

SUBSISTENCE

Miscellaneous

(FILE 2)

McKie -

Here are some pieces of information responding to your questions. They are provided in the interest of being cooperative, and are not intended to express approval from a policy standpoint.

Lauri, et al

1. The deletion of Section 6, AS 16.05.258(f) will not remove all reference to "preference" from the bill; it appears in (c) of the same section. To comply with ANILCA, ~~we~~ our statute must give subsistence a priority preference.
2. "Nonwasteful" could be removed from section 9 and section 10(30), and a new section could be added to provide
 - ~~"The provisions of AS 16.30.010 -- AS 16.30.030 apply to subsistence fishing and subsistence fis~~
 - "The provisions of AS 16.05.8311 ^{apply to subsistence fishing} and ^{the} provisions of AS 16.30.010 -- AS 16.30.030 apply to subsistence ~~hunting fishing and~~ subsistence hunting."

Of course, those prohibitions on waste apply anyway.

3. Durational residency in a rural area poses severe constitutional problems. Instead, perhaps define "domicile" as used in section 9 in a new section, tracking the definition ~~the definition~~, adopted by the fish board:

"domicile" means the location of a person's primary residence; evidence of domicile may include, but is not limited to, the following:

- (A) statements made to obtain a license to drive, hunt, fish, or engage in an activity regulated by a government entity;
- (B) affidavit of the person, or of other persons who may know of that person's domicile;
- (C) place of voter registration;
- (D) location of residences owned, rented, or leased;
- (E) location of storage of household goods;
- (F) location of business owned or operated;
- (G) residence of spouse and minor children or dependents;

4. Regarding defining "reasonable opportunity," any definition will probably be circular. Courts and the boards apply the term "reasonable" all the time, and defining it has not been necessary — in fact, it may be such a strained definition as to be actually counter productive.

5. Administrative Remedies

Substitute the following for Section 6, AS 16.05.259

ADMINISTRATIVE REMEDIES (a) No person may challenge in court a regulation adopted by the Board of Fisheries or the Board of Game unless the person establishes that all administrative remedies through the boards have been exhausted.

(b)

(b) 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 for subsistence uses unless the defendant establishes that ~~the defendant exhausted~~ all administrative remedies through the ^{Board of Fisheries} Board of Game, ^{have been exhausted} in an effort to assure continuation of the defendant's subsistence uses of game resources.

Ed
should
help with
language

14-1465
Hein
01/23/86

MASTER DRAFT
1/27/86

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, of
-the taking of

game for subsistence
and personal use

6 For an Act entitled: "An Act relating to ^{the taking of} fishing] and ^{game for subsistence} [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; *watershed and habitat regulation may be adopted under*
this paragraph only after consultation with the
Department of Natural Resources;

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; *Delete*

18 * Sec. 3. 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 *procedure for admin effort*
(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:

27 *Delete*
(7) protecting, maintaining, and improving watersheds
28 [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation, and

stocking of game; *watershed and habitat regulations may be adopted under this paragraph only after consultation with the Department of Natural Resources;*

* Sec. 5. AS 16.05.255(a) is amended by adding a new paragraph to read:
> admin. appeal
(10) regulating sport hunts and subsistence hunts as needed for the conservation, development, and utilization of game and nongame species.

* Sec. 6. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.258. SUBSISTENCE USE AND ALLOCATION ^{OF} FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall

(1) identify the fish stocks and game populations, or portions of stocks and populations, that are important to the subsistence economy and culture of the area in which they are located; and

(2) estimate the amount of fish and game needed from each stock or population identified under (1) of this subsection to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(b) Consistent with sustained yield, sound management, and the maintenance of healthy fish stocks and game populations, the boards shall determine

(1) whether there exists a harvestable surplus of the stocks and populations identified under (a)(1) of this section; and

(2) how much of the surplus is needed to provide a reasonable opportunity to satisfy the subsistence uses of those stocks and populations.

(c) The boards shall adopt subsistence fishing and subsistence hunting regulations for each stock and population ~~for which a harvestable surplus is determined to exist.~~ *(b)(1) of* ~~under this section.~~ *all other* If a surplus is not sufficient to accommodate ~~consumptive~~ *consumptive* uses of the surplus, but is sufficient to accommodate subsistence uses of the surplus, then subsistence uses shall be accorded a preference over other consumptive

ask for portions

(e) Fish stocks and game populations ~~For portions of stocks and populations,~~ that are not identified under (a)(1) of this section ~~[as important to the subsistence economy and culture of the area in which they are located]~~ may only be taken under non subsistence regulations.

uses, and the regulations shall provide a reasonable opportunity to satisfy subsistence uses of the surplus, and may provide opportunities to satisfy other consumptive uses of the surplus. If it is necessary to restrict subsistence fishing or subsistence hunting in order to assure sound management or protect future subsistence fishing or subsistence hunting, then the preference shall be limited, and the boards shall distinguish among subsistence users, by applying the following criteria:

- (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

(d) The boards may adopt regulations consistent with this section that authorize taking for nonsubsistence uses a stock or population identified under (a)(1) of this section.

(e) [A board may provide that a fish stock or game population not identified under (a)(1) of this section may not be taken under subsistence regulations, but may be taken under other regulations.] ^(f) The Board of Fisheries may shift subsistence use of a fish stock to a suitable prior or contemporaneous stock of the same or a different species that is readily available. The Board of Game may shift subsistence use of a game population to another population if a suitable alternative population of the same or a different species is readily available.

(g) [(f)] The subsistence preference shall provide a reasonable opportunity for subsistence fishing or subsistence hunting. The preference may vary, may be graduated, and may be balanced against the degree of economic and traditional dependence on the resource in question. If dependence on the resource in question is high, the preference shall

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provide a full opportunity for satisfaction of subsistence uses, including potentially exclusive 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.

(h) (g) Takings authorized under this section are subject to reasonable regulation of seasons, catch or bag limits, and methods and means.

(i) (h) 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) (i) The ^{boards, after consultation with 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 "harvestable surplus."

Sec. 16.05.259. ~~ADMINISTRATIVE APPEALS~~ (i) 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.~~ ^{injunction relief}

* 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

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,

★ domicile or durational issue ★
 longevity def.

1 whichever is greater.

2 * Sec. 8. AS 16.05.940(22) is amended to read:

3 (22) "subsistence fishing" means the nonwasteful taking of,
 4 fishing for, or possession of fish, shellfish, or other fisheries
 5 resources by a resident domiciled in a rural area of the state for
 6 subsistence uses with gill net, seine, fish wheel, long line, or other
 7 means defined by the Board of Fisheries;

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

9 (23) "subsistence uses" means the nonwasteful, noncommer-
 10 cial, customary and traditional uses [IN ALASKA] of wild, renewable
 11 resources by a resident domiciled in a rural area of the state for
 12 direct personal or family consumption as food, shelter, fuel, cloth-
 13 ing, tools, or transportation, for the making and selling of handi-
 14 craft articles out of nonedible by-products of fish and wildlife
 15 resources taken for personal or family consumption, and for the cus-
 16 tomary trade, barter, or sharing for personal or family consumption;
 17 in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons
 18 related by blood, marriage, or adoption, and a [ANY] person living in
 19 [WITHIN] the household on a permanent basis;

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

21 (28) "fish stock" means a species, subspecies, geographic
 22 grouping or other category of fish manageable as a unit; ~~that; [at any~~
 23 ~~time during any season of the year, may be found in water subject to~~
 24 ~~state jurisdiction;]~~

25 (29) "game population" means a group of game animals of a
 26 single species or subgroup whose members in whole or in part ^{are manageable as a unit;} ~~use, or~~
 27 ~~may be found at any time or during any season of the year in or on,~~
 28 ~~land, air, or water subject to state jurisdiction;]~~

29 (30) "nonwasteful" means making reasonable use of .

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harvested fish or game animal or most of its parts;

(31) "rural area" means a community or area of the state in which the ^{noncommercial} ~~taking~~ ^{and consumption} of fish or game [for personal or family consumption] is a significant characteristic of the economy of the community or area;

^{hunting} ~~fishing~~ ^{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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IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
v.)	
)	
DONALD SKUSE,)	
)	
Defendant,)	No. 3KN 85-1111 CR
)	

MOTION FOR RECONSIDERATION

Pursuant to Alaska Criminal Rule 50(b), Civil Rule 77(m) and Appellate Rule 506, the state requests that the court reconsider action granting defendant's motion for pre-judgment acquittal. Under Appellate Rule 506(a)(1) and (2) the court has overlooked a statute directly controlling the outcome, and has misconceived a proposition of law.

First, the court found that the state had specifically excluded taking with hook and line, even for personal use, from the purview of "subsistence fishing," and that since the defendant was fishing for personal consumption, under Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985), he was subsistence fishing. Findings and conclusions, pages 2 and 5. This conclusion overlooks the significance of AS 16.05-.940(21), the definition of "sport fishing."

Before 1978, "subsistence fishing" was defined as fishing for personal use "with gill net, seine, fish wheel, long line, or other means defined by the board." Sec. 4, ch. 131, SLA 1960. "Sport fishing," was also defined as fishing for personal use, but with hook and line, "or by other means defined by the board." Sec. 1, ch. 131, SLA 1960.

In 1978, the legislature amended the definition of "subsistence fishing" to mean fishing for "subsistence uses" with the same means specified in the previous definition. AS 16.05.940(22). At the same time, the legislature in AS 16-.05.251(b) removed from the Board of Fisheries the discretion it

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

1 had previously held with regard to subsistence fishing, and
2 mandated that the board allow the taking of fish for subsistence
3 uses unless the resource would be jeopardized. The legislature
4 in that same subsection gave subsistence uses a priority over
5 other uses.

6 The legislature did not alter the definition of "sport
7 fishing" in AS 16.05.940(21). The statutory changes related to
8 subsistence fishing, a distinct category of fishing from sport
9 fishing. The legislature knew that sport fishing was engaged in
10 by Alaska residents as well as non-residents, as evidenced by
11 the different license fees established for resident sport
12 fishing and non-resident sport fishing licenses. AS 16.05-
13 .340(a)(1)(7) and (8). The legislature knew that the definition
14 of "sport fishing" was fishing "for personal use." Yet the
15 legislature did not in 1978 give sport fishing the status of
16 subsistence fishing, with a mandatory allocation and priority.

17 "Subsistence fishing" is defined in terms of specific
18 gear types, not including hook and line. It is true that the
19 list of gear is followed by the words "or other means as defined
20 by the board." However, "Where general words follow specific
21 words in a statutory enumeration, the general words are to
22 embrace only objects similar in nature to those objects enumer-
23 ated by the preceding specific words." 2A M. Singer, Sutherland
24 Statutory Construction section 47.17 (4th edition 1984). Since
25 1960, "sport fishing" has been defined as fishing with hook and
26 line, and subsistence fishing has been defined as fishing with
27 nets, fish wheels, and long lines -- much more efficient gear
28 than hook and line. While the state agrees that the principles
29 of Madison and Eluska v. State, 698 P.2d 147 (Alaska app. 1985)
30 apply to subsistence fishing, by the clear terms of the statute
31 fishing with hook and line is sport fishing, which is not a
32 category of fishing given special treatment by the legislature
33 in AS 16.05.251(b).

34 Second, the court in this case ruled that the board

1 was incorrect in authorizing subsistence fishing after Madison
2 and Eluska only in places where that activity had occurred in
3 the past. At page 4 of the findings and conclusions, in foot-
4 note 3, the court states that Madison held that the board could
5 not link subsistence fishing to historical patterns unless there
6 was a resource shortage. This misconceives the court's
7 analysis. Actually, Madison discussed the definition of "subsistence
8 uses" in AS 16.05.940(23) as "the customary and traditional
9 uses" of fish and game for certain purposes. Madison held at
10 page 176 that, "The words customary and traditional serve as a
11 guideline to recognize historical subsistence use by individ-
12 uals, both native and non-native Alaskans." (Emphasis added.)

13
14 Madison does not hold that all fishing for personal
15 consumption is subsistence fishing; the court recognized that
16 the modifiers "customary and traditional" did mean historic. In
17 this instance, since 1960, when the definition of "subsistence
18 fishing" was first enacted into state statute, such fishing has
19 not occurred in the Moose River, and therefore, the board was
20 not under any obligation under the principles of Madison to au-
21 thorize it there. */

22 The state asks the court to reconsider and reverse its
23 action granting the defendant's motion for pre-judgment
24 acquittal.

25 DATED:

26
27 Shannon Turner
28 Assistant District Attorney
29 Kenai

30 */ On the other hand, sport fishing for red salmon in the Moose
31 River is open year round, except for the period between April 15
32 and June 14, which closure is designed to protect spawning rain-
33 bow trout. 5 AAC 56.010 and 5 AAC 56.050(11). The daily bag
34 limit for red salmon in the Moose River is three of 16 inches or
more, and ten of less than 16 inches. 5 AAC 56.020. Thus, even
under an Eluska analysis, the regulations do provide a reason-
able opportunity for harvest, and do not "significantly impair"
fishing with hook and line for personal use.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,

Plaintiff,

vs.

DONALD SKUSE,

Defendant.

FILED in the Trial Courts
State of Alaska Third District

at Kenai
JAN 17 1986

Clk of the Trial Court
JAN 23 1986

Case No. 3KNS 85-1111 CR

of the District Attorney
Kenai, Alaska

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1. The defendant, Donald Skuse, is charged with three counts of fishing violations: Count I - unlawfully taking fish; Count II - unlawfully possessing fish; Count III - engaging in sport fishing without a sport fishing license in possession.

2. The defendant, by affidavit and testimony, claims a subsistence defense.

3. Two days of motions were heard regarding the defendant's motion for pretrial judgment of acquittal. As a result of those hearings, this court finds the following uncontested facts:

(A) The defendant was fishing in the Moose River, a tributary of the Kenai River. He was snagging red salmon. He caught and kept six red salmon.

(B) When approached by the undercover Fish and Game officer, he advised the officer, whom he believed to be a fisherman, that he was snagging for "subsistence" and that he intended to use the fish for his personal consumption.

(C) The defendant was well aware of, and in fact had studied and thought he understood, the decisions of State vs. Eluska, 698 P.2d 175 (1985) and Madison vs. Alaska Department of Fish and Game, 696 P.2d 168 (1985).

(D) The defendant has been a resident of Alaska and has resided on the Moose River for approximately 15 years. He has routinely and regularly snagged red salmon and used the fish for personal consumption during that period of time.

(E) At some point after the defendant's arrival in Alaska and prior to 1973, snagging in freshwater was first made illegal. It appears that one of the major reasons that snagging was made illegal is that it was considered to be an unethical form of sport fishing.

(F) The defendant continued to snag fish every year even after it was made illegal.

(G) According to the testimony that was presented, in the early 1950s, when the Kenai and Moose River area population was small, fishing for direct personal and family consumption was widespread. The methods of taking these fish included both gill netting and snagging.

(H) Subsequent to the Madison and Eluska decisions, the State attempted to institute subsistence fishing regulations which would comply with the holdings in Madison and Eluska.

(I) During the process of formulating the regulations, the State determined that the "subsistence fisheries" existing from 1960 to the present should be reestablished.

(J) This decision led to the opening of "subsistence fisheries" as noted in plaintiff's Exhibit #1, a map which details the type of fishery, the date it was opened and its location.

(K) No "subsistence fishery" was established on the Kenai River because the State determined that subsistence fishing by "traditional subsistence means" had not occurred in the Kenai from 1960 to the present. In making this determination, the State defined "traditional subsistence means" in such a way as to specifically exclude taking with hook and line, even for personal use.

(L) Prior to Madison and Eluska, and pursuant to 5 AAC 77.545, a "personal use" dip net fishery was established on the Kenai River after the escapement goal of 500,000 sockeye salmon had been reached. This "personal use" fishery was only open in 1982 and 1983. Although the escapement goal was reached in 1985, it occurred too late to open the dip net "personal use" fishery.

