not a clear one. Residency itself is rather clear in that it generally means the place where one lives and works as distinguished from a place of temporary sojourn. Local may be defined as meaning not general or widespread, having a definite spatial form or location, or relating to a specific place. Rural means relating to the country and implies a sharp contrast to urban. Taken together, the three words mean a place where someone resides permanently, living and working and carrying out the activities of life within a non-urban setting but within a limited or definite spatial location or geographical area.

The National Park Service suggests that the State Subsistence Law take a similar approach to defining "rural area" or "local rural resident" as ANILCA, i.e., identify those areas or communities that are not rural. Anchorage, Fairbanks, Juneau, or Ketchikan are not considered rural by ANILCA. The State Subsistence Law should identify these same areas and direct the Boards of Fisheries and Game to add areas or communities to the list as additional areas or communities become urbanized and thus, no longer rural. The residency issue appears to have been adequately dealt with on page 5, Section 9, AS 16.05.940(28), but "local" is not mentioned in the bill. The National Park Service is, for example, restricted by law to only allow subsistence use by local residents. The House Congressional Record, November 12, 1980 (H 10542) states: "ALL National Park System areas which allow subsistence are authorized to allow it for local residents only."

If the State's subsistence law, in providing subsistence preference during times of shortages, limits the subsistence harvest to "local rural residence", persons domiciled away from the immediate area or animal population would not be permitted to participate in that specific area or harvest. This appears to be necessary to comply with Section 804 of ANILCA.

Page 6: Sec. 9 AS 16.05.940(32)

Discussion: This section defines "subsistence hunting". The National Park Service feels that "subsistence trapping" should similarly be defined.

The National Park Service believes that some of the legislative history associated with Sections 803 - 804 - 805 of ANILCA may provide helpful insights to the state legislation as deliberation continues on the state's subsistence bill. As such, we have attached a copy of the Senate Report No. 96-413 on those portions dealing with Section 803-805.

*subsections
(separated (b) and)*

* Sec. 4. AS 16.05.251 is amended by adding new subsections to read:

(b) Regulations adopted under (a) of this section shall provide that, consistent with the provisions of ~~(b) of this section~~ *Sec 16.05.258, resident personal use*, ~~that~~ *use* net, sport, and commercial fishermen are provided a fair and reasonable opportunity to participate in the harvest of fish. The regulations shall provide that, regardless of the type of gear used in each fishery, the taking of fish by residents for personal and family consumption is a priority use of fish.

(e) In allocating access to fish among persons engaged in resident ~~net~~ *personal use*, sport, and commercial fishing, the Board of Fisheries shall consider the following factors:

(1) the history of each personal use, sport, 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 of Alaska;

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

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

Sec. 5. AS 16.05.255(b) is repealed and reenacted to read:

(b) Regulations adopted under (a) of this section shall provide that, consistent with the provisions of ~~(b) of this section~~ *Sec 16.05.258*, on a ~~harvested~~ *harvestable* ~~basis~~ *portion*, the taking of game from the population by residents for personal and family consumption shall be the priority use of the harvestable ~~portion~~ *portion* of the population.

1 IN THE HOUSE DRAFT HEIN 2/3/86 BY THE STATE AFFAIRS COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

10 * Section 1. AS 16.05.251(a)(6) is amended to read:

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec. 2. AS 16.05.251(a) is amended by adding new paragraphs to read:

15 (12) designating and regulating special fishing areas,
16 including personal use areas, trophy management areas, catch-and-
17 release areas, and children's fishing areas, and designating stocks in
18 those areas for which special management is appropriate;

19 (13) regulating commercial, sport, subsistence, and personal
20 use fishing as needed for the conservation, development, and utiliza-
21 tion of fisheries.

22 * Sec. 3. AS 16.05.255(a) is amended by adding a new paragraph to read:

23 (10) regulating sport hunts and subsistence hunts as needed
24 for the conservation, development, and utilization of game and nongame
25 species.

26 * Sec. 4. AS 16.05 is amended by adding new sections to read:

27 Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION OF FISH AND GAME.