(M) In summary, the State established a "subsistence fishery" in areas where fishing for personal use with non-sport

gear (i.e. non-hook and line) had historically occurred. The state established a "personal use" fishery in areas where there was no significant evidence of an historically established non-hook and line fishery but where an abundance of fish were available after sport and commercial takes.

(N) No subsistence fishing was allowed on the Kenai or its tributaries in 1985.

(O) Sport fishing and commercially guided fishing was allowed on the Kenai and its tributaries in 1985.

The court is concerned about the application of Eluska and Madison to the foregoing facts. Madison was decided before Eluska and involves a claim by Kenai Peninsula fishing families for eligibility for subsistence fishing in the Cook Inlet Region in an area just south of the area that is the subject of this litigation. In Madison the fishing families demonstrated that they had fished for several years with set nets for salmon for personal and family use. The case details the history of subsistence fishing regulations prior to 1978¹ and summarizes the 1978 subsistence law (See Ch 151 SLA 1978) in which subsistence fishing was redefined as fishing for "subsistence uses." "Subsistence uses" are defined, in part, as fishing for direct personal or family consumption. Without detailing the 1978 subsistence law which was carefully analyzed in Madison, it suffices to say that one subsection of that law (AS 16.05.251(b)) mandates that subsistence shall have priority over sport and commercial fishing and that to the extent that any fishing must be restricted to maintain the resource, subsistence fishing will be the last to be restricted. Madison makes clear that the establishment of subsistence fishing as a priority is not discretionary and that subsistence use can only be restricted if the sustained yield principle of management is in danger.²

¹Prior to 1978, subsistence had been defined as fishing for personal use and not for sale or barter.

²The facts in this case do not require the court to reach Madison's "two tier level of analysis." There was no showing at either of the evidentiary hearings that if statutory priority was given to all subsistence users, there would be too few fish for all subsistence users. Therefore, there is no need to deal with the analysis of "preferred subsistence users."

In Madison, the court also stated that subsistence fishing did not mean "fishing by individuals residing in those rural communities that historically depended upon subsistence hunting and fishing."³ In effect, Madison declares all Alaskans fishing for personal consumption to be subsistence fishers.

Subsequent to the Supreme Court decision in Madison, the Alaska Court of Appeals faced a "subsistence use" issue in State v. Eluska, 698 P.2d 174 (1985). Eluska involved a hunting violation in which the defendant took a deer out of season in a closed game unit. In Eluska the State claimed that the defendant must show that a six month season and seven deer limit was insufficient to meet his subsistence uses before he could prevail on a motion to dismiss pursuant to a subsistence defense.

The State argues in this case, as it argued in Eluska, that either the defendant was able to satisfy his subsistence, i.e. personal use, needs pursuant to the regulations established on the Kenai River and its tributaries, or that sufficient subsistence fishing was authorized in the area such that the State did not need to authorize subsistence fishing in the Kenai River system. That argument was rejected in Eluska.

³The State, in attempting to comply with Madison and Eluska by reinstating "subsistence fisheries that existed from 1960 on" (see finding of facts, L-Q) misconstrued AS 16.05.251(b) in the same way the Madison court found the statute to have been misconstrued. In Madison, the court held that historical patterns of subsistence could be considered only when there were not enough fish for all subsistence users and it was necessary to discriminate amongst various groups of subsistence users. It appears that the State has again applied "second tier" criteria to establish a definition for subsistence. As stated in Madison, all subsistence users have priority over commercial and sport uses. Further regulations which relate subsistence use to a historical pattern of fishing by a particularized group can only operate to limit all subsistence users when it is necessary to assure sustained yield of the resource.

The State's attempt to label the last priority subsistence fishery authorized for the Kenai River as a "personal use" fishery thereby exempting it from a priority status violates the holding in Madison. Since there has been no evidence of a threat to the sustained yield to the resource, those fishing for direct personal use in the Kenai do not have to demonstrate an historical pattern of fishing by a particularized group in a designated area in order to have the State establish a subsistence fishery in the Kenai.

The Court of Appeals found that Eluska was entitled to rely on a subsistence defense where the State had failed to enact specific regulations governing subsistence hunting, or in this case, fishing. The court held that:

When the trial court concludes, as a matter of law, that hunting occurs in an area in which the State has not adopted regulations pursuant to AS 16.05.255(b), providing for subsistence uses and recognizing the subsistence priority, conduct which would otherwise be a violation of a regulation adopted pursuant to AS 16.05.255(a) restricting hunting is justified as a subsistence use if the person whose conduct is alleged to have constituted hunting in violation of the regulation believed he or she was taking game for subsistence uses (See AS 16.05.940(23)) and was not aware of and did not consciously disregard a substantial and unjustifiable risk that his or her taking was not a subsistence use of the game taken.

Under Eluska, the defendant must, either by affidavit or testimony, establish that he believed in good faith that his hunting or fishing constituted a subsistence use of the resource. The State must show that it has complied with AS 16.05.255(b) or AS 16.05.251(b) by providing a priority scheme for subsistence. If the State has provided a priority plan for subsistence fishing in this case, and if its regulations involve merely time, place or manner but do not significantly impair the subsistence fishing right, then the State prevails.

In the case before the court, there is no question that the defendant has established a good-faith claim that his taking of fish in the Moose River, a tributary of the Kenai River, was for personal consumption and therefore, under Madison, for a subsistence use. There is no question that the State has not provided for priority subsistence fishing in the Kenai River or its tributaries, except in circumstances which are clearly violative of the dictates of AS 16.05.251(b).⁴ Therefore

⁴According to the testimony adduced at the hearing, when the escapement reaches over 500,000, the State will set up a "personal use" fishery at the mouth of the Kenai which allows for fishing for personal consumptive use with a dip net. That fishery has only been opened two out of the last five years and is a "last priority" as opposed to first priority fishery in that it is only available after all other needs have been met.

this court finds as a matter of law that the defendant was fishing for subsistence use in an area in which the State has not adopted regulations which comply with AS 16.05.251(b).

The only question that remains for this court is whether or not the State, having provided for a personal use (i.e. subsistence use under Madison) fishery on the Kenai, and having given that fishery least priority, can claim that a dip net fishery available to the defendant at the mouth of the Kasilof River, approximately 35 miles from the defendant's home, satisfies the Eluska requirement that the State make "adequate provisions⁵ for subsistence (fishing)". This court, in reading Madison and Eluska together, finds that the answer to that question must be in the negative. The Madison court states that AS 16.05.251(b) requires that:

If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations. . . it is the intent of the committee that sports or commercial use be restricted before subsistence use. . . .

Thus it appears to this court that Madison requires that the State permit subsistence use first if it allows sports or commercial use.

This court certainly can take judicial notice of the fact that the Kenai River is one of the most heavily utilized and popular sportfishing rivers in Southcentral Alaska. It is a heavily regulated river, due in part to its popularity. The question the court does not answer today is: If the State had provided for priority personal use or subsistence fishing elsewhere in the region, could it reserve the Kenai River as an exclusive sports fishery?

⁵The State provided at the hearing, plaintiff's Exhibit 1, which indicated the areas open for subsistence fishing. The court finds that the only adequate subsistence fishery available to the defendant would have been the dip net fishery at Kasilof. The other subsistence fisheries were closed at the time the defendant was fishing or required a substantial financial investment in a motorized skiff and net which clearly would be uneconomic, given this defendant's subsistence claim to only 40 to 50 red salmon per year

It is also clear to this court that, under Madison and Eluska, the State may regulate time, place and manner of subsistence fishing. In this case, if it had provided for a priority subsistence fishery at all in the Kenai River, the State could have restricted the subsistence take below the counting weir to assure adequate monitoring of the resource. The State could have designated the type of gear to be used for subsistence fishing and in doing so could have prevented snagging, and it could regulate the time during which fishing could be done as well as the bag limits to be taken by subsistence fishers.

In the absence of a regulation giving subsistence fishing in the Kenai River or its tributaries priority, the defendant prevails and his motion for prejudgment acquittal is GRANTED.

DATED at Anchorage, Alaska, this 17 day of January, 1986.

Elaine M. Andrews

ELAINE M. ANDREWS
District Court Judge

I certify that on 1-20-86
a copy of the above was mailed to each
of the following at their addresses of
record: Dist. Atty. ; D. Skuse
D. Dawley
Secretary

...you need
some help.
Please help me,
you know. Don't
dummy up on
me..."

— Gilbert Paule

Anchorage Daily News illustration/Dee Boyles

long-time foe and former brother-in-law. Pfeil was shot Oct. 12 and died of his injuries a month later.

Paule told police Neil Mackay gave him \$10,000 to pay for the attack and agreed to testify against Mackay and three co-defendants. Mackay has entered a plea of n +

guilty to a charge of first-degree murder.

A millionaire property owner and former Anchorage lawyer, Mackay now makes his home in Honolulu. Paule told police he visited Mackay there twice in the months before the shooting and discussed the murder plan with

him in general terms. He said Mackay gave him the \$10,000 on the second trip.

In the hours after his arrest, Paule agreed to plead guilty to attempted murder — Pfeil was still alive then — and to accept the maximum

See Page A-8, MACKAY

Judge grants subsistence rights on any fresh water fishing stream

By RONNIE CHAPPELL
Daily News reporter

KENAI— Alaska residents are entitled to subsistence fish on any fresh water stream that supports a sport or commercial fishery, Superior Court Judge Elaine Andrews has ruled.

Under present state law, subsistence fishermen would have first right to catch fish in some of the state's premier salmon streams, including the Kenai, Anchor and Susitna Rivers.

In a January 17 decision, Andrews dismissed charges against Sterling resident Donald Skuse who was cited last summer for "snagging" six red salmon in the Moose River, a tributary of the Kenai.

Snagging — the jerking of a large treble-hook through a group of schooled fish — is a highly efficient "rod and reel" technique that has been outlawed in Alaska.

When caught, Skuse told an undercover Fish and Wildlife Protection Officer that he was "snagging" for subsistence

purposes.

Skuse prevailed in court, Andrews said, because the state failed — as required by law — to provide him with an "adequate" Kenai River subsistence fishery. If the state had provided that fishery, it could have regulated its location, time, bag limits and means of take, she said.

The state argued that Skuse could have satisfied his subsistence needs by sport fishing on the Kenai River or

See Back Page, JUDGE

Rare ferrets find a home

Wyoming town takes endangered critters to heart

By IVER PETERSON
The New York Times

MEETEETSE, Wyo. — Finding a federally protected endangered animal on one's property is an honor that most Western ranchers would just as soon pass up.

So when Lucille Hogg's dog, Shep, dropped the carcass of a black-footed ferret on her back porch in 1981 and word got out that a colony of one of the rarest mammals in North America had somehow survived here in Meeteetse, "Pop. 500, El. 5,797," as the road sign says, the reaction was pronounced.

"There was panic," said Rick West-

brook, manager of the 15,000-acre 91 Ranch on which some of the ferrets were subsequently found.

It was not an unusual reaction in the West to what Easterners might consider good news: that an animal thought to be all but extinct was surviving. The panic has moderated, thanks in part to state officials' shrewd management of the politics of animal preservation.

In a region where everyone makes a living from the land one way or another, it would be hard not to feel threatened by the array of federal and state rules for the protection of endangered species that can

See Back Page, ...

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Judge

Continued from Page A-1

participating in other subsistence and personal use fisheries available on the Kenai Peninsula.

In the past, subsistence fishing in Cook Inlet has been limited to gillnetting in salt water. The state has also allowed for "personal use" dip net fisheries on the Kasilof and Kenai Rivers.

Andrews' decision means that subsistence fishing must be allowed on every stream in Alaska, said one Fish and Game official who asked not to be identified. "The way I read this, I could go down to the Anchor River between weekends and snag all I want."

The Anchor River is one of the first salmon streams in Alaska to open each summer to sport fishing. The king salmon fishery is so popular and so limited that it is open only three weekends a year.

The decision could also create problems on the Kenai River, where creation of a subsistence fishery will increase competition for a limited number of fish.

In recent years, the river has been the scene of a bitter salmon allocation fight between Anchorage sportsmen and Cook Inlet commercial fishermen. The anglers want to increase the number of king salmon they can catch by decreasing the fishing time given Kenai Peninsula set-netters.

"If this decision had to be rendered, it's good it was rendered while the subsistence question is before the legislature," said Russ Redick, executive director of the Alaska Sportfishing Association. "The idea that every fish stock in every stream has to be open to subsistence is ridiculous. We've got to move on from this. That's why we need a rational decision out of the legislature."

Lawmakers are considering a variety of bills amending the state's 1978 subsistence law. Most would restrict subsistence to rural residents or give the Boards of Fisheries and Game increased authority to restrict subsistence users.

Gov. Bill Sheffield tried to win passage of a subsistence bill last year after the Alaska Supreme Court ruled that urban Alaskans with no traditional dependence on fish



Lucille Hogg: Discovery of the ferrets has done town "a lot of good."

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ground. Overhead poles could provide perches from which hawks and eagles could spot ferrets.

The Pitchfork is credited with nurturing Wyoming's dwindling antelope population back to abundance earlier in the century, and Turnell shares Westbrook's feeling that so far the ferret protection program has not hurt his ranch or his community.

But an abiding suspicion of outsiders and particularly of Eastern environmentalists lingers here. "The environmentalists look at us like all we care about is running cattle and getting all we can get," Westbrook said. "The truth of the matter is that most ranchers care about the land and understand that wildlife is part of it."

money for a special drunk patrol.

"We get hundreds of these type of call every month," he said. "We always respond... this is the first time an attempt has been made to link it to someone's death."

Rhodes said the department is "concerned about the incident" but plans no special review of Officer Brechon's actions. "He acted professionally and competent," said Rhodes.

□ Associated Press reporter Paul

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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

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 fishing and 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. 3. 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:

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. 5. 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. 6. 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 this section. If a surplus
27 is not sufficient to accommodate 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

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. The
19 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

1 provide a full opportunity for satisfaction of subsistence uses, in-
2 cluding potentially exclusive subsistence use when a resource shortage
3 occurs. If dependence on the resource in question is low, the prefer-
4 ence may provide a lesser opportunity for satisfaction of subsistence
5 uses and need not be potentially exclusive. As the degree of depen-
6 dence varies, the degree of the preference may vary accordingly.

7 (g) Takings authorized under this section are subject to reason-
8 able regulation of seasons, catch or bag limits, and methods and
9 means.

10 (h) The implementation of a subsistence preference under this
11 section does not affect the eligibility of active duty military
12 personnel, while stationed in the state for more than 30 days, to
13 fish, hunt, or trap on military installations and facilities in the
14 state under 10 U.S.C. 2671.

15 (i) The commissioner of fish and game shall adopt regulations
16 defining "maintenance of healthy populations of fish and game," "sound
17 management principles," and "sustained yield."

18 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
19 and the Board of Game, acting jointly, shall establish by regulation
20 an appeal procedure for persons aggrieved by the adoption or repeal of
21 a fishing or hunting regulation. An aggrieved person must exhaust
22 administrative remedies before bringing a legal action challenging the
23 adoption or repeal of the regulation.

24 * Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

25 (c) The Board of Fisheries and the Board of Game may adopt
26 regulations providing for the issuance and expiration of subsistence
27 permits for areas, villages, communities, groups, or individuals as
28 needed for authorizing, regulating and monitoring the subsistence
29 harvest of fish and game. The boards shall adopt these regulations

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,

1 whichever is greater.

2 * Sec. 8. AS 16.05.940(22) is amended to read:

3 (22) "subsistence fishing" means the nonwasteful taking of,
4 fishing for, or possession of fish, shellfish, or other fisheries
5 resources by a resident domiciled in a rural area of the state for
6 subsistence uses with gill net, seine, fish wheel, long line, or other
7 means defined by the Board of Fisheries;

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

9 (23) "subsistence uses" means the nonwasteful, noncommer-
10 cial, customary and traditional uses [IN ALASKA] of wild, renewable
11 resources by a resident domiciled in a rural area of the state for
12 direct personal or family consumption as food, shelter, fuel, cloth-
13 ing, tools, or transportation, for the making and selling of handi-
14 craft articles out of nonedible by-products of fish and wildlife
15 resources taken for personal or family consumption, and for the cus-
16 tomary trade, barter, or sharing for personal or family consumption;
17 in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL] persons
18 related by blood, marriage, or adoption, and a [ANY] person living in
19 [WITHIN] the household on a permanent basis;

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

21 (28) "fish stock" means a species, subspecies, geographic
22 grouping or other category of fish manageable as a unit that, at any
23 time during any season of the year, may be found in water subject to
24 state jurisdiction;

25 (29) "game population" means a group of game animals of a
26 single species or subgroup whose members in whole or in part use, or
27 may be found at any time or during any season of the year in or on,
28 land, air, or water subject to state jurisdiction;

29 (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 which the taking of fish or game for personal or family consumption is
4 a significant characteristic of the economy of the community or area;

5 (32) "subsistence hunting" means the nonwasteful taking of
6 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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WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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. FINDINGS AND INTENT. (a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.

(b) Maintaining healthy populations of fish and wildlife is important to the state because ^{Resources are held in common by all citizens.} [healthy populations] provide opportunities for a subsistence life style, for trophy and other sport hunting and fishing, for commercial fishing and for wildlife viewing.]

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive [needs;] uses.

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, [and information] needed to maintain sustained yield, healthy populations, and ^{Reasonable} opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the
4 Board of Game regarding the adoption, amendment, and repeal of regu-
5 lations;

6 (15) provide information to the Board of Fisheries and the
7 Board of Game as needed to carry out their statutory duties.

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

9 (a) The Board of Fisheries may adopt regulations it considers
10 advisable in accordance with the Administrative Procedure Act (AS 44.-
11 62) for

12 (1) setting apart and designating fish reserve areas,
13 refuges and sanctuaries in the waters of the state over which it has
14 jurisdiction, subject to the approval of the legislature;

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,
19 escapement levels, and sex, [AND] size, age, and other limitations
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including
22 gear, tackle, and vessels, employed in the pursuit, capture, and
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-
25 ments for means used in pursuit, capture, possession, tagging, and
26 transport of fish;

27 (7) [(6)] classifying as commercial fish, sport fish,
28 personal use fish, subsistence fish, indigenous fish, exotic fish,
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish; watershed and habitat regulations may be adopted under this
7 paragraph only after consultation with the Department of Natural
8 Resources;

9 (9) [(8)] investigating and determining the extent and
10 effect of disease, predation, and competition among fish in the state,
11 and exercising control measures considered necessary to the resources
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which
19 the issuance of fishing licenses, permits and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,
24 including personal use areas, trophy management areas, catch-and-
25 release areas, and children's fishing areas, and designating stocks in
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-
2 tion of fisheries.

3 * Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-
5 able in accordance with the Administrative Procedure Act (AS 44.62)
6 for

7 (1) setting apart [and designating] game reserve areas,
8 *game* refuges and *game* sanctuaries in the water or on the land of the state over
9 which it has jurisdiction, subject to the approval of the legislature;

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, marking,
14 and identification requirements employed in the pursuit, capture,
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and
17 sex, age, [AND] size, and other limitations on, and game population
18 goals pertaining to, the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to
22 control predation and competition among game in the state;

23 *new authority* (8) protecting, maintaining, and improving watersheds [(7)
24 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
25 ment, conservation, protection, use, disposal, propagation and stock-
26 ing of game; watershed and habitat regulations may be adopted under
27 this paragraph only after consultation with the Department of Natural
28 Resources;

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the
3 issuance of game licenses, permits and registrations and the transfer
4 of permits and registrations between registration areas and game
5 management units or subunits is allowed;

6 (11) regulating sport hunts and subsistence hunts as needed
7 for the conservation, development, and utilization of game and nongame
8 species.

9 * Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
12 Fisheries and the Board of Game shall:

13 (1) ^{Determine} [estimate] the amount of fish and game needed to provide
14 a reasonable opportunity [for [rural residents]] to continue to engage in
15 a customary and traditional subsistence way of life; determinations
16 shall be based on research, analysis, comments, and recommendations of
17 the department;

18 (2) identify [and designate] the areas used for subsistence
19 harvest, and areas formerly used for subsistence harvest, according to
20 fish stock and game population, and according to subsistence user
21 population; the zones may overlap where different groups of subsis-
22 tence users have customarily and traditionally used the same areas;

23 (3) identify fish stocks and game populations that custom-
24 arily and traditionally have been used by, and are important [to, rural
25 residents] for subsistence use. (Redundant)

26 (b) The Board of Fisheries or the Board of Game shall assess the
27 biological status of, respectively, the important subsistence fish
28 stocks and the important subsistence game populations in the use
29 zones, and shall determine whether a surplus may be harvested during

Department Responsibility - Use of the Boards.

a regulatory year consistent with the sustained yield principle, sound management principles, and the maintenance of healthy fish stocks, and other wildlife populations.

(c) After identifying the important subsistence fish stocks or game populations, the appropriate board shall determine the amount of harvestable surplus of the stock or population that will provide a reasonable opportunity to engage in customary and traditional subsistence uses of the stocks or populations.

(d) The Board of Fisheries and the Board of Game shall adopt regulations, in ~~accordance with~~ *Agree Review* the Administrative Procedure Act (AS 44.62), for subsistence fishing and subsistence hunting unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on a sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. The regulations may be the same as, different from, or in addition to regulations governing other consumptive uses of the stocks or populations.

(e) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting is accorded a preference over other consumptive takings and uses of fish, game, or other wildlife. Whenever it is necessary, after reasonably regulating seasons, bag or catch limits, and means and methods, to further restrict subsistence fishing or subsistence hunting to protect the continued health and viability of a fish stock or game population, assure sound management, assure the maintenance of a fish stock or game population on a sustained-yield basis, or protect continued future subsistence fishing or subsistence hunting, the preference may be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that
6 authorize taking for nonsubsistence uses a stock or population iden-
7 tified as important for subsistence use, to the extent that the non-
8 subsistence uses do not jeopardize or interfere with sound management
9 principles, sustained yield, [the maintenance of healthy populations,]
10 or the ^{desirable} opportunity for taking these resources for subsistence uses
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that
13 establish criteria that the boards must consider when defining and
14 identifying customary and traditional subsistence uses and customary
15 and traditional subsistence use areas. The regulations may include,
16 but need not be limited to, the following criteria:

17 ^{define?} (1) long-term, consistent patterns of use recurring in ^{define?}
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest
20 characterized by efficiency and economy of effort and cost, and condi-
21 tioned by local circumstances;

22 ^{define?} (3) the consistent harvest and use of fish or game that is
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge
25 of fishing or hunting skills, values, and lore from generation to
26 generation;

27 (5) use patterns in which the hunting or fishing effort or
28 the products of that effort are distributed or shared among others
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include
2 significant commercial enterprises; an area may include specific
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence
5 purposes on a wide diversity of the fish and game resources of an area
6 and provide substantial economic, cultural, social, and nutritional
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular
11 fish stock or game population is not a customary and traditional
12 subsistence resource or not a significant source of subsistence use
13 and (2) subsistence is not the ^{highest determined} ~~best~~ use of that fish stock or game
14 population, the board may provide that the fish stock or game popu-
15 lation may not be taken under subsistence regulations, but may be
16 taken under other regulations. The Board of Fisheries may shift
17 subsistence use of a fish stock to a suitable prior or contempora-
18 neous stock of the same or a different species. The Board of Game may
19 shift subsistence use of a game population to another population if a
20 suitable alternative population of the same or a different species is
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-
23 tunity for subsistence fishing or subsistence hunting. The preference
24 may vary, may be graduated, and may be balanced against the degree of
25 economic and traditional dependence on the resource in question. If
26 dependence on the resource in question is high, the preference shall
27 provide a full opportunity for satisfaction of subsistence needs,
28 including potentially exclusive subsistence use when a resource
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As
2 the degree of dependence varies, the degree of the preference may vary
3 accordingly.

4 Sec. 16.05.259. JUDICIAL ^{Review} APPEAL OF REGULATORY ACTIONS. An
5 aggrieved person must exhaust all administrative remedies before
6 bringing a legal action challenging the adoption or repeal of a regu-
7 lation of the Board of Fisheries or the Board of Game.

8 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-
11 viding for the issuance and expiration of subsistence fishing permits,
12 subsistence hunting permits, and combination subsistence fishing and
13 hunting permits as needed for authorizing, regulating and monitoring
14 the subsistence harvest of fish and game. The boards shall adopt
15 these regulations when the subsistence preference requires a reduction
16 in the harvest of a fish stock or game population by nonsubsistence
17 users, or when special seasons, bag limits or other provisions are
18 necessary, to provide a reasonable opportunity for subsistence tak-
19 ings. A permit program need not be established in any particular area
20 of the state or for any particular fish stock or game population
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-
23 grams that may be established. The commissioner may appoint and
24 authorize compensation of persons to take applications and issue
25 permits and tags, and may require reports, as provided for licenses
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-
28 ments of state or federal law for licenses, permits, stamps, tags, or
29 seals.

1 * Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,
3 fishing for, or possession of fish, shellfish, or other fisheries
4 resources in accordance with regulations adopted under AS 16.05.258
5 for subsistence uses with gill net, seine, fish wheel, long line, or
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and
9 traditional uses by residents of rural subsistence areas in Alaska of
10 wild, renewable resources for direct personal or family consumption as
11 food, shelter, fuel, clothing, tools, or transportation, for the
12 making and selling of handicraft articles out of nonedible by-products
13 of fish and wildlife resources taken for personal or family consump-
14 tion, and for the customary trade, barter, or sharing for personal or
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"
16 means [ALL] persons related by blood, marriage, or adoption, and a
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 * Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state
26 residents domiciled in rural areas of the state that the Board of
27 Fisheries and the Board of Game determine, under AS 16.05.258, are
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 game animals by a person qualified under AS 16.05.258 for subsistence
2 uses by methods and means defined by the Board of Game.

3 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

4 * Sec. 11. This Act takes effect June 1, 1986.
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WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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. FINDINGS AND INTENT. [(a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.]

(b) Maintaining healthy populations of fish and ^{game} [wildlife] is important to the state because all resources are held in common by all Alaska's citizens and [healthy populations] provide opportunities for [a] subsistence life styles, for [trophy and other] sport hunting and fishing, for commercial fishing and for wildlife viewing.

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive ^{uses} [needs];

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, and information needed to maintain sustained yield, healthy populations, and ^{reasonable} opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the
4 Board of Game regarding the adoption, amendment, and repeal of regu-
5 lations;

6 (15) provide information to the Board of Fisheries and the
7 Board of Game as needed to carry out their statutory duties.

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

9 (a) The Board of Fisheries may adopt regulations it considers
10 advisable in accordance with the Administrative Procedure Act (AS 44.-
11 62) for

12 (1) setting apart [and designating] fish reserve areas,
13 refuges and sanctuaries in the waters of the state over which it has
14 jurisdiction, subject to the approval of the legislature;

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,
19 escapement levels, and sex, [AND] size, age, and other limitations
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including
22 gear, tackle, and vessels, employed in the pursuit, capture, and
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-
25 ments for means used in pursuit, capture, possession, tagging, and
26 transport of fish; *fish in categories necessary for management such as*

27 (7) [(6)] classifying *as* commercial fish, sport fish,
28 personal use fish, subsistence fish, [indigenous fish, exotic fish,
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish; watershed and habitat regulations may be adopted under this
7 paragraph only after consultation with the Department of Natural
8 Resources;]

9 (9) [(8)] investigating and determining the extent and
10 effect of disease, predation, and competition among fish in the state,
11 and exercising control measures considered necessary to the resources
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which
19 the issuance of fishing licenses, permits and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,
24 including personal use areas, trophy management areas, catch-and-
25 release areas, and children's fishing areas, and designating stocks in
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-
2 tion of fisheries.

3 * Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-
5 able in accordance with the Administrative Procedure Act (AS 44.62)
6 for

7 (1) setting apart [and designating] game reserve areas,
8 refuges and sanctuaries in the water or on the land of the state over
9 which it has jurisdiction, subject to the approval of the legislature;

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, [marking,
14 and identification requirements] employed in the pursuit, capture,
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and
17 sex, age, [AND] size, and other limitations on, [and game population
18 goals pertaining to,] the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to
22 control predation and competition among game in the state;

23 (8) [protecting, maintaining, and improving watersheds [(7)]
24 WATERSHED] and [habitats] [HABITAT IMPROVEMENT], and [for the] manage-
25 ment, conservation, protection, use, disposal, propagation and stock-
26 ing of game; [watershed and habitat regulations may be adopted under
27 this paragraph only after consultation with the Department of Natural
28 Resources;]

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the
 3 issuance of game licenses, permits and registrations and the transfer
 4 of permits and registrations between registration areas and game
 5 management units or subunits is allowed;
 6 (11) establishing a procedure for administrative appeal of board & decisions.
 7 (12) regulating sport hunts and subsistence hunts as needed
 8 for the conservation, development, and utilization of game and nongame
 9 species.

* Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
 11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
 12 Fisheries and the Board of Game shall:

13 [(1) estimate the amount of fish and game needed to provide
 14 a reasonable opportunity for [rural residents to continue to engage in
 15 a] customary and traditional subsistence [way of life] determinations
 16 shall be based on research, analysis, comments, and recommendations of
 17 the department;]

18 (2) identify and designate [the] areas used for subsistence
 19 harvest [and areas formerly used for subsistence harvest, according to
 20 fish stock and game population, and according to subsistence user
 21 population; the zones may overlap where different groups of subsis-
 22 tence users have customarily and traditionally used the same areas;]

23 (3) identify fish stocks and game populations that custom-
 24 arily and traditionally have been used by, and are important to, rural
 25 residents for subsistence use.

26 (b) The Board of Fisheries or the Board of Game shall assess the
 27 biological status of, respectively, the important subsistence fish
 28 stocks and the important subsistence game populations in the use
 29 zones, and shall determine whether a surplus may be harvested during

1 a regulatory year consistent with the sustained yield principle, sound
2 management principles, and the maintenance of healthy fish stocks, and
3 other wildlife populations.

4 (c) After identifying the important subsistence fish stocks or
5 game populations, the appropriate board shall determine the amount of
6 harvestable surplus of the stock or population that will provide a
7 reasonable opportunity to engage in customary and traditional subsis-
8 tence uses of the stocks or populations.

9 (d) The Board of Fisheries and the Board of Game shall adopt
10 regulations, in accordance with the Administrative Procedure Act
11 (AS 44.62), for subsistence fishing and subsistence hunting unless
12 adoption of the regulations could jeopardize or interfere with the
13 maintenance of fish stocks, game populations, or other wildlife popu-
14 lations on a sustained-yield basis, or could be inconsistent with
15 sound management principles or with the maintenance of healthy fish
16 stocks, game populations, or other wildlife populations. The regula-
17 tions may be the same as, different from, or in addition to regula-
18 tions governing other consumptive uses of the stocks or populations.