28 (a) The Board of Fisheries and the Board of Game shall identify the
29 fish stocks and game populations, or portions of stocks and

1 populations, that are customarily and traditionally taken and used in
2 the subsistence economy and culture of the area in which they are
3 located.

4 (b) Consistent with sustained yield, sound management, and the
5 maintenance of healthy fish stocks and game populations, the boards
6 shall determine

7 (1) whether there exists a harvestable surplus of the
8 stocks and populations identified under (a) of this section; and

9 (2) how much of the surplus is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If
15 a surplus is not sufficient to accommodate all consumptive uses of the
16 surplus, but is sufficient to accommodate subsistence uses of the
17 surplus, then subsistence uses shall be accorded a preference over
18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the surplus.
21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting in order to assure sound management or protect future subsis-
23 tence fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria:

26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;

28 (2) local residency; and

29 (3) availability of alternative resources.

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(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a) of this section.

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

(f) In making allocation decisions the boards may apportion subsistence use among species, stocks, and populations that are similar and reasonably available.

(g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30.

(h) Active duty military personnel, while stationed in the state for more than 30 days, are eligible to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671 to the same extent as other nonsubsistence users.

(i) The boards, after consulting with the department, shall adopt regulations defining "maintenance of healthy populations of fish and game," "sound management principles," "sustained yield," and "harvestable surplus."

Sec. 16.05.259. ADMINISTRATIVE APPEALS. (a) The Board of Fisheries and the Board of Game, acting jointly, may establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a subsistence or personal use regulation.

(b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of a subsistence or personal use regulation.

* Sec. 5. AS 16.05 is amended by adding a new section to read:

1 Sec. 16.05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
2 the taking of fish or game in violation of a statute or regulation, it
3 is not a defense that the taking was done for subsistence uses.

4 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

5 (c) The Board of Fisheries and the Board of Game may adopt
6 regulations providing for the issuance and expiration of subsistence
7 permits for areas, villages, communities, groups, or individuals as
8 needed for authorizing, regulating and monitoring the subsistence
9 harvest of fish and game. The boards shall adopt these regulations
10 when the subsistence preference requires a reduction in the harvest of
11 a fish stock or game population by nonsubsistence users.

12 X (d) With the assistance of the department, the boards shall
13 provide reasonable public notice of the following information to users
14 of a group, community, village, or area subsistence permit:

15 (1) the terms of the permit;

16 (2) the fish stocks and game populations authorized to be
17 taken under the permit;

18 (3) the subsistence use areas covered by the permit.

19 X (e) The Board of Fisheries and the Board of Game may use village
20 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
21 Native Claims Settlement Act) and community, postal, media, or other
22 services appropriate for providing notice under (d) of this section.

23 X (f) The commissioner shall administer subsistence permit pro-
24 grams that may be established. The commissioner may appoint state
25 employees or other persons to take applications and issue permits and
26 tags. A person appointed by the commissioner may administer oaths for
27 permit and tag applications. The commissioner or the appropriate
28 board may require a report from persons using a permit concerning the
29 time, manner, and place of taking fish and game, the kinds and

1 quantity taken, and other information helpful in administering the
2 fish and game resources of the state. Except for state employees, a
3 person appointed by the commissioner under this subsection is entitled
4 to compensation of \$50 per year or \$1 for each permit or tag issued,
5 whichever is greater.

6 * Sec. 7. AS 16.05.940(22) is amended to read:

7 (22) "subsistence fishing" means the taking of, fishing for,
8 or possession of fish, shellfish, or other fisheries resources by a
9 resident domiciled in a rural area of the state for subsistence uses
10 with gill net, seine, fish wheel, long line, or other means defined by
11 the Board of Fisheries;

12 * Sec. 8. AS 16.05.940(23) is amended to read:

13 (23) "subsistence uses" means the noncommercial, customary
14 and traditional uses [IN ALASKA] of wild, renewable resources by a
15 resident domiciled in a rural area of the state for direct personal or
16 family consumption as food, shelter, fuel, clothing, tools, or trans-
17 portation, for the making and selling of handicraft articles out of
18 nonedible by-products of fish and wildlife resources taken for per-
19 sonal or family consumption, and for the customary trade, barter, or
20 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
21 this paragraph, "family" means [ALL] persons related by blood, mar-
22 riage, or adoption, and a [ANY] person living in [WITHIN] the hou-
23 hold on a permanent basis;

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

25 (28) "domicile" means the true and permanent home of a
26 person from which the person has no present intention of moving and to
27 which the person intends to return whenever the person is away; domi-
28 cile may be proved by presenting evidence of having had a permanent
29 home in a particular location for the preceding 12 consecutive months

1 or other evidence acceptable to the boards of fisheries and game;

2 (29) "fish stock" means a species, subspecies, geographic
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals of a
5 single species or subgroup manageable as a unit;

6 (31) "rural area" means a community or area of the state in
7 which the noncommercial, customary, and traditional taking and use of
8 fish or game for personal or family consumption is a significant
9 characteristic of the economy of the community or area;

10 (32) "subsistence hunting" means the taking of, hunting for,
11 or possession of game animals by a resident domiciled in a rural area
12 of the state for subsistence uses by means defined by the Board of
13 Game.

14 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

15 * Sec. 11. This Act takes effect June 1, 1986.

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PART 8.
SUBSISTENCE HUNTING, FISHING, AND TRAPPING

CHAPTER 99.
SUBSISTENCE USES.

ARTICLE I.
GENERAL PROVISIONS

5 AAC 99.010. JOINT BOARDS OF FISHERIES AND GAME SUBSISTENCE PROCEDURES. (a) In applying a subsistence priority, the boards will provide for conservation and development of Alaska's fish and game resources according to the following procedures:

(1) Each board will assess the biological status of fish or game resources and determine whether a surplus may be harvested during a regulatory year consistent with the conservation and development of the resources on the sustained yield principle and compatible with the public interest;

(2) Each board will identify subsistence uses of fish or game resources, recognizing that subsistence uses are customary and traditional uses by rural Alaska residents for food, shelter, fuel, clothing, tools, transportation, making of handicrafts, customary trade, barter and sharing.

(b) Customary and traditional subsistence uses by rural Alaska residents will be identified by use of the following criteria:

(1) a long-term, consistent pattern of use, excluding interruption by circumstances beyond the user's control such as regulatory prohibitions;

(2) a use pattern recurring in specific seasons of each year;

(3) a use pattern consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, and conditioned by local circumstances;

(4) the consistent harvest and use of fish or game which is near or reasonably accessible from the user's residence;

(5) the means of handling, preparing, preserving and storing fish or game which has been traditionally used by past generations, but not excluding recent technological advances where appropriate;

(6) a use pattern which includes the handing down of knowledge of fishing or hunting skills, values and lore from generation to generation;

(7) a use pattern in which the hunting or fishing effort or the products of that effort are distributed or shared among others within a definable community of persons, including customary trade, barter, sharing and gift-giving, customary trade may include limited exchanges for cash, but does not include significant commercial enterprises; a community for purposes of subsistence uses may include specific villages or towns, with a historical preponderance of subsistence users, and in addition encompasses individuals, families, or groups who in addition meet the criteria described in this subsection; and

(8) a use pattern which includes reliance for subsistence purposes upon a wide diversity of the fish and game resources of an area, and which provides substantial economic, cultural, social and nutritional elements of the subsistence user's life.

(c) After identifying subsistence uses based upon the criteria set out in (b) of this section, each board will determine the approximate amount of fish or game necessary to provide fully for reasonable opportunities to engage in these customary and traditional uses.

(d) Each board will adopt regulations that provide an opportunity for the subsistence taking of fish or game resources in amounts sufficient to provide for the customary and traditional uses identified in (b) of this section, and consistent with sound conservation and management practices. In no instance may the subsistence taking jeopardize or interfere with the maintenance of a specific fish stock or game population on a sustained yield basis.

(e) Each board will, in its discretion adopt regulations that provide an opportunity for non-subsistence uses of the resource, to the extent that the non-subsistence uses do not jeopardize or interfere with the conservation and development of fish or game resources on a sustained yield basis, or with the opportunity for taking these resources for customary and traditional subsistence uses as provided in (d) of this section.