19 (e) Except as otherwise provided in this chapter or in other
20 state or federal laws, subsistence fishing and subsistence hunting is
21 accorded a preference over other consumptive takings and uses of fish,
22 game, ~~[or other wildlife]~~. Whenever it is necessary, after reasonably
23 regulating seasons, bag or catch limits, and means and methods, to
24 further restrict subsistence fishing or subsistence hunting to protect
25 the continued health and viability of a fish stock or game population,
26 assure sound management, assure the maintenance of a fish stock or
27 game population on a sustained-yield basis, or protect continued
28 future subsistence fishing or subsistence hunting, the preference may
29 be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that
6 authorize taking for nonsubsistence uses a stock or population iden-
7 tified as important for subsistence use, to the extent that the non-
8 subsistence uses do not jeopardize or interfere with sound management
9 principles, sustained yield, the maintenance of healthy populations,
10 or the opportunity for taking these resources for subsistence uses
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that
13 establish criteria that the boards must consider when defining and
14 identifying customary and traditional subsistence uses and customary
15 and traditional subsistence use areas. The regulations may include,
16 but need not be limited to, the following criteria:

17 (1) long-term, consistent patterns of use recurring in
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest
20 characterized by efficiency and economy of effort and cost, and condi-
21 tioned by local circumstances;

22 (3) the consistent harvest and use of fish or game that is
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge
25 of fishing or hunting skills, values, and lore from generation to
26 generation;

27 (5) use patterns in which the hunting or fishing effort or
28 the products of that effort are distributed or shared among others
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include
2 significant commercial enterprises; an area may include specific
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence
5 purposes on a wide diversity of the fish and game resources of an area
6 and provide substantial economic, cultural, social, and nutritional
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular
11 fish stock or game population is not a customary and traditional
12 subsistence resource or not a significant source of subsistence use
13 and (2) subsistence is not the best use of that fish stock or game
14 population, the board may provide that the fish stock or game popu-
15 lation may not be taken under subsistence regulations, but may be
16 taken under other regulations. The Board of Fisheries may shift
17 subsistence use of a fish stock to a suitable prior or contempora-
18 neous stock of the same or a different species. The Board of Game may
19 shift subsistence use of a game population to another population if a
20 suitable alternative population of the same or a different species is
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-
23 tunity for subsistence fishing or subsistence hunting. The preference
24 may vary, may be graduated, and may be balanced against the degree of
25 economic and traditional dependence on the resource in question. If
26 dependence on the resource in question is high, the preference shall
27 provide a full opportunity for satisfaction of subsistence needs,
28 including potentially exclusive subsistence use when a resource
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As
2 the degree of dependence varies, the degree of the preference may vary
3 accordingly.

4 Sec. 16.05.259. JUDICIAL APPEAL OF REGULATORY ACTIONS. An
5 aggrieved person must exhaust all administrative remedies before
6 bringing a legal action challenging the adoption or repeal of a regu-
7 lation of the Board of Fisheries or the Board of Game.

8 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-
11 viding for the issuance and expiration of subsistence fishing permits,
12 subsistence hunting permits, and combination subsistence fishing and
13 hunting permits as needed for authorizing, regulating and monitoring
14 the subsistence harvest of fish and game. The boards shall adopt
15 these regulations when the subsistence preference requires a reduction
16 in the harvest of a fish stock or game population by nonsubsistence
17 users, or when special seasons, bag limits or other provisions are
18 necessary, to provide a reasonable opportunity for subsistence tak-
19 ings. A permit program need not be established in any particular area
20 of the state or for any particular fish stock or game population
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-
23 grams that may be established. The commissioner may appoint and
24 authorize compensation of persons to take applications and issue
25 permits and tags, and may require reports, as provided for licenses
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-
28 ments of state or federal law for licenses, permits, stamps, tags, or
29 seals.

1 * Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,
3 fishing for, or possession of fish, shellfish, or other fisheries
4 resources in accordance with regulations adopted under AS 16.05.258
5 for subsistence uses with gill net, seine, fish wheel, long line, or
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and
9 traditional uses by residents of rural subsistence areas in Alaska of
10 wild, renewable resources for direct personal or family consumption as
11 food, shelter, fuel, clothing, tools, or transportation, for the
12 making and selling of handicraft articles out of nonedible by-products
13 of fish and wildlife resources taken for personal or family consump-
14 tion, and for the customary trade, barter, or sharing for personal or
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"
16 means [ALL] persons related by blood, marriage, or adoption, and a
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 * Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state
26 residents domiciled in rural areas of the state that the Board of
27 Fisheries and the Board of Game determine, under AS 16.05.258, are
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 *OR hunting fox*
 2 *in accordance with regulations adopted*
 3 game animals ~~[by a person qualified]~~ under AS 16.05.258 for subsistence
 4 uses by methods and means defined by the Board of Game.

5 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

6 * Sec. 11. This Act takes effect June 1, 1986.

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2

SENATE BILL NO.

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 fishing and hunting; and provid-
7 ing for an effective date."

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

9 *Section* * Section 1. FINDINGS AND INTENT. (a) ~~Sound management of fish and~~
10 ~~wildlife is more likely to be achieved if the management of fish and wild-~~
11 ~~life, including allocation among different uses, is done on a biological~~
12 ~~basis, rather than on the basis of land ownership.~~

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

1. authority to establish subsistence permit programs.

*Consider
Refer to
Revenue,
Sho. In.*

2 * Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in
6 future studies, and conduct studies to gather information, including
7 data from subsistence users, the public, other divisions of the de-
8 partment, and other state or federal agencies, on all aspects of the
9 role of subsistence hunting and fishing in the lives of the residents
10 of the state; while analyzing and studying, the division shall, as
11 clearly as possible, identify

12 (A) the species, stocks, and populations of fish and
13 wildlife used for customary and traditional subsistence in each
14 area of the state;

15 (B) the degree of significance that these species,
16 stocks, and populations have to customary and traditional subsis-
17 tence in each area of the state;

18 (C) the customary and traditional subsistence uses of
19 fish and wildlife by species, stock, and population in each area
20 of the state;

21 (D) the areas used for subsistence harvest, and areas
22 formerly used for subsistence harvest, according to

23 (i) fish stock and wildlife population; and

24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-
26 tats, whether or not within the state, used by fish and wildlife
27 that are subject to subsistence uses; in identifying these habi-
28 tats, the division shall seek the assistance of other divisions
29 of the department, and other state or federal agencies having

1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each
3 species, stock, or population has on the maintenance of healthy
4 populations, on the sustained yield of these species, stocks, or
5 populations, on other subsistence users, and on sport or commer-
6 cial users whether or not in the state; in identifying these
7 effects, the division shall seek the assistance of other divi-
8 sions of the department and other state or federal agencies
9 having jurisdiction over fish and wildlife;

10 (2) quantify or estimate the amount, nutritional value, and
11 extent of dependence on food acquired through subsistence hunting and
12 fishing according to

13 (A) species, stock, or population of fish and wild-
14 life;

15 (B) population of customary and traditional subsis-
16 tence users; and

17 (C) subsistence use area;

18 (3) make information gathered available to the public,
19 appropriate agencies, and other organized bodies;

20 (4) assist the department, the Board of Fisheries, and the
21 Board of Game in determining what uses of fish and game, as well as
22 which users and what methods, should be termed customary and tradi-
23 tional subsistence uses, users, and methods;

24 (5) evaluate the impact of state and federal laws and
25 regulations on subsistence hunting and fishing and, when corrective
26 action is indicated, make recommendations to the department;

27 (6) make recommendations to the Board of Game and the Board
28 of Fisheries regarding adoption, amendment and repeal of regulatio
29 affecting subsistence hunting and fishing; in making recommendatic

1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.

11 * Sec. 3. AS 16.05.251(a) is amended to read:

12 -11 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 ✓ 62) for

15 (1) setting apart ~~[and designating]~~ fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 ~~[(2) managing fish reserve areas, refuges and sanctuaries;]~~

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish ~~[in waters subject to state~~
24 ✓ ~~jurisdiction;]~~

25 (5) [(4)] establishing the means and methods, ~~[such as gear~~
26 ~~tackle and vessels]~~ employed in the pursuit, capture, and transport o
27 ✓ fish;

28 (6) [(5)] establishing marking and identification require
29 ments for] means used in pursuit, capture, ~~[possession, tagging,]~~ ar

1 ✓ transport of fish,

2 (7) [(6)] classifying as commercial fish, sport fish,
-1 3 personal use fish, subsistence fish, [indigenous fish, exotic fish,
4 LH nonindigenous fish, hatchery fish.] or predators or other categories
-2 5 essential for regulatory purposes; a fish stock may be the subject of
6 ✓ more than one classification;

7 (8) protecting, maintaining and improving watersheds [(7)
8 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
9 conservation, protection, use, disposal, propagation, and stocking of
10 fish; watershed and habitat regulations may be adopted under this
11 LH paragraph only after consultation with the Department of Natural
-2 12 ✓ Resources;

13 (9) [(8)] investigating and determining the extent and
14 effect of disease, predation, and competition among fish in the state,
15 and exercising control measures considered necessary to the resources
16 ✓ of the state;

17 (10) [(9)] prohibiting and regulating the live capture,
18 possession, transport, or release of (NATIVE OR EXOTIC) fish or their
-1 19 ✓ eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods
21 ✓ of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which
23 the issuance of fishing licenses, permits and registrations and the
24 transfer of permits and registrations between registration areas is
25 allowed; however, this paragraph does not apply to permits issued or
26 ✓ transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,
28 including personal use areas, trophy management areas, catch-and-
29 release areas, and children's fishing areas, and designating species ^{species}

1 in those areas for which special management is appropriate;

2 ~~(14) establishing a procedure for administrative appeal of~~
3 ~~board decisions, and~~

4 (15) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservator, development and utiliza-
6 tion of fisheries.

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 (4) ^{regulating} [(3)] establishing the means ^{SET} [AND] methods, marking,
18 and identification requirements employed in the pursuit, capture,
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other limitations on, and game population
22 goals pertaining to, the taking of game;

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 ~~(11)~~ (11) regulating sport hunts and subsistence hunts as needed
11 for the conservation, development, and utilization of game and nongame
12 species.

13 * Sec. 5. AS 16.05 is amended by adding new sections to read:

14 Sec. 16.05.258. [METHODS OF] [DETERMINING CUSTOMARY AND TRADITIONAL]
15 SUBSISTENCE [USE] AND ALLOCATING FISH AND GAME. (a) The Board of
16 Fisheries and the Board of Game, [acting jointly], shall:

17 (1) estimate ^{for each subsistence area,} the amount of fish and game needed to provide
18 a reasonable opportunity for [rural residents to continue to engage in
19 a] customary and traditional subsistence [way of life]; determinations
20 shall be based on research, analysis, comments, and recommendations of
21 the ^{department} ~~subsistence division;~~

22 (1) [identify and] designate [the] areas used for subsistence
23 harvest, [and areas formerly used for subsistence harvest], according to
24 LH fish stock and game population, and [according to] subsistence user
25 population; the zones may overlap where different groups of subsis-
26 tence users [have customarily and traditionally] used [the] same areas;

27 (2) identify, ^{for each subsistence area, the} fish stocks and game populations that custom-
28 arily and traditionally have been used by, and are important to, rural
29 residents for subsistence use.

-5

1
2 ~~(b) The Board of Fisheries or the Board of Game shall assess the~~
3 biological status of ~~respectively~~ the ~~important subsistence fish~~
4 stocks and ~~the important subsistence game~~ populations in ~~the use~~
5 ~~areas,~~ ^{zones,} and shall determine whether a surplus may be harvested during
6 a regulatory year consistent with the sustained yield principle, sound
7 management principles, and the maintenance of healthy fish stocks,
8 game populations, or other wildlife populations.

9 (b) After identifying the important subsistence fish stocks or
10 game populations, the appropriate board shall ^{The appropriate board shall then} determine the amount of
11 harvestable surplus, ^{if any,} of the stock or population that will ~~[provide a]~~
12 reasonable ^{satisfy} opportunity to engage in ~~[customary and traditional]~~ subsis-
13 tence uses ^{needs} [of the stocks or populations].

14 (c) ~~The Board of Fisheries and the Board of Game shall adopt~~
15 regulations, in accordance with the Administrative Procedure Act
16 (AS 44.62), ^{that will provide} for subsistence fishing and subsistence hunting ^{of the important stocks and pop.} unless
17 adoption of the regulations could jeopardize or interfere with the
18 maintenance of fish stocks, game populations, or other wildlife popu-
19 lations on a sustained-yield basis, or could be inconsistent with
20 sound management principles or with the maintenance of healthy fish
21 stocks, game populations, or other wildlife populations. The
22 regulations may be the same as, different from, or in addition to
23 regulations governing other consumptive uses of the stocks or
24 populations.

25 (d) Except as otherwise provided in this chapter or in other
26 state or federal laws, subsistence fishing and subsistence hunting ~~[on~~
27 land ~~or water subject to state jurisdiction]~~ is accorded a subsistence
28 preference over other consumptive takings and uses of fish, game, or
29 other wildlife. This preference is not a preference over
nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting. Whenever it is necessary to restrict subsistence
7 fishing or subsistence hunting ~~[on land or water subject to State~~
8 ~~jurisdiction]~~ to protect the continued health and viability of a fish
9 stock, game population, or other wildlife population, assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting, the preference may be limited by
13 applying the following criteria:

- 14 (1) customary and direct dependence on the fish stock or
15 game population as the mainstay of livelihood;
16 (2) local residency; and
17 (3) availability of alternative resources.

18 ^e
19 (f) Each board may adopt regulations under this chapter that
20 authorize taking for nonsubsistence uses a stock or population iden-
21 tified as important for subsistence use, to the extent that the non-
22 subsistence uses do not jeopardize or interfere with sound management
23 principles, sustained yield, the maintenance of healthy populations
24 or the ^{reasonable} opportunity for taking these resources for ~~[customary and~~
25 ~~traditional]~~ subsistence uses, ~~[under this chapter.]~~

26 ~~(g) The boards, acting jointly, shall adopt regulations that~~
27 ~~establish criteria that the boards must consider when defining or~~
28 ~~identifying customary and traditional subsistence uses and, if appro-~~
29 ~~priate, customary and traditional subsistence use areas. The regula-~~
30 ~~tions may include, but need not be limited to, the following criteri-~~

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

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

5 (3) a use pattern consisting of methods and means of har-
6 vest characterized by efficiency and economy of effort and cost, and
7 conditioned by local circumstances;

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

10 (5) the means of handling, preparing, preserving, and
11 storing fish or game that has been used traditionally by past genera-
12 tions, but not excluding appropriate recent technological advances;

13 (6) a use pattern that includes the handing down of knowl-
14 edge of fishing or hunting skills, values, and lore from generation to
15 generation;

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

24 (8) a use pattern that includes reliance for subsistence
25 purposes on a wide diversity of the fish and game resources of an area
26 and provides substantial economic, cultural, social, and nutritional
27 elements of the subsistence user's life; and

28 (f)(1) ^{(f) the extent of such economy in the area.} If the appropriate board determines that (1) a particular
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a ^{low extent level and important} ~~significant~~ source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species ^{that is readily available.} The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 ^{readily} available.

11 (d) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings. *The authority in this subsection shall not be used to prohibit*
subsistence use by children or family members of subsistence users.

15 (h) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
27 and the Board of Game, acting jointly, shall establish an appeal
28 procedure for persons aggrieved by the adoption or repeal of a fishing
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.

3 * Sec. ~~4~~⁴. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence ~~fishings~~ permits/
7 ~~to areas, villages, communities, groups, or individuals~~
8 ~~subsistence hunting permits, and combination subsistence fishing and~~
9 ~~hunting permits~~ as needed for authorizing, regulating and monitoring
10 the subsistence harvest of fish and game. The boards shall adopt
11 these regulations when the subsistence preference requires a reduction
12 in the harvest of a fish stock or game population by nonsubsistence
13 users, or when special seasons, bag limits or other provisions are
14 necessary, to provide a reasonable opportunity for subsistence tak-
15 ings. A permit program need not be established in any particular area
16 of the state or for any particular fish stock or game population
17 unless circumstances warrant.

18 ~~(d) Each board may establish programs to issue subsistence~~
19 ~~permits to individuals, groups, communities, villages, or areas.~~

20 ~~Nothing in this section shall be construed as altering other require-~~
21 ~~ments of state or federal law for licenses, permits, stamps, tags, or~~
22 ~~seals.~~

23 (d) With the assistance of the department, the boards shall
24 provide reasonable public notice of the following information to users
25 of a group, community, village, or area subsistence permit:

26 (1) the terms of the permit;

27 (2) the fish stocks and game populations authorized to be
28 taken under the permit;

29 (3) the subsistence use areas covered by the permit.

30 ← ~~set~~ The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice, ~~under (e) of this section.~~

4 (g) The commissioner shall administer subsistence permit pro-
5 grams that may be established. The commissioner may appoint state
6 employees or other persons to take applications and issue permits and
7 tags. A person appointed by the commissioner, may administer oaths
8 for permit and tag applications. The commissioner or the appropriate
9 board may require a report from persons using a permit concerning the
10 time, manner, and place of taking fish and game, the kinds and
11 quantity taken, and other information helpful in administering the
12 fish and game resources of the state. Except for state employees, a
13 person appointed by the commissioner under this subsection is entitled
14 to compensation of \$50 per year or \$1 for each permit or tag issued,
15 whichever is greater.