(f) When circumstances such as increased numbers of users, weather, predation, or loss of habitat may jeopardize the sustained yield of a fish stock or game population, each board will exercise all practical options for restricting nonsubsistence harvest before subsistence uses are restricted. If all available restrictions for nonsubsistence uses have been implemented and further restrictions are needed, each board will reduce the take for subsistence uses in a series of graduated steps, by giving maximum protection to subsistence users who:

(1) live closest to the resource;

(2) have the fewest available alternative resources; and

(3) have the greatest customary and direct dependence upon the resource.

(g) In no event, however, will a board allow uses which will jeopardize or interfere with the conservation and management of fish stocks or game populations on a sustained yield basis.

by Congress by the Alaska Native Claims Settlement Act to protect and provide for continued subsistence uses by Alaska Natives and other rural residents, and is based upon the constitutional authority of Congress over Native affairs and its authority under the Property Clause and the Commerce Clause. The committee also has determined that the protection of the subsistence way of life and the fish and wildlife populations upon which that lifestyle depends necessitates the establishment of an administrative structure which enables rural residents with personal knowledge of local conditions and requirements to have a meaningful role in the regulations and management of fish and wildlife and subsistence uses on the public lands.

Section 802: Policy

Based upon the findings in the preceding section, three basic policies have been established which shall guide the activities of the Federal government and the State on the public lands: that the utilization of the public lands is to cause the least adverse impact possible upon rural residents who depend upon subsistence uses for their economic and physical well-being and cultural vitality; the nonwasteful subsistence uses of fish, wildlife and other renewable resources, e.g., berries, timber, grasses, shall be the first priority consumptive use of such resources on the public lands, and when or where it is necessary to restrict the taking of such resources, taking for nonwasteful subsistence uses shall be given preference over other consumptive uses; and that the successful management of subsistence resources and activities requires long term cooperation between adjacent landowners and managers, including appropriate State and Federal agencies, Native corporations, and other nations.

Section 803: Definition

The committee has adopted a definition of "subsistence uses" based on the definition of that term set forth in section 15, ch. 151 SLA 1978 (A.S. 16.05.940) of the Alaska Statutes. In turn, the State definition was modeled on section 703 of the House bill. "Subsistence uses" are defined as the customary and traditional use in Alaska of fish, wildlife and other renewable resources for direct personal or family consumption, for the making and selling of handicraft articles from the non-edible by-products of fish and wildlife taken for direct personal or family consumption, and for customary trade, barter, or sharing for personal or family consumption. The definition of "family" recognizes extended family patterns common to all of Alaska's Native cultures. "Family" includes any person living in a household on a permanent basis as well as those persons living outside the household who are related by blood, marriage or adoption (legal or equitable). "Barter" means the exchange or trade of fish or wildlife, or their parts, for other fish or wildlife, or their parts, or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition of "barter" recognizes that in many rural villages the subsistence diet must be supplemented with other foods which may be available from the village store and other sources, and that the limited noncommercial barter of subsistence resources for nonedible items is an essential element of the rural subsistence lifestyle. The definition of "subsistence uses" is intended to include all

Alaska residents who utilize renewable resources for direct personal or family consumption.

However, the phrase "customary and traditional" is intended to place particular emphasis on the protection and continuation of the taking of fish, wildlife, and other renewable resources in areas of, and by persons (both Native and non-Native) resident in, areas of Alaska in which such uses have played a long established and important role in the economy and culture of the community and in which such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation. The factors of local residency, economic dependence, and availability of alternative resources have been included in section 804 rather than in the definition. Although a truly comprehensive definition of "subsistence uses" must include a mix of those factors, the committee has determined that they should be incorporated through appropriate action by the State rulemaking authority in conjunction with the recommendations of the regional council established pursuant to section 805 to implement the subsistence preference set forth in section 804. Sections 803-805 are intended to establish a dynamic process for the regulation of subsistence resources and uses which will enable rural people to participate in the decisionmaking process of the State rulemaking authority in the inclusion of the local residency, economic dependence, and availability of alternative resources factors into the definition of "subsistence uses" on a case-by-case basis to meet the needs of a particular management situation in a particular area.

Section 804: Preference for Subsistence Uses

This section requires both the State and the Federal government to accord nonwasteful subsistence uses a preference over the taking of such resources for other purposes on the public lands. Although the committee recognizes that only rarely will the failure to adequately provide for the preference result in the threat of literal starvation, in many instances the failure to obtain fish to dry for winter use or fresh meat to supplement other foods can engender considerable individual, community and cultural trauma and hardship. Consequently, this section envisions that governmental action affecting subsistence resources and uses shall be undertaken in a manner which adequately provides for the preference on an ongoing basis and not only when critical allocation decisions may be necessary because a particular subsistence resource may be threatened with depletion, so long as such action is conducted in a manner which is consistent with the protection of the continued viability of fish and wildlife populations which may be affected by such action. If a particular fish or wildlife population (e.g. salmon, moose or caribou) in a particular area is sufficient to sustain a harvest by all persons engaged in subsistence and other uses, the implementation of restrictions on taking set forth in this section need not be imposed by the State rulemaking authority. However, if the continued viability of a particular population or the ability of rural subsistence-dependent residents to satisfy their subsistence needs would be threatened by a harvest by all such persons, the State rulemaking authority, in conjunction with the recommendations of the regional council representing the affected area, is required by this section

to establish regulations which restrict the taking of such population to Alaska residents engaged in subsistence uses.

If "subsistence uses" must be further restricted to protect the continued viability of the population or to ensure the satisfaction of rural subsistence needs, the State rulemaking authority, in conjunction with the recommendations of the regional council, must limit such uses to local residents of the affected area, or, if necessary, only those local residents with the most customary and direct dependence on the population as the mainstay of livelihood and with the least access to alternative food supplies. In the latter situation, the committee believes that in making such difficult allocation decisions, the State rulemaking authority, in conjunction with the recommendations of the regional council, should endeavor to utilize the special knowledge of local conditions and requirements of the local advisory committees within the affected region. This section also requires the Secretary of the Interior and the Secretary of Agriculture to give subsistence uses preferential consideration in their management activities on the public lands which directly relate to the taking of fish and wildlife, and to take appropriate action to protect such uses and the continued viability of fish and wildlife populations upon which the continuation of such uses depend.

Section 805: Local and Regional Participation

The committee has determined that the opportunity for rural residents of Alaska with personal knowledge of local conditions and requirements to participate effectively in the management and regulation of subsistence resources on the public is important in order to assure both the continued viability of fish and wildlife populations of national importance and the ability of rural people engaged in a subsistence lifestyle to continue to do so. Although the State has indicated that it intends to provide greater support to its existing local advisory committees and establish a system of regional councils throughout the rural areas of the state which will have a major role in the State rulemaking authority's establishment of seasons, bag limits and the provision of the preference for subsistence uses in their respective areas, the State still is in the process of establishing such a system. Section 805 implements section 801(5) by requiring the Secretary of the Interior to establish a regional council, and if necessary a local committee, system on the public lands if within one year from the date of enactment of this Act the State has not yet established a system for local and regional participation which satisfies the requirement of this section.

The State system of local and regional participation shall be in compliance with the requirements of this section and the Secretary shall not establish local committees or regional councils if the State: (1) divides the public lands into at least six regions. The number and boundaries of the regions must be sufficient to assure that regional differences in subsistence uses are adequately accommodated.

However, it is the intent of the Committee that the number and boundaries of the regions be established in a manner which does not permit the large urban population centers to dominate the regional council system and exercise control over the regulation of subsistence resources in the rural areas; (2) strengthens the existing State local

fish and game advisory committee system by adequately funding committee activities, assigning appropriate staff and distributing available support data to the committees, and encouraging the committees to work closely with the regional councils to develop a recommended strategy for the management of subsistence resources within each region and recommendations concerning policies, standards, guidelines, and regulations to implement the strategy; (3) establishes a regional council within each region composed of residents of the region with duties and responsibilities analogous to those set forth in section 805(a)(3), and assigns staff and distributes available support data to the councils; and (4) provides by statute or regulation that recommendations made by the regional councils to the State rulemaking authority concerning the taking of fish and wildlife populations on the public lands within their respective regions for subsistence uses shall be considered by the authority during the course of its administrative proceedings.