16 ~~(h) A person who holds a limited entry permit may not engage in~~
17 ~~subsistence fishing for a species of fish authorized under the limited~~
18 ~~entry permit unless the person proves to the satisfaction of the~~
19 ~~commissioner's appointee that~~

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.

29 *Sec. 7. AS 16.05.930(e) is amended to read:

1 (e) ~~This chapter does not prevent the traditional trade or~~
2 ~~barter of fish and game taken by subsistence hunting or subsistence~~
3 ~~fishing, except that the commissioner may prohibit the trade or barter~~
4 ~~of subsistence-taken fish and game by regulation, emergency order, or~~
5 ~~otherwise, if a determination on the record is made that the trade or~~
6 ~~barter is resulting in a waste of the resource, damage to fish stocks~~
7 ~~or game populations, or circumvention of fish or game management~~
8 ~~programs.~~

9 * Sec. ~~5~~. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the nonwasteful taking of,
11 fishing for, or possession of fish, shellfish, or other fisheries
12 resources ~~by a person qualified under AS 16.05.258~~ for subsistence
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;

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

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a
3 single species or subgroup whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction;

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident
9 engaged in customary and traditional subsistence ^{use} as a way of life;

10 (32) "subsistence hunting" means the nonwasteful taking of
11 game animals by a person qualified under AS 16.05.258 for subsistence
12 uses by methods and means defined by the Board of Game.

13 * Sec. ~~8~~. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are re-
14 pealed.

15 * Sec. ~~9~~. This Act takes effect June 1, 1986.
16

r5
and who is domiciled outside the road connected
area and outside of a community with a population
of 7,000 or more, as determined by the Alaska
Department of Community and Regional Affairs;

current

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

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 fishing and hunting; and provid-
7 ing for an effective date."

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

9 * Section 1. FINDINGS AND INTENT. (a) Sound management of fish and
10 wildlife is more likely to be achieved if the management of fish and wild-
11 life, including allocation among different uses, is done on a biological
12 basis, rather than on the basis of land ownership.

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive needs;

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in
6 future studies, and conduct studies to gather information, including
7 data from subsistence users, the public, other divisions of the de-
8 partment, and other state or federal agencies, on all aspects of the
9 role of subsistence hunting and fishing in the lives of the residents
10 of the state; while analyzing and studying, the division shall, as
11 clearly as possible, identify

12 (A) the species, stocks, and populations of fish and
13 wildlife used for customary and traditional subsistence in each
14 area of the state;

15 (B) the degree of significance that these species,
16 stocks, and populations have to customary and traditional subsis-
17 tence in each area of the state;

18 (C) the customary and traditional subsistence uses of
19 fish and wildlife by species, stock, and population in each area
20 of the state;

21 (D) the areas used for subsistence harvest, and areas
22 formerly used for subsistence harvest, according to

23 (i) fish stock and wildlife population; and

24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-
26 tats, whether or not within the state, used by fish and wildlife
27 that are subject to subsistence uses; in identifying these habi-
28 tats, the division shall seek the assistance of other divisions
29 of the department, and other state or federal agencies having

1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each
3 species, stock, or population has on the maintenance of healthy
4 populations, on the sustained yield of these species, stocks, or
5 populations, on other subsistence users, and on sport or commer-
6 cial users whether or not in the state; in identifying these
7 effects, the division shall seek the assistance of other divi-
8 sions of the department and other state or federal agencies
9 having jurisdiction over fish and wildlife;

10 (2) quantify or estimate the amount, nutritional value, and
11 extent of dependence on food acquired through subsistence hunting and
12 fishing according to

13 (A) species, stock, or population of fish and wild-
14 life;

15 (B) population of customary and traditional subsis-
16 tence users; and

17 (C) subsistence use area;

18 (3) make information gathered available to the public,
19 appropriate agencies, and other organized bodies;

20 (4) assist the department, the Board of Fisheries, and the
21 Board of Game in determining what uses of fish and game, as well as
22 which users and what methods, should be termed customary and tradi-
23 tional subsistence uses, users, and methods;

24 (5) evaluate the impact of state and federal laws and
25 regulations on subsistence hunting and fishing and, when corrective
26 action is indicated, make recommendations to the department;

27 (6) make recommendations to the Board of Game and the Board
28 of Fisheries regarding adoption, amendment and repeal of regulation
29 affecting subsistence hunting and fishing; in making recommendatio

1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.

11 * Sec. 3. AS 16.05.251(a) is amended to read:

12 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 62) for

15 (1) setting apart and designating fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 (2) managing fish reserve areas, refuges and sanctuaries;

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish [in waters subject to state
24 jurisdiction];

25 (5) [(4)] establishing the means and methods, [?] [such as gear,
26 tackle and vessels] employed in the pursuit, capture, and transport o:
27 fish;

28 *no change* (6) [(5)] ~~Establishing~~ ^{Regulating} establishing marking and identification require
29 ments for } means used in pursuit, capture, ~~[possession, tagging]~~ an

1 transport of fish;

2 (7) [(6)] classifying as commercial fish, sport fish,
3 personal use fish, subsistence fish, [indigenous fish, exotic fish,
4 nonindigenous fish, hatchery fish,] or predators or other categories
5 essential for regulatory purposes; [a fish stock may be the subject of
6 more than one classification;]

7 (8) protecting, maintaining and improving watersheds [(7)
8 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
9 conservation, protection, use, disposal, propagation, and stocking of
10 fish; [watershed and habitat regulations may be adopted under this
11 paragraph only after consultation with the Department of Natural
12 Resources;]

13 (9) [(8)] investigating and determining the extent and
14 effect of disease, predation, and competition among fish in the state,
15 and exercising control measures considered necessary to the resources
16 of the state;

17 (10) [(9)] prohibiting and regulating the live capture,
18 possession, transport, or release of {NATIVE OR EXOTIC} fish or their
19 eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods
21 of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which
23 the issuance of fishing licenses, permits and registrations and the
24 transfer of permits and registrations between registration areas is
25 allowed; however, this paragraph does not apply to permits issued or
26 transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,
28 including personal use areas, trophy management areas, catch-and-
29 release areas, and children's fishing areas, and designating [species] ^{stocks}

1 in those areas for which special management is appropriate;

2 (14) establishing a procedure for administrative appeal of
3 board decisions; and

4 (14) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservation, development and utiliza-
6 tion of fisheries.

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

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

14 (2) managing game reserve areas, refuges and sanctuaries;

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 (4) ^{Regulating} [(3)] [establishing the] means, [AND] methods, [marking,
18 and identification requirements] employed in the pursuit, capture,
19 [possession, tagging] and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other imitations on, [and game population
22 goals pertaining to,] the taking, of game;

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources;

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 ~~(11) establishing a procedure for administrative appeal of board decisions~~
11 (11) regulating sport hunts and subsistence hunts as needed
12 for the conservation, development, and utilization of game and nongame
13 species.

14 * Sec. 5. AS 16.05 is amended by adding new sections to read:

15 Sec. 16.05.258. [METHODS OF] DETERMINING CUSTOMARY AND TRADITIONAL
16 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
17 Fisheries and the Board of Game, [acting jointly,] shall:

18 (a) estimate ^{by area of the state,} the amount of fish and game needed to provide
19 a reasonable opportunity for [rural residents to continue to engage in
20 a] customary and traditional subsistence ^{by area} [way of life]; determinations
21 shall be based on research, analysis, comments, and recommendations of
22 the [subsistence division]; ^{department}

23 (1) [identify and] designate [the] areas used for subsistence
24 harvest [and areas formerly used for subsistence harvest,] according to
25 fish stock and game population, and [according to] subsistence user
26 population; the zones may overlap where different groups of subsis-
27 tence users [have customarily and traditionally] use[d] the same areas;

28 (2) identify fish stocks and game populations that custom-
29 arily and traditionally have been used by, and are important to, rural
residents for subsistence use.

1 (b) The Board of Fisheries or the Board of Game shall assess the
2 biological status of, respectively, the important subsistence fish
3 stocks and the important subsistence game populations in the use
4 zones, and shall determine whether a surplus may be harvested during
5 a regulatory year consistent with the sustained yield principle, sound
6 management principles, and the maintenance of healthy fish stocks,
7 game populations, or other wildlife populations.

8 (c) After identifying the important subsistence fish stocks or
9 game populations, the appropriate board shall determine the amount of
10 harvestable surplus of the stock or population that will provide a
11 reasonable opportunity to engage in customary and traditional subsis-
12 tence uses of the stocks or populations.

13 (d) The Board of Fisheries and the Board of Game shall adopt
14 regulations, in accordance with the Administrative Procedure Act
15 (AS 44.62), for subsistence fishing and subsistence hunting unless
16 adoption of the regulations could jeopardize or interfere with the
17 maintenance of fish stocks, game populations, or other wildlife popu-
18 lations on a sustained-yield basis, or could be inconsistent with
19 sound management principles or with the maintenance of healthy fish
20 stocks, game populations, or other wildlife populations. The
21 regulations may be the same as, different from, or in addition to
22 regulations governing other consumptive uses of the stocks or
23 populations.

24 (e) Except as otherwise provided in this chapter or in other
25 state or federal laws, subsistence fishing and subsistence hunting on
26 land or water subject to state jurisdiction is accorded a subsistence
27 preference over other consumptive takings and uses of fish, game, or
28 other wildlife. This preference is not a preference over
29 nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting. Whenever it is necessary to restrict subsistence
7 fishing or subsistence hunting on land or water subject to state
8 jurisdiction to protect the continued health and viability of a fish
9 stock, game population, or other wildlife population, assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting, the preference may be limited by
13 applying the following criteria:

14 (1) customary and direct dependence on the fish stock or
15 game population as the mainstay of livelihood;

16 (2) local residency; and

17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that
19 authorize taking for nonsubsistence uses a stock or population iden-
20 tified as important for subsistence use, to the extent that the non-
21 subsistence uses do not jeopardize or interfere with sound management
22 principles, sustained yield, the maintenance of healthy populations,
23 or the opportunity for taking these resources for customary and
24 traditional subsistence uses under this chapter.

25 (g) The boards, acting jointly, shall adopt regulations that
26 establish criteria that the boards must consider when defining and
27 identifying customary and traditional subsistence uses and, if appro-
28 priate, customary and traditional subsistence use areas. The regula-
29 tions may include, but need not be limited to, the following criteria:

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

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

5 (3) a use pattern consisting of methods and means of har-
6 vest characterized by efficiency and economy of effort and cost, and
7 conditioned by local circumstances;

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

10 (5) the means of handling, preparing, preserving, and
11 storing fish or game that has been used traditionally by past genera-
12 tions, but not excluding appropriate recent technological advances;

13 (6) a use pattern that includes the handing down of knowl-
14 edge of fishing or hunting skills, values, and lore from generation to
15 generation;

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

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

28 (h) If the appropriate board determines that (1) a particular
29 fish stock or game population is not a customary and traditional

1 subsistence resource or not a significant source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species. The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 available.

11 (i) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings.

15 (j) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries
27 and the Board of Game, acting jointly, shall establish an appeal
28 procedure for persons aggrieved by the adoption or repeal of a fishing
29 or hunting regulation. An aggrieved person must exhaust this

1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.

3 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence fishing permits,
7 subsistence hunting permits, and combination subsistence fishing and
8 hunting permits as needed for authorizing, regulating and monitoring
9 the subsistence harvest of fish and game. The boards shall adopt
10 these regulations when the subsistence preference requires a reduction
11 in the harvest of a fish stock or game population by nonsubsistence
12 users, or when special seasons, bag limits or other provisions are
13 necessary, to provide a reasonable opportunity for subsistence tak-
14 ings. A permit program need not be established in any particular area
15 of the state or for any particular fish stock or game population
16 unless circumstances warrant.

17 (d) Each board may establish programs to issue subsistence
18 permits to individuals, groups, communities, villages, or areas.
19 Nothing in this section shall be construed as altering other require-
20 ments of state or federal law for licenses, permits, stamps, tags, or
21 seals.

22 (e) With the assistance of the department, the boards shall
23 provide reasonable public notice of the following information to users
24 of a group, community, village, or area subsistence permit:

25 (1) the terms of the permit;

26 (2) the fish stocks and game populations authorized to be
27 taken under the permit;

28 (3) the subsistence use areas covered by the permit.

29 (f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice under (e) of this section.

4 (g) The commissioner shall administer subsistence permit pro-
5 grams that may be established. The commissioner may appoint state
6 employees or other persons to take applications and issue permits and
7 tags. A person appointed by the commissioner, may administer oaths
8 for permit and tag applications. The commissioner or the appropriate
9 board may require a report from persons using a permit concerning the
10 time, manner, and place of taking fish and game, the kinds and
11 quantity taken, and other information helpful in administering the
12 fish and game resources of the state. Except for state employees, a
13 person appointed by the commissioner under this subsection is entitled
14 to compensation of \$50 per year or \$1 for each permit or tag issued,
15 whichever is greater.

16 (h) A person who holds a limited entry permit may not engage in
17 subsistence fishing for a species of fish authorized under the limited
18 entry permit unless the person proves to the satisfaction of the
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.

29 * Sec. 7. AS 16.05.930(e) is amended to read:

1 (e) This chapter does not prevent the traditional trade or
2 barter of fish and game taken by subsistence hunting or subsistence
3 fishing, except that the commissioner may prohibit the trade or barter
4 of subsistence-taken fish and game by regulation, emergency order, or
5 otherwise, if a determination on the record is made that the trade or
6 barter is resulting in a waste of the resource, damage to fish stocks
7 or game populations, or circumvention of fish or game management
8 programs.

9 * Sec. 8. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the nonwasteful taking of,
11 fishing for, or possession of fish, shellfish, or other fisheries
12 resources by a person qualified under AS 16.05.258 for subsistence
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by-products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;

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

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction;

2 (29) "game population" means a group of game animals of a
3 single species or subgroup whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction;

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident
9 engaged in customary and traditional subsistence as a way of life;

10 (32) "subsistence hunting" means the nonwasteful taking of
11 game animals by a person qualified under AS 16.05.258 for subsistence
12 uses by methods and means defined by the Board of Game.

13 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are re-
14 pealed.

15 * Sec. 12. This Act takes effect June 1, 1986.

16

9/25/85

DISCUSSION DRAFT

some recognition in findings of desirability of issue - call for fairness.

1 IN THE SENATE

2 SENATE BILL NO.

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 fishing and hunting."

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

8 * Section 1. FINDINGS AND INTENT. (a) The legislature finds that

9 (1) hunting and fishing are ^{economically & culturally} important to residents of many
10 small, remote areas communities in the state as a principal means of obtaining
11 food; *and sustaining a subsistence life style and culture.*

12 (2) the Congress, in enacting the Alaska National Interest Lands
13 Conservation Act, intended to ensure, in their words, "the continuation of
14 the opportunity for subsistence uses by rural residents of Alaska" who are
15 dependent on subsistence uses and for whom "no practical alternative means
16 are available to replace the food supplies and other items gathered from
17 fish and wildlife";

18 (3) even in areas communities in which there are practical alternative
19 means of obtaining food, many residents rely on fishing and hunting to
20 obtain a substantial portion of their food;

21 (4) the opportunity to fish and hunt is ^{equally} ~~vital~~ important to
22 many Alaskans throughout the state, not only for obtaining food, but also
23 for the experience itself. *recreational and commercial purposes equally related to their lifestyle and culture*

24 (b) It is the intent of the legislature

25 (1) to establish as a principle of resource management by the
26 Board of Fisheries and the Board of Game a preference for subsistence uses
27 of fish and game in those areas "where no practical alternative means are
28 available to replace the food supplies and other items gathered from fish
29 and wildlife which supply rural residents dependent on subsistence uses";

1 and

2 (2) that the Board of Fisheries and the Board of Game have broad
3 flexibility to manage the state's fish and game, and that they use this
4 flexibility to ensure the sustained yield and best use of all fish stocks
5 and game populations.