The rulemaking authority may choose not to follow a recommendation if it determines that based on the evidence presented during the course of the administrative proceedings of the board the recommendation is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If the authority makes such a determination and chooses not to follow the recommendation it shall set forth the factual basis and the reasons for its decision.

So long as the State is in full compliance with the requirements of this section, the Secretary of the Interior shall reimburse the State for reasonable costs relating to the operation of the local committees and the establishment and operation of the regional councils. Such reimbursement may not exceed 50 per centum of such costs in any fiscal year, and total payments to the State shall not exceed the sum of \$5,000,000 in any one fiscal year.

If the Secretary determines, one year after the date of this Act and after notice and hearing, that the State is not in full compliance with the requirements of this section, he shall establish a regional council system, and if necessary a local committee system, on the public lands pursuant to the requirements of this section. In performing this monitoring responsibility pursuant to section 806 and in the exercise of his closure and other administrative authority over the public lands the Secretary of the Interior and the Secretary of Agriculture shall be guided by the annual report and advice of the regional councils established by the Secretary of the Interior pursuant to this section, and shall follow such advice unless he determines in writing that such evidence is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs.

Section 806: Federal Monitoring

This section requires the Secretary of the Interior to monitor the State's provision of the preference for subsistence uses on the public lands including, in consultation with the Secretary of Agriculture, units of the National Forest System. Such monitoring responsibilities should include ongoing communication and cooperation between Federal land and resources managers and Alaska Department of Fish and

1 - When dealing with subsistence legislation, there is a basic question legislators have to answer - Are we going to comply with the requirements of the federal law on subsistence?

2 - The federal government has advised the state that we are not in compliance with the law now, and has given Alaska until June 1st to come into compliance. If we are not in compliance by June 1st, they have advised that they will take over all fish and game management on Federal lands and on fish and game that migrate across state or private land to get to federal land.

3 - The feds have neither enough money nor manpower to effectively manage our wildlife and they admit this. Unfortunately, that only guarantees that they will do a bad job, not that they won't takeover. Anyone who doubts this should look at the current federal management of marine mammals.

4 - If the feds do take over, the easiest way to manage without money is to shut down some nonsubsistence uses. I don't want to indulge in scare tactics, there has been far too much of that already. We can not proceed, however, on what we wish would happen. We need to face realistically what is going to happen on June 1, if we are not in compliance.

Doesn't make sense to
5. ~~Amount~~ proportional resource

6. Poachers benefit - law abiding citizens suffer

7. death of office
to uphold laws of state

8. Important - get in
plan for summer.
requires rep to be adopted

Important improvements over gov's bill
Retains house amendments - domicile + def of rural area

FEB 19, 26 MARCH 5
overview public hearing Bill Horn

Which fish & game ^{Cashmir} traditionally
used for subsistence

Bison - , antelope. pop. Droll Sheep
mtn goats.

mtn goat antelope areas

of nat - only under
nm - subsistence pop

all ~~mtn~~ uses incl subsistence

*Join
committee
Curt
Palmer*

*Bill Horn
Under Secretary
Fish & Wildlife*

*managing
S & T*

Original sponsor: Rules/Governor

*Feb
19 - 26
1986*

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 288 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the taking of fish and game for
7 subsistence and personal use; and providing for an
8 effective date."

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

Board of Fish Powers

10 * Section 1 AS 16.05.251(a)(6) is amended to read:

*Amendment
Add new
Section to
fish & game
code*

11 (6) classifying as commercial fish, sport fish, personal
12 use fish, subsistence fish, or predators or other categories essential
13 for regulatory purposes;

14 * Sec 2 AS 16.05.251(a) is amended by adding new paragraphs to read:

15 (12) designating and regulating special fishing areas,
16 including personal use areas, trophy management areas, catch-and-
17 release areas, and children's fishing areas, and designating stocks in
18 those areas for which special management is appropriate;

19 (13) regulating commercial, sport, subsistence, and personal
20 use fishing as needed for the conservation, development, and utiliza-
21 tion of fisheries.

Board of Game Powers

22 * Sec 3 AS 16.05.255(a) is amended by adding a new paragraph to read:

23 (14) regulating sport hunts and subsistence hunts as needed
24 for the conservation, development, and utilization of game and nongame
25 species.

26 * Sec 4 AS 16.05 is amended by adding new sections to read:

27 Sec. SUBSISTENCE, USE AND ALLOCATION OF FISH AND GAME

28 * The Board of Fisheries and the Board of Game shall identify the
29 fish stocks and game populations, or portions of stocks and

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Red
Sheets
Carbon
etc*

*for I work
done in studies
market base*

1 populations, that are customarily and traditionally taken and used in
2 the subsistence economy and culture of the area in which they are
3 located.

*school boat
at term
we need to
define*

*we will delete these
two sections
and include public
let of sust. yield*

4 (b) Consistent with sustained yield, sound management, and the
5 maintenance of healthy fish stocks and game populations, the boards
6 shall determine

7 (1) whether there exists a harvestable surplus of the
8 stocks and populations identified under (a) of this section; and

9 (2) how much of the surplus is needed to provide a reason-
10 able opportunity to satisfy the subsistence uses of those stocks and
11 populations.

12 (c) The boards shall adopt subsistence fishing and subsistence
13 hunting regulations for each stock and population for which a harvest-
14 able surplus is determined to exist under (b)(1) of this section. If
15 a surplus is not sufficient to accommodate all consumptive uses of the
16 surplus, but is sufficient to accommodate subsistence uses of the
17 surplus, then subsistence uses shall be accorded a preference over
18 other consumptive uses, and the regulations shall provide a reasonable
19 opportunity to satisfy subsistence uses of the surplus, and may pro-
20 vide opportunities to satisfy other consumptive uses of the surplus.
21 If it is necessary to restrict subsistence fishing or subsistence
22 hunting in order to assure sound management or protect future subsis-
23 tence fishing or subsistence hunting, then the preference shall be
24 limited, and the boards shall distinguish among subsistence users, by
25 applying the following criteria:

- 26 (1) customary and direct dependence on the fish stock or
27 game population as the mainstay of livelihood;
- 28 (2) local residency; and
- 29 (3) availability of alternative resources.

*area by area
Buffalo hit
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Linton
an*

(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a) of this section.

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

(f) In making allocation decisions the boards may apportion subsistence use among species, stocks, and populations that are similar and reasonably available.

(g) Takings authorized under this section are **subject to reasonable regulation** of **seasons**, **catch or bag limits**, and **methods and means**. Takings and uses of resources authorized under this section are subject to AS 16.05.831 and AS 16.30. *WANTON WASTE PROVISIONS*

(h) Active duty military personnel, while stationed in the state for more than 30 days, are eligible to fish, hunt, or trap on military installations and facilities in the state under 10 U.S.C. 2671 to the same extent as other nonsubsistence users.

(i) The boards, after consulting with the department, shall adopt regulations defining "maintenance of healthy populations of fish and game," "sound management principles," "sustained yield," and "harvestable surplus."

Sec. 16.05.259. ADMINISTRATIVE APPEALS.

(a) The Board of Fisheries and the Board of Game, acting jointly, may establish by regulation an appeal procedure for persons aggrieved by the adoption or repeal of a subsistence or personal use regulation.

~~(b) An aggrieved person must exhaust administrative remedies before bringing a legal action challenging the adoption or repeal of a subsistence or personal use regulation.~~

* AS 16.05 is amended by adding a new section to read:

*
don't endorse this section

*
change all words subject to reasonable subsistence

?
waiting changed

pp. to 80
in hand before
ct.

*subject to
wanton waste*

Handwritten notes:
*
Ponding/Song

1 Sec. 16-05.261. NO SUBSISTENCE DEFENSE. In a prosecution for
2 the taking of fish or game in violation of a statute or regulation, it
3 is not a defense that the taking was done for subsistence uses.