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

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

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

13 (2) establishing open and closed seasons and areas for the
14 taking of fish;

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

17 (4) establishing the ^{including appropriate gear boats vessels and other} means and methods ^{such items} employed in the
18 pursuit, capture and transport of fish;

19 (5) establishing marking and identification requirements
20 for means used in pursuit, capture and transport of fish;

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

24 (7) watershed and habitat improvement, and management,
25 conservation, protection, use, disposal, propagation and stocking of
26 fish;

27 (8) investigating and determining the extent and effect of
28 disease, predation, and competition among fish in the state, exercis-
29 ing control measures considered necessary to the resources of the

1 state;

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

4 (10) establishing seasons, areas, quotas and methods of
5 harvest for aquatic plants;

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

11 (12) regulating catch-and-release sport fishing for selected
12 fish stocks;

*(14) with. to add
Regs. for appeal
procedure.*

13 (13) regulating commercial, sport, personal use, and subsis-
14 tence fishing *as otherwise necessary for the conservation, utilization and development of fisheries.*

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

16 (b) The Board of Fisheries shall adopt regulations in accordance
17 with the Administrative Procedure Act (AS 4..62) for? [PERMITTING] the
18 taking of fish for subsistence uses unless the board determines, in
19 accordance with the Administrative Procedure Act, that adoption of the
20 regulations will jeopardize or interfere with the maintenance of fish
21 stocks on a sustained-yield basis. Whenever it is necessary to re-
22 strict the taking of fish to assure the maintenance of fish stocks on
23 a sustained-yield basis, or to assure the continuation of subsistence
24 uses of such resources, subsistence use shall be the preferred [PRI-
25 ORITY] use. If further restriction is necessary, the board shall
26 establish restrictions and limitations on and priorities for these
27 consumptive uses on the basis of the following criteria:

*needs
L20
H20*

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

- (2) local residency; and
- (3) availability of alternative resources.

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

(d) ^{All include but not limited to} Subsistence fishing authorized under this section is subject to reasonable regulation of seasons, catch limits, methods, and means.

(e) ^{to reasonable regulation w/ elim of other uses} If the Board of Fisheries determines that (1) a particular fish stock is not a customary and traditional source or not a significant source of subsistence for rural subsistence area residents and (2) subsistence is not the best use of that fish stock, the board may provide that the fish stock may not be taken under subsistence regulations.

(f) The Board of Fisheries shall establish an appeal procedure for persons aggrieved by the adoption or repeal or enforcement of a subsistence fishing regulation. The aggrieved person must exhaust this administrative remedy before bringing a legal action challenging the regulation.

* Sec. 5. AS 16.05.255(a) is amended 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 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;

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

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

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

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

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

14 (10) regulating sport hunts and subsistence hunts.

15 * Sec. 6. AS 16.05.255(b) is amended to read:

16 (b) The Board of Game shall adopt regulations in accordance with
17 the Administrative Procedure Act (AS 44.62) for [PERMITTING] the
18 taking of game for subsistence uses unless the board determines, in
19 accordance with the Administrative Procedure Act, that adoption of the
20 regulations will jeopardize or interfere with the maintenance of game
21 resources on a sustained-yield basis. Whenever it is necessary to
22 restrict the taking of game to assure the maintenance of game re-
23 sources on a sustained-yield basis, or to assure the continuation of
24 subsistence uses of such resources, subsistence use shall be the
25 preferred [PRIORITY] use. If further restriction is necessary, the
26 board shall establish restrictions and limitations on and priorities
27 for these consumptive uses on the basis of the following criteria:

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

1 (2) local residency; and

2 (3) availability of alternative resources.

3 * Sec. 7. AS 16.05.255 is amended by adding new subsections to read:

4 (d) Subsistence hunting authorized under this section is subject
5 to reasonable regulation of seasons, bag limits, methods, and means.

6 (e) If the Board of Game determines that (1) a particular game
7 species is not a customary and traditional source or not a significant
8 source of subsistence for rural subsistence area residents and (2)
9 subsistence is not the best use of that game species, the board may
10 provide that the game species may not be taken under subsistence
11 regulations.

12 (f) The Board of Game shall establish an appeal procedure for
13 persons aggrieved by the adoption or repeal or enforcement of a sub-
14 sistence hunting regulation. The aggrieved person must exhaust this
15 administrative remedy before bringing a legal action challenging the
16 regulation.

17 * Sec. 8. AS 16.05.330 is amended to read:

18 Sec. 16.05.330. LICENSES AND TAGS REQUIRED. (a) Except as
19 otherwise permitted in this chapter, a person may not engage in
20 personal use fishing, subsistence fishing or sport fishing, including
21 the taking of razor clams; in ^{sport} hunting, subsistence hunting, trapping,
22 or fur dealing; in the farming of fish, fur, or game; or in taxidermy,
23 without having the appropriate license or tag in actual possession.

24 (b) When obtaining the appropriate license or tag in (a) of this
25 section, an applicant who asserts residency in the state or in a rural
26 subsistence area shall provide the license vendor with the proof of
27 residence that the department requires by regulation.

28 * Sec. 9. AS 16.05.340(a) is amended by adding new paragraphs to read:

29 (18) personal use fishing license \$10

1 (19) subsistence fishing license \$10

2 (20) subsistence hunting license \$12

3 However, the fee for a license under this paragraph or (18) or (19) of
4 this subsection is 25 cents for an applicant who is the head of a
5 family or a dependent member of that family, or who is solely self-
6 supporting, upon proof presented by the applicant that the applicant

7 (A) is obtaining or has obtained assistance during the
8 preceding six months under any state or federal welfare program
9 to aid the indigent, or

10 (B) has an annual family gross income of less than
11 \$5,600 for the year preceding application.

12 * Sec. 10. AS 16.05.940(23) is amended to read:

13 (23) "subsistence uses" means the customary and traditional
14 uses [IN ALASKA] of wild, renewable resources by a resident of a rural
15 subsistence area of the state for direct personal or family noncommer-
16 cial consumption as food, shelter, fuel, clothing, tools, or transpor-
17 tation, for the making and selling of handicraft articles out of
18 nonedible by-products of fish and wildlife resources taken for direct
19 personal or family noncommercial consumption, and for the customary
20 trade, barter, or sharing for direct personal or family noncommercial
21 consumption; for the purposes of this paragraph, "family" means all
22 persons related by blood, marriage, or adoption, and any person living
23 within the household on a permanent basis;

24 * Sec. 11. AS 16.05.940 is amended by adding new paragraphs to read:

25 (28) "personal use fishing" means the taking of, or the
26 attempt to take, finfish, shellfish, or other fishery resources in an
27 area other than a rural subsistence area by a resident for direct
28 personal or family consumption, not for sale or barter, by means of
29 gill net, dip net, seine, pot, fishwheel, long line, or other [similar]

Can we just provide

1 means defined by the Board of Fisheries; personal use fishing is
2 limited to areas which, in the judgment of the board, can support both
3 personal use fishing and sport fishing because of an abundance of
4 fishery resources in the area;

Amended

(29) "resident of a rural subsistence area" means

(A) a person who, for 12 consecutive months, has main-
tained in a single rural subsistence area a permanent place of
abode and a voting residence;

~~(B) a member of the military service who has been
stationed, or a dependent of the member who has been living, for
the preceding 12 consecutive months in a single rural subsistence
area is a resident of that area; or~~

~~(C) an alien who, for 12 consecutive months, has main-
tained in a single rural subsistence area a permanent place of
abode;~~

(30) "rural subsistence area" means a community or area of

the state in which there are no practical alternative means for re-
placing food supplies and other items that are gathered from fish and
game by rural residents who are dependent on subsistence resources, as
determined by the Board of Fisheries or the Board of Game after con-
sidering the following criteria:

delete community

(A) lack of cash economy, sources of employment, or
stores in the community;

(B) customary and traditional community dependence for
sustenance on the consistent harvest and use, in a cost effective
manner, of fish or game that is near or reasonably accessible
from the community;

(C) remoteness of the community and lack of access by
road, regularly scheduled barge, ferry, railroad or airplane

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service; and

(D) community population of less than 500 persons;

(31) "subsistence hunting" means the taking of a game animal by a resident of a rural subsistence area for subsistence uses by means defined by the Board of Game.

* Sec. 12. AS 16.05.257(h)(1) is repealed.

1/15/85

WORK DRAFT

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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. FINDINGS AND INTENT. (a) Sound management of fish and wildlife is more likely to be achieved if the management of fish and wildlife, including allocation among different uses, is done on a biological basis, rather than on the basis of land ownership.

(b) Maintaining healthy populations of fish and wildlife is important to the state because healthy populations provide opportunities for a subsistence life style, for trophy and other sport hunting and fishing, for commercial fishing and for wildlife viewing.

(c) To assure that these opportunities remain reasonably available it is necessary

(1) that there be an equitable balance among sport, commercial, subsistence, and nonconsumptive needs;

(2) that, when all consumptive uses of fish and game cannot be accommodated without harming the resource, there be a reasonable preference for subsistence use of fish stocks and game populations that are important to subsistence uses;

(3) that the Board of Fisheries and the Board of Game have the authority, flexibility, and information needed to maintain sustained yield, healthy populations, and opportunities for subsistence, sport, commercial and other consumptive and nonconsumptive uses of fish and game; and

(4) that the Board of Fisheries and the Board of Game have

1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.050 is amended by adding new paragraphs to read:

3 (14) make recommendations to the Board of Fisheries and the
4 Board of Game regarding the adoption, amendment, and repeal of regu-
5 lations;

6 (15) provide information to the Board of Fisheries and the
7 Board of Game as needed to carry out their statutory duties.

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

9 (a) The Board of Fisheries may adopt regulations it considers
10 advisable in accordance with the Administrative Procedure Act (AS 44.-
11 62) for

12 (1) setting apart and designating fish reserve areas,
13 refuges and sanctuaries in the waters of the state over which it has
14 jurisdiction, subject to the approval of the legislature;

15 (2) managing fish reserve areas, refuges and sanctuaries;

16 (3) establishing open and closed seasons and areas for the
17 taking of fish;

18 (4) [(3)] setting quotas, bag limits, harvest levels,
19 escapement levels, and sex, [AND] size, age, and other limitations
20 pertaining to [ON] the taking of fish;

21 (5) [(4)] establishing the means and methods, including
22 gear, tackle, and vessels, employed in the pursuit, capture, and
23 transport of fish;

24 (6) [(5)] establishing marking and identification require-
25 ments for means used in pursuit, capture, possession, tagging, and
26 transport of fish;

27 (7) [(6)] classifying as commercial fish, sport fish,
28 personal use fish, subsistence fish, indigenous fish, exotic fish,
29 nonindigenous fish, hatchery fish, or predators or other categories

1 essential for regulatory purposes; a fish stock may be the subject of
2 more than one classification;

3 (8) protecting, maintaining and improving watersheds [(7)
4 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management,
5 conservation, protection, use, disposal, propagation, and stocking of
6 fish; watershed and habitat regulations may be adopted under this
7 paragraph only after consultation with the Department of Natural
8 Resources;

9 (9) [(8)] investigating and determining the extent and
10 effect of disease, predation, and competition among fish in the state,
11 and exercising control measures considered necessary to the resources
12 of the state;

13 (10) [(9)] prohibiting and regulating the live capture,
14 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
15 eggs;

16 (11) [(10)] establishing seasons, areas, quotas and methods
17 of harvest for aquatic plants;

18 (12) [(11)] establishing the times and dates during which
19 the issuance of fishing licenses, permits and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (13) designating and regulating special fishing areas,
24 including personal use areas, trophy management areas, catch-and-
25 release areas, and children's fishing areas, and designating stocks in
26 those areas for which special management is appropriate;

27 (14) establishing a procedure for administrative appeal of
28 board decisions; and

29 (15) regulating commercial, sport, subsistence, and personal

1 use fishing as needed for the conservation, development and utiliza-
2 tion of fisheries.

3 * Sec. 4. AS 16.05.255(a) is amended to read:

4 (a) The Board of Game may adopt regulations it considers advis-
5 able in accordance with the Administrative Procedure Act (AS 44.62)
6 for

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

10 (2) managing game reserve areas, refuges and sanctuaries;

11 (3) establishing open and closed seasons and areas for the
12 taking of game;

13 (4) [(3)] establishing the means, [AND] methods, marking,
14 and identification requirements employed in the pursuit, capture,
15 possession, tagging and transport of game;

16 (5) [(4)] setting quotas, bag limits, harvest levels, and
17 sex, age, [AND] size, and other limitations on, and game population
18 goals pertaining to, the taking of game;

19 (6) [(5)] classifying game as game birds, song birds, big
20 game animals, fur bearing animals, predators or other categories;

21 (7) [(6)] methods, means, and harvest levels necessary to
22 control predation and competition among game in the state;

23 (8) protecting, maintaining, and improving watersheds [(7)
24 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
25 ment, conservation, protection, use, disposal, propagation and stock-
26 ing of game; watershed and habitat regulations may be adopted under
27 this paragraph only after consultation with the Department of Natural
28 Resources;

29 (9) [(8)] prohibiting the live capture, possession,

1 transport, or release of native or exotic game or their eggs;

2 (10) [(9)] establishing the times and dates during which the
3 issuance of game licenses, permits and registrations and the transfer
4 of permits and registrations between registration areas and game
5 management units or subunits is allowed;

6 (11) regulating sport hunts and subsistence hunts as needed
7 for the conservation, development, and utilization of game and nongame
8 species. (12) establishing a procedure for administrative appeal of

9 * Sec. 5. AS 16.05 is amended by adding new sections to read:

10 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
11 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
12 Fisheries and the Board of Game shall:

13 (1) estimate the amount of fish and game needed to provide
14 a reasonable opportunity for rural residents to continue to engage in
15 a customary and traditional subsistence way of life; determinations
16 shall be based on research, analysis, comments, and recommendations of
17 the department;

18 (2) identify and designate the areas used for subsistence
19 harvest, and areas formerly used for subsistence harvest, according to
20 fish stock and game population, and according to subsistence user
21 population; the zones may overlap where different groups of subsis-
22 tence users have customarily and traditionally used the same areas;

23 (3) identify fish stocks and game populations that custom-
24 arily and traditionally have been used by, and are important to, rural
25 residents for subsistence use.

26 (b) The Board of Fisheries or the Board of Game shall assess the
27 biological status of, respectively, the important subsistence fish
28 stocks and the important subsistence game populations in the use
29 zones, and shall determine whether a surplus may be harvested during

1 a regulatory year consistent with the sustained yield principle, sound
2 management principles, and the maintenance of healthy fish stocks, and
3 other wildlife populations.

4 (c) After identifying the important subsistence fish stock or
5 game populations, the appropriate board shall determine the amount of
6 harvestable surplus of the stock or population that will provide a
7 reasonable opportunity to engage in customary and traditional subsis-
8 tence uses of the stocks or populations.

9 (d) The Board of Fisheries and the Board of Game shall adopt
10 regulations, in accordance with the Administrative Procedure Act
11 (AS 44.62), for subsistence fishing and subsistence hunting unless
12 adoption of the regulations could jeopardize or interfere with the
13 maintenance of fish stocks, game populations, or other wildlife popu-
14 lations on a sustained-yield basis, or could be inconsistent with
15 sound management principles or with the maintenance of healthy fish
16 stocks, game populations, or other wildlife populations. The regula-
17 tions may be the same as, different from, or in addition to regula-
18 tions governing other consumptive uses of the stocks or populations.

19 (e) Except as otherwise provided in this chapter or in other
20 state or federal laws, subsistence fishing and subsistence hunting is
21 accorded a preference over other consumptive takings and uses of fish,
22 ^{OR} game, [~~or other wildlife~~]. Whenever it is necessary, after reasonably
23 regulating seasons, bag or catch limits, and means and methods, to
24 ⁷ further restrict subsistence fishing or subsistence hunting to [protect
25 the continued health and viability] of a fish stock or game population,
26 ⁷ assure sound management, assure the maintenance of a fish stock or
27 game population on a sustained-yield basis, or protect continued
28 future subsistence fishing or subsistence hunting, the preference may
29 ⁰ be limited by applying the following criteria:

1 (1) customary and direct dependence on the fish stock or
2 game population as the mainstay of livelihood;

3 (2) local residency; and

4 (3) availability of alternative resources.