4 * AS 16.05.330 is amended by adding new subsections to read:

5 (a) The Board of Fisheries and the Board of Game may adopt
6 regulations providing for the issuance and expiration of subsistence
7 permits for areas, villages, communities, groups, or individuals as
8 needed for authorizing, regulating and monitoring the subsistence
9 harvest of fish and game. The boards shall adopt these regulations
10 when the subsistence preference requires a reduction in the harvest of
11 a fish stock or game population by nonsubsistence users.

12 (b) With the assistance of the department, the boards shall
13 provide reasonable public notice of the following information to users
14 of a group, community, village, or area subsistence permit:

- 15 (1) the terms of the permit;
- 16 (2) the fish stocks and game populations authorized to be
17 taken under the permit;
- 18 (3) the subsistence use areas covered by the permit.

Handwritten notes:
sections
d, e & f
are unnecessary

19 (c) The Board of Fisheries and the Board of Game may use village
20 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
21 Native Claims Settlement Act) and community, postal, media, or other
22 services appropriate for providing notice under (d) of this section.

23 (d) The commissioner shall administer subsistence permit pro-
24 grams that may be established. The commissioner may appoint state
25 employees or other persons to take applications and issue permits and
26 tags. A person appointed by the commissioner may administer oaths for
27 permit and tag applications. The commissioner or the appropriate
28 board may require a report from persons using a permit concerning the
29 time, manner, and place of taking fish and game, the kinds and

1 quantity taken, and other information helpful in administering the
2 fish and game resources of the state. Except for state employees, a
3 person appointed by the commissioner under this subsection is entitled
4 to compensation of \$50 per year or \$1 for each permit or tag issued,
5 whichever is greater.

6 * ~~Sec. 7~~ AS 16.05.940(22) is amended to read:

7 (22) "subsistence fishing" means the taking of, fishing for,
8 or possession of fish, shellfish, or other fisheries resources ~~by a~~
9 resident domiciled in a rural area of the state for subsistence uses
10 with gill net, seine, fish wheel, long line, or other means defined by
11 the Board of Fisheries;

12 * ~~Sec. 8~~ AS 16.05.940(23) is amended to read:

13 (23) "subsistence uses" means the noncommercial, customary
14 and traditional uses [IN ALASKA] of wild, renewable resources by a
15 resident domiciled in a rural area of the state for direct personal or
16 family consumption as food, shelter, fuel, clothing, tools, or trans-
17 portation, for the making and selling of handicraft articles out of
18 nonedible by-products of fish and wildlife resources taken for per-
19 sonal or family consumption, and for the customary trade, barter, or
20 sharing for personal or family consumption; in [FOR THE PURPOSES OF]
21 this paragraph, "family" means [ALL] persons related by blood, mar-
22 riage, or adoption, and a [ANY] person living in [WITHIN] the house-
23 hold on a permanent basis;

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

25 (24) "~~Sec. 9~~ domicile" means the true and permanent home of a
26 person from which the person has no present intention of moving and to
27 which the person intends to return whenever the person is away; domi-
28 cile may be proved by presenting evidence of having had a permanent
29 home in a particular location for the preceding 12 consecutive months

30 *Working*

1 or other evidence acceptable to the boards of fisheries and game;

2 (29) "fish stock" means a species, subspecies, geographic
3 grouping or other category of fish manageable as a unit;

4 (30) "game population" means a group of game animals of a
5 single species or subgroup manageable as a unit;

6 (31) "rural area" means a community or area of the state in
7 which the noncommercial, customary, and traditional taking and use of
8 fish or game for personal or family consumption is a significant
9 characteristic of the economy of the community or area;

10 (32) "subsistence hunting" means the taking of, hunting for,
11 or possession of game animals by a resident domiciled in a rural area
12 of the state for subsistence uses by means defined by the Board of
13 Game.

14 * Sec. 107 AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

15 * Sec. 117 This Act takes effect June 1, 1986.

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Pulaski
Pomeroy

mm rural
Federal
legislative
history

*Kitchikan
Skowhegan
Anch
Fair*
Food Law
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anxious