5 (f) Each board may adopt regulations under this chapter that
6 authorize taking for nonsubsistence uses a stock or population iden-
7 tified as important for subsistence use, to the extent that the non-
8 subsistence uses do not jeopardize or interfere with sound management
9 principles, sustained yield, the maintenance of healthy populations,
10 or the opportunity for taking these resources for subsistence uses
11 under this chapter.

12 (g) The boards, acting jointly, shall adopt regulations that
13 establish criteria that the boards must consider when defining and
14 identifying customary and traditional subsistence uses and customary
15 and traditional subsistence use areas. The regulations ^{shall} may include,
16 but need not be limited to, the following criteria:

17 (1) long-term, consistent patterns of use recurring in
18 specific seasons each year;

19 (2) use patterns consisting of methods and means of harvest
20 characterized by efficiency and economy of effort and cost, and condi-
21 tioned by local circumstances;

22 (3) the consistent harvest and use of fish or game that is
23 near, or reasonably accessible from, the user's residence;

24 (4) use patterns that include the handing down of knowledge
25 of fishing or hunting skills, values, and lore from generation to
26 generation;

27 (5) use patterns in which the hunting or fishing effort or
28 the products of that effort are distributed or shared among others
29 within a definable community of persons, including customary trade,

1 barter, sharing, and gift-giving; customary trade does not include
2 significant commercial enterprises; an area may include specific
3 villages or towns with a historical dependence on subsistence uses;

4 (6) use patterns that include reliance for subsistence
5 purposes on a wide diversity of the fish and game resources of an area
6 and provide substantial economic, cultural, social, and nutritional
7 elements of the life of area residents; and

8 (7) lack of a developed cash economy that could provide all
9 residents of the area a reasonable opportunity for participation.

10 (h) If the appropriate board determines that (1) a particular
11 fish stock or game population is not a customary and traditional
12 subsistence resource or not a significant source of subsistence use
13 and (2) subsistence is not the best use of that fish stock or game
14 population, the board may provide that the fish stock or game popu-
15 lation may not be taken under subsistence regulations, but may be
16 taken under other regulations. The Board of Fisheries may shift
17 subsistence use of a fish stock to a suitable prior or contempora-
18 neous stock of the same or a different species. The Board of Game may
19 shift subsistence use of a game population to another population if a
20 suitable alternative population of the same or a different species is
21 available.

22 (i) The subsistence preference shall provide a reasonable oppor-
23 tunity for subsistence fishing or subsistence hunting. The preference
24 may vary, may be graduated, and may be balanced against the degree of
25 economic and traditional dependence on the resource in question. If
26 dependence on the resource in question is high, the preference shall
27 provide a full opportunity for satisfaction of subsistence needs,
28 including potentially exclusive subsistence use when a resource
29 shortage occurs. If dependence on the resource in question is low,

1 the preference may be less and need not be potentially exclusive. As
2 the degree of dependence varies, the degree of the preference may vary
3 accordingly.

4 Sec. 16.05.259. JUDICIAL APPEAL OF REGULATORY ACTIONS. An
5 aggrieved person must exhaust all administrative remedies before
6 bringing a legal action challenging the adoption or repeal of a regu-
7 lation of the Board of Fisheries or the Board of Game.

8 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

9 (c) The Board of Fisheries and the Board of Game may adopt
10 regulations, under the Administrative Procedure Act (AS 44.62), pro-
11 viding for the issuance and expiration of subsistence fishing permits,
12 subsistence hunting permits, and combination subsistence fishing and
13 hunting permits as needed for authorizing, regulating and monitoring
14 the subsistence harvest of fish and game. The boards shall adopt
15 these regulations when the subsistence preference requires a reduction
16 in the harvest of a fish stock or game population by nonsubsistence
17 users, or when special seasons, bag limits or other provisions are
18 necessary, to provide a reasonable opportunity for subsistence tak-
19 ings. A permit program need not be established in any particular area
20 of the state or for any particular fish stock or game population
21 unless circumstances warrant.

22 (d) The commissioner shall administer subsistence permit pro-
23 grams that may be established. The commissioner may appoint and
24 authorize compensation of persons to take applications and issue
25 permits and tags, and may require reports, as provided for licenses
26 and tags under AS 16.05.360 - 16.05.390.

27 (e) This section may not be construed as altering other require-
28 ments of state or federal law for licenses, permits, stamps, tags, or
29 seals.

1 * Sec. 7. AS 16.05.940(22) is amended to read:

2 (22) "subsistence fishing" means the nonwasteful taking of,
3 fishing for, or possession of fish, shellfish, or other fisheries
4 resources in accordance with regulations adopted under AS 16.05.258
5 for subsistence uses with gill net, seine, fish wheel, long line, or
6 other methods and means defined by the Board of Fisheries;

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

8 (23) "subsistence uses" means the nonwasteful, customary and
9 traditional uses by residents of rural subsistence areas in Alaska of
10 wild, renewable resources for direct personal or family consumption as
11 food, shelter, fuel, clothing, tools, or transportation, for the
12 making and selling of handicraft articles out of nonedible by-products
13 of fish and wildlife resources taken for personal or family consump-
14 tion, and for the customary trade, barter, or sharing for personal or
15 family consumption; in [FOR THE PURPOSES OF] this paragraph, "family"
16 means [ALL] persons related by blood, marriage, or adoption, and a
17 [ANY] person living in [WITHIN] the household on a permanent basis;

18 * Sec. 9. AS 16.05.940 is amended by adding new paragraphs to read:

19 (28) "fish stock" means a species, subspecies, geographic
20 grouping or other category of fish manageable as a unit;

21 (29) "game population" means a group of game animals of a
22 single species or geographic subgroup;

23 (30) "nonwasteful" means making reasonable use of a har-
24 vested fish or game animal or most of its parts;

25 (31) "residents of rural subsistence areas" means state
26 residents domiciled in rural areas of the state that the Board of
27 Fisheries and the Board of Game determine, under AS 16.05.258, are
28 customary and traditional subsistence use areas;

29 (32) "subsistence hunting" means the nonwasteful taking of

1 ^{or hunting for} ~~by a person qualified~~ ^{in accordance with regulations adopted} ~~under~~
 2 V game animals V under AS 16.05.258 for subsistence
 3 uses by methods and means defined by the Board of Game.

4 * Sec. 10. AS 16.05.251(b), 16.05.255(b), and 16.05.257 are repealed.

5 * Sec. 11. This Act takes effect June 1, 1986.

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IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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) 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, escapement levels, and sex, [AND] size, age, and other limitations pertaining to [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;

Sec 1. S.A.A. (6) classifying as commercial fish, sport fish, personal use fish, subsistence fish, or predators or other categories essential for regulatory purposes;

Sec 2. S.A.A. (7) protecting, maintaining and improving watersheds [WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the 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, and 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;

Sec 3
(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) is amended to read:

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

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(1) setting apart and designating 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) managing game reserve areas, refuges and sanctuaries;

(3) establishing open and closed seasons and areas for the taking of game;

(4) [(3)] regulating [ESTABLISHING] the means and methods employed in the pursuit, capture and transport of game;

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

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

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

Sec 4 (a) (7) ^{amended to read} ~~(7)~~ protecting, maintaining, and improving watersheds [(7) WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the management, conservation, protection, use, disposal, propagation and stocking of game;

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

(10) [(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;

Sec 5 (a) (10) ^{new section} ~~(10)~~ regulating sport hunts and subsistence hunts as needed for the conservation, development, and utilization of game and nongame species.

* Sec. 3. AS 16.05 is amended by adding new sections to read:

Sec. 6.05.258. SUBSISTENCE USE AND ALLOCATION FISH AND GAME.

(a) The Board of Fisheries and the Board of Game shall:

(1) ^{subsistence harvest} designate ~~areas [used for subsistence harvest]~~, according to fish stock, ~~[and] game population~~, and ~~[subsistence]~~ user population

areas *to reflect common use by different*
the ~~zones~~ may overlap where different groups of subsistence users use the same areas;

(2) identify for each subsistence area, the fish stocks and game populations *important to the subsistence economy and culture of each area;* that customarily and traditionally have been used by, and are important to, rural residents for subsistence use.

(3) estimate *in each area* for each subsistence area, the amount of fish and game needed to provide a reasonable opportunity for customary and traditional subsistence; *use in each exact stocks and populations identified under (2) of this section* determinations shall be based on research, analysis, comments, and recommendations of the department;

(b) [After identifying the important subsistence fish stocks or game populations,] the appropriate board shall assess the biological status of the stocks and populations in each subsistence area, and

The boards shall determine whether a surplus may be harvested during a regulatory year (consistent with [the] sustained yield [principle], sound management [principles], and the maintenance of healthy fish stocks, game populations, or other wildlife populations. The appropriate board shall then determine the amount of harvestable surplus, if any, that will reasonably satisfy subsistence needs.

reasonable regs (c) The [appropriate] board shall adopt [regulations] [in accordance with the Administrative Procedure Act (AS 44.62),] that will provide for subsistence fishing and subsistence hunting *regs* of the important stocks and populations *to* at a level sufficient to *to* reasonable satisfy subsistence needs, unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. [The regulations may be the same as, different from, or in

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addition to regulations governing other consumptive uses of the stocks or populations.)

(d) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting is accorded a [subsistence] preference ^g over other consumptive takings and uses of fish, game, ^p or other wildlife. This preference is not a preference over nonconsumptive takings and uses of fish, game, or other wildlife, such as catch-and-release fishing if the fish stock is substantially unrelated to customary and traditional subsistence needs, or over the taking, capture, tagging, or transport of fish, game, or other wildlife for biological or management purposes, or over nonconsumptive uses of game in areas, such as national parks, that are open only to subsistence hunting. Whenever it is necessary to restrict subsistence fishing ^{of a surplus} or subsistence hunting ^{of a surplus} to [protect the continued health and viability of a fish stock, game population, or other wildlife population], assure sound management ^{of} [assure the maintenance of a fish stock or game population on a sustained-yield basis] ³ for protect continued future subsistence fishing or subsistence hunting ² the preference may be limited by applying the following criteria:

- (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood;
- (2) local residency; and
- (3) availability of alternative resources.

(e) Each board may adopt ^{considered by the purposes of this section} regulations under this chapter that authorize taking ^{identified} for nonsubsistence uses a stock or population identified as ~~important~~ for subsistence use, to the extent that the non-subsistence uses do not jeopardize or interfere with sound management principles, sustained yield, the maintenance of healthy populations,

or the reasonable opportunity for taking these resources for subsistence uses.

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f) If ^a the [appropriate] board determines that (1) a [particular] fish stock or game population is not a [customary and traditional] subsistence resource or not a long established and important source of subsistence use [and (2) subsistence is not the best use of that fish stock or game population], ^{the board may provide that the fish stock or game population ~~may~~ not be taken under subsistence regulations, but may be taken under other regulations. //} The Board of Fisheries may shift subsistence use of a fish stock to a suitable prior or contemporaneous stock of the same or a different species that is readily available. The Board of Game may shift subsistence use of a game population to another population if a suitable alternative population of the same or a different species is readily available.

[(g) Each board may adopt regulations, under the Administrative Procedure Act (AS 44.62), that prohibit the taking of fish or game for subsistence uses by persons who have not qualified previously for subsistence takings. The authority in this subsection shall not be used to prohibit subsistence use by children or family members of subsistence users.]

(h) The subsistence preference shall provide a reasonable opportunity for subsistence fishing or subsistence hunting. The preference may vary, may be graduated, and may be balanced against the degree of economic and traditional dependence on the resource in question. [If dependence on the resource in question is high, the preference shall provide a full opportunity for satisfaction of subsistence needs, including potentially exclusive subsistence use when a resource shortage occurs. If dependence on the resource in question is low, the preference may be less and need not be potentially exclusive. As the

degree of dependence varies, the degree of the preference may vary accordingly.

Sec. 16.05.259. ADMINISTRATIVE APPEALS. The Board of Fisheries and the Board of Game, acting jointly, shall adopt regulations, under the Administrative Procedure Act (AS 44.62), establish an appeal procedure for persons aggrieved by the adoption or repeal of a fishing or hunting regulation. An aggrieved person must exhaust ~~this~~ administrative remedy before bringing a legal action challenging the adoption or repeal of the regulation.

* Sec. 4. 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, under the Administrative Procedure Act (AS 44.62), providing for the issuance and expiration of subsistence permits to 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 when the subsistence preference requires a reduction in the harvest of a fish stock or game population by nonsubsistence users, or when special seasons, bag limits or other provisions are necessary, to provide a reasonable opportunity for subsistence takings. A permit program need not be established in any particular area of the state or for any particular fish stock or game population unless circumstances warrant.

(d) With the assistance of the department, the boards shall provide reasonable public notice of the following information to users of a group, community, village, or area subsistence permit:

- (1) the terms of the permit;
- (2) the fish stocks and game populations authorized to be taken under the permit;
- (3) the subsistence use areas covered by the permit.

The Board of Fisheries and the Board of Game may use village and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) and community, postal, media, or other services appropriate for providing notice.

(e) The commissioner shall administer subsistence permit programs that may be established. The commissioner may appoint state employees or other persons to take applications and issue permits and tags. A person appointed by the commissioner, may administer oaths for permit and tag applications. The commissioner or the appropriate board may require a report from persons using a permit concerning the time, manner, and place of taking fish and game, the kinds and quantity taken, and other information helpful in administering the fish and game resources of the state. Except for state employees, a person appointed by the commissioner under this subsection is entitled to compensation of \$50 per year or \$1 for each permit or tag issued, 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 for subsistence uses with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

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

(23) "subsistence uses" means the nonwasteful, customary and traditional uses by a resident of rural [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

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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. 7. 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 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) "resident of rural Alaska" means a state resident engaged in customary and traditional subsistence use as a way of life and who is domiciled outside the road connected area and outside of a community with a population of 7,000 or more, as determined by the Alaska Department of Community and Regional Affairs;

(32) "subsistence hunting" means the nonwasteful taking of game animals by a person qualified under AS 16.05.258 for subsistence uses by methods and means defined by the Board of Game.

* Sec. 8. AS 16.05.251(b), 16.05.255(b), and 16.05.257(h) are repealed.

* Sec. 9. This Act takes effect June 1, 1986.



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1 IN THE SENATE *SCS HB 288* BY THE STATE AFFAIRS COMMITTEE

2 SENATE BILL NO.

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 fishing and 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 *uni* (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; add DNR consultation

18 * Sec. 3. 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~~ ^{by age} 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:

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; *DNR consultation*

2 * Sec. 5. AS 16.05.255(a) is amended by adding a new paragraph to read:

maybe

3 (10) regulating [^{*they*} sport hunts and ^{*hunting*} subsistence hunts] as needed
4 for the conservation, development, and utilization of game [and nongame]
5 species.

6 * Sec. 6. 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, ^{*and*} 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 ~~this section~~ ^{*section*} If a surplus
27 is not sufficient to accommodate 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

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~~Subsistence~~ Stocks and game populations, or portions of
 stocks and populations that are not identified,
 under A(1) of this section, as important to the
 subsistence of

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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. *Both*
 19 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

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1 provide a full opportunity for satisfaction of subsistence uses, in-
2 cluding potentially exclusive subsistence use when a resource shortage
3 occurs. If dependence on the resource in question is low, the prefer-
4 ence may provide a lesser opportunity for satisfaction of subsistence
5 uses and need not be potentially exclusive. As the degree of depen-
6 dence varies, the degree of the preference may vary accordingly.

7 (g) Takings authorized under this section are subject to reason-
8 able regulation of seasons, catch or bag limits, and methods and
9 means.

10 (h) The implementation of a subsistence preference under this
11 section does not affect the eligibility of active duty military
12 personnel, while stationed in the state for more than 30 days, to
13 fish, hunt, or trap on military installations and facilities in the
14 state under 10 U.S.C. 2671. *Board's consultation w/ the department*

15 (i) The [commissioner] of fish and game] shall adopt regulations
16 defining "maintenance of healthy populations of fish and game," "sound
17 management principles," and "sustained yield." *define harvestable surplus*

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20 Sec. 16.05.259. ADMINISTRATIVE APPEALS. [The Board of Fisheries
21 and the Board of Game, acting jointly, shall establish by regulation
22 an appeal procedure for persons aggrieved by the adoption or repeal of
23 a fishing or hunting regulation.] An aggrieved person must exhaust
24 administrative remedies before bringing a legal action challenging the
25 adoption or repeal of the regulation.

* Sec. 7. AS 16.05.330 is amended by adding new subsections to read:

26 (c) The Board of Fisheries and the Board of Game may adopt
27 regulations providing for the issuance and expiration of subsistence
28 permits for areas, villages, communities, groups, or individuals as
29 needed for authorizing, regulating and monitoring the subsistence
harvest of fish and game. The boards shall adopt these regulations

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,

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 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

*See 39.9.75.30
for legend*

** wanky waste sections*

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 which the ~~taking~~ ^{noncommercial and consumption} of fish or game ^{subsistence} [for personal or family consumption] is
4 a significant characteristic of the economy of the community or area;

5 (32) "subsistence hunting" means the nonwasteful taking of
6 ^{hunts for on 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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1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2

SENATE BILL NO.

Military

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 fishing and hunting; and provid-
7 ing for an effective date."

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

9 [* Section 1. FINDINGS AND INTENT. (a) Sound management of fish and
10 wildlife is more likely to be achieved if the management of fish and wild-
11 life, including allocation among different uses, is done on a biological
12 basis, rather than on the basis of land ownership.]

13 (b) Maintaining healthy populations of fish and wildlife is important
14 to the state because ^{resources are held in common by all citizens} healthy populations provide opportunities for a sub-
15 sistence life style, for trophy and other sport hunting and fishing, for
16 commercial fishing and for wildlife viewing.]

17 (c) To assure that these opportunities remain reasonably available it
18 is necessary

19 (1) that there be an equitable balance among sport, commercial,
20 subsistence, and nonconsumptive ^{uses} [needs];

21 (2) that, when all consumptive uses of fish and game cannot be
22 accommodated without harming the resource, there be a reasonable preference
23 for subsistence use of fish stocks and game populations that are important
24 to subsistence uses;

25 (3) that the Board of Fisheries and the Board of Game have the
26 authority, flexibility, and information needed to maintain sustained yield,
27 healthy populations, and ^{reasonable} opportunities for subsistence, sport, commercial
28 and other consumptive and nonconsumptive uses of fish and game; and

29 (4) that the Board of Fisheries and the Board of Game have

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Repeal of
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1 authority to establish subsistence permit programs.

2 * Sec. 2. AS 16.05.094 is amended to read:

3 Sec. 16.05.094. DUTIES OF DIVISION OF SUBSISTENCE HUNTING AND
4 FISHING. The division of subsistence hunting and fishing shall

5 (1) compile and analyze existing data and data gathered in
6 future studies, and conduct studies to gather information, including
7 data from subsistence users, the public, other divisions of the de-
8 partment

9 role of Sect 2. AS 16.05.050 (14) amended
10 of the : by adding two new sections:
11 clearly

12 (14) Make recommendations to the Boards of
13 Fisheries and Game regarding adoption, amendment
14 and repeal of regulations

15 (15) Provide info to Boards of F & G as needed
16 for them to carry out their statutory
17 mandated duties!

18 (C) the customary and traditional subsistence uses of
19 fish and wildlife by species, stock, and population in each area
20 of the state;

21 (D) the areas used for subsistence harvest, and areas
22 formerly used for subsistence harvest, according to

- 23 (i) fish stock and wildlife population; and
- 24 (ii) subsistence user population;

25 (E) the areas, watersheds, flyways, and other habi-
26 tats, whether or not within the state, used by fish and wildlife
27 that are subject to subsistence uses; in identifying these habi-
28 tats, the division shall seek the assistance of other divisions
29 of the department, and other state or federal agencies having

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1 jurisdiction over fish and wildlife;

2 (F) the effect, if any, that subsistence use of each
3 species, stock, or population has on the maintenance of healthy
4 populations, on the sustained yield of these species, stocks, or
5 populations, on other subsistence users, and on sport or commer-
6 cial users whether or not in the state; in identifying these
7 effects, the division shall seek the assistance of other divi-
8 sions of the department and other state or federal agencies
9 having jurisdiction over fish and wildlife;

10 (2) quantify or estimate the amount, nutritional value, and
11 extent of dependence on food acquired through subsistence hunting and
12 fishing according to

13 (A) species, stock, or population of fish and wild-
14 life;

15 (B) population of customary and traditional subsis-
16 tence users; and

17 (C) subsistence use area;

18 (3) make information gathered available to the public,
19 appropriate agencies, and other organized bodies;

20 (4) assist the department, the Board of Fisheries, and the
21 Board of Game in determining what uses of fish and game, as well as
22 which users and what methods, should be termed customary and tradi-
23 tional subsistence uses, users, and methods;

24 (5) evaluate the impact of state and federal laws and
25 regulations on subsistence hunting and fishing and, when corrective
26 action is indicated, make recommendations to the department;

27 (6) make recommendations to the Board of Game and the Board
28 of Fisheries regarding adoption, amendment and repeal of regulations
29 affecting subsistence hunting and fishing; in making recommendations

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1 the division shall consult with appropriate divisions of the depart-
2 ment and, when appropriate, with other state or federal agencies
3 having jurisdiction over fish and wildlife; recommendations must be
4 approved by the commissioner;

5 (7) participate with other divisions of the department and
6 with other departments of state and federal government in the prepara-
7 tion of statewide, [AND] regional, or area management plans affecting
8 fish and wildlife and their habitats so that those plans recognize
9 [REORGANIZE] and incorporate the needs of subsistence users of fish
10 and game.]

11 * Sec. 3. AS 16.05.251(a) is amended to read:

12 (a) The Board of Fisheries may adopt regulations it considers
13 advisable in accordance with the Administrative Procedure Act (AS 44.-
14 62) for

15 (1) setting apart and designating fish reserve areas,
16 refuges and sanctuaries in the waters of the state over which it has
17 jurisdiction, subject to the approval of the legislature;

18 (2) managing fish reserve areas, refuges and sanctuaries;

19 (3) establishing open and closed seasons and areas for the
20 taking of fish;

21 (4) [(3)] setting quotas, bag limits, harvest levels,
22 escapement levels, and sex, [AND] size, age, and other limitations
23 pertaining to [ON] the taking of fish [in waters subject to state
24 jurisdiction;]

25 (5) [(4)] establishing the means and methods, [such as] gear,
26 tackle and vessels employed in the pursuit, capture, and transport of
27 fish;

28 (6) [(5)] establishing marking and identification require-
29 ments for means used in pursuit, capture, possession, tagging, and

only legis. have this authority

fish fish

*including * [such as]*

*fish in categories necessary for mgt.
such as*

1 transport of fish;

2 (7) [(6)] classifying^V as commercial fish, sport fish,
3 personal use fish, subsistence fish, [indigenous fish, exotic fish,
4 nonindigenous fish, hatchery fish, or predators or other categories
5 essential for regulatory purposes; a fish stock may be the subject of
6 more than one classification;]

7 (8) protecting, maintaining and improving watersheds [(7)
8 WATERSHED] and habitars [HABITAT IMPROVEMENT], ~~and~~^{and} for the management,
9 conservation, protection, use, disposal, propagation, and stocking of
10 fish; [watershed and habitat regulations may be adopted under this
11 paragraph only after consultation with the Department of Natural
12 Resources;]?

13 (9) [(8)] investigating and determining the extent and
14 effect of disease, predation, and competition among fish in the state,
15 and exercising control measures considered necessary to the resources
16 of the state;

17 (10) [(9)] ~~[prohibiting and]~~ ^{or prohibiting} regulating^V the live capture,
18 possession, transport, or release of [NATIVE OR EXOTIC] fish or their
19 eggs;

20 (11) [(10)] establishing seasons, areas, quotas and methods
21 of harvest for aquatic plants;

22 (12) [(11)] establishing the times and dates during which
23 the issuance of fishing licenses, permits and registrations and the
24 transfer of permits and registrations between registration areas is
25 allowed; however, this paragraph does not apply to permits issued or
26 transferred under AS 16.43;

27 (13) designating and regulating special fishing areas,
28 including personal use areas, trophy management areas, catch-and-
29 release areas, and children's fishing areas, and designating [species]
^{stocks}

1 in those areas for which special management is appropriate;

2 § (14) establishing a procedure for administrative appeal of
3 board decisions; and] *There is an ^{existing} appeal procedure.*

4 § (15) regulating commercial, sport, subsistence, and personal
5 use fishing as needed for the conservation, development and utiliza-
6 tion of fisheries. §

7 * Sec. 4. AS 16.05.255(a) is amended to read:

8 (a) The Board of Game may adopt regulations it considers advis-
9 able in accordance with the Administrative Procedure Act (AS 44.62)
10 for

11 (1) setting apart and designating } *Authority to do this* game reserve areas,
12 refuges and sanctuaries in the water or on the land of the state over
13 which it has jurisdiction, subject to the approval of the legislature;

14 (2) managing game reserve areas, refuges and sanctuaries; *game game*

15 (3) establishing open and closed seasons and areas for the
16 taking of game;

17 *talk to dept* (4) [(3)] establishing the means, [AND] methods, marking, ①
18 and identification requirements] employed in the pursuit, capture,
19 possession, tagging and transport of game;

20 (5) [(4)] setting quotas, bag limits, harvest levels, and
21 sex, age, [AND] size, and other limitations on, and game population
22 goals pertaining to, the taking of game;]

23 (6) [(5)] classifying game as game birds, song birds, big
24 game animals, fur bearing animals, predators or other categories;

25 (7) [(6)] methods, means, and harvest levels necessary to
26 control predation and competition among game in the state;

27 (8) protecting, maintaining, and improving watersheds [(7)
28 WATERSHED] and habitats [HABITAT IMPROVEMENT], and for the manage-
29 ment, conservation, protection, use, disposal, propagation and

SB 8001 ① *This, if adopted would subject every staff management technique to APA procedures (Aerial wolf hunting etc.)*

New authenticity.

1 stocking of game; watershed and habitat regulations may be adopted
2 under this paragraph only after consultation with the Department of
3 Natural Resources; }

4 (9) [(8)] prohibiting the live capture, possession, trans-
5 port, or release of native or exotic game or their eggs;

6 (10) [(9)] establishing the times and dates during which the
7 issuance of game licenses, permits and registrations and the transfer
8 of permits and registrations between registration areas and game
9 management units or subunits is allowed;

10 (11) regulating sport hunts and subsistence hunts as needed
11 for the conservation, development, and utilization of game and nongame
12 species. *redundant* *not needed*

13 * Sec. 5. AS 16.05 is amended by adding new sections to read:

14 Sec. 16.05.258. METHODS OF DETERMINING CUSTOMARY AND TRADITIONAL
15 SUBSISTENCE USE AND ALLOCATING FISH AND GAME. (a) The Board of
16 Fisheries and the Board of Game, acting jointly, *OR separately as decided by the Board* shall:

17 (1) *Determine* [estimate] the amount of fish and game needed to provide
18 a reasonable opportunity [for rural residents] to continue to engage in
19 a customary and traditional subsistence way of life; determinations
20 shall be based on research, analysis, comments, and recommendations of
21 the [subsistence division]; *Department of Fish and Game and public.*

22 (2) identify [and designate] the areas used for subsistence
23 harvest, and areas formerly used for subsistence harvest, according to
24 fish stock and game population, and according to subsistence user
25 population; the zones may overlap where different groups of subsis-
26 tence users have customarily and traditionally used the same areas;

27 (3) identify fish stocks and game populations that custom-
28 arily and traditionally have been used by, and are important to, rural
29 residents for subsistence use. *Redundant again, see (1)*

This section is the Dept's responsibility. Board is not qualified.

over

(b) The Board of Fisheries or the Board of Game shall assess the biological status of, respectively, the important subsistence fish stocks and the important subsistence game populations in the use zones, and shall determine whether a surplus may be harvested during a regulatory year consistent with the sustained yield principle, sound management principles, and the maintenance of healthy fish stocks, and [game populations] or other [wildlife populations]

(c) After identifying the important subsistence fish stocks or game populations, the appropriate board shall determine the amount of harvestable surplus of the stock or population that will provide a reasonable opportunity to engage in customary and traditional subsistence uses of the stocks or populations.

(d) The Board of Fisheries and the Board of Game shall adopt regulations, in accordance with the Administrative Procedure Act (AS 44.62), for subsistence fishing and subsistence hunting unless adoption of the regulations could jeopardize or interfere with the maintenance of fish stocks, game populations, or other wildlife populations on a sustained-yield basis, or could be inconsistent with sound management principles or with the maintenance of healthy fish stocks, game populations, or other wildlife populations. The regulations may be the same as, different from, or in addition to regulations governing other consumptive uses of the stocks or populations.

(e) Except as otherwise provided in this chapter or in other state or federal laws, subsistence fishing and subsistence hunting [on land or water subject to state jurisdiction] is accorded a [subsistence] preference over other consumptive takings and uses of fish, game, or other wildlife. [This preference is not a preference over nonconsumptive takings and uses of fish, game, or other wildlife, such

1 as catch-and-release fishing if the fish stock is substantially
2 unrelated to customary and traditional subsistence needs, or over the
3 taking, capture, tagging, or transport of fish, game, or other
4 wildlife for biological or management purposes, or over nonconsumptive
5 uses of game in areas, such as national parks, that are open only to
6 subsistence hunting.] Whenever it is necessary to restrict subsistence
7 fishing or subsistence hunting ^{beyond reasonable regulations on seasons,}
8 ^{bag limits and methods and means} [on land or water subject to state
9 stock, ^{OR} game population, [or other wildlife population,] ^{or} assure sound
10 management, assure the maintenance of a fish stock or game population
11 on a sustained-yield basis, or protect continued future subsistence
12 fishing or subsistence hunting, the preference may be limited by
13 applying the following criteria:

14 (1) customary and direct dependence on the fish stock or
15 game population as the mainstay of livelihood;

16 (2) local residency; and

17 (3) availability of alternative resources.

18 (f) Each board may adopt regulations under this chapter that
19 authorize taking for nonsubsistence uses a stock or population iden-
20 tified as important for subsistence use, to the extent that the non-
21 subsistence uses do not jeopardize or interfere with sound management
22 principles, sustained yield, the maintenance of healthy populations,
23 or the opportunity for taking these resources for [customary and
24 traditional] subsistence uses under this chapter.

25 (g) The boards, acting jointly, shall adopt regulations that
26 establish criteria that the boards must consider when defining and
27 identifying customary and traditional subsistence uses and [if appro-
28 priate,] customary and traditional subsistence use areas. The regula-
29 tions may include, but need not be limited to, 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 each year;

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

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

(5) the means of storing fish or

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(4) [(6) [a] edge of fishing generation;

(5) [(7) [a] the products of

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significant commercial enterprises; an

villages or towns, with a historical

users and encompasses individuals, families, or groups who meet the

criteria described in this subsection]; and

(c) [(8) [a] use pattern that includes reliance for subsistence

purposes on a wide diversity of the fish and game resources of an area

and provides substantial economic, cultural, social, and nutritional

elements of the [subsistence user's] life of area residents.

(h) If the appropriate board determines that (1) a particular

fish stock or game population is not a customary and traditional

(7) lack of a developed cash economy ~~for~~ the area which could provide all residents of a reasonable opportunity for participation.

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1 subsistence resource or not a significant source of subsistence use
2 and (2) subsistence is not the best use of that fish stock or game
3 population, the board may provide that the fish stock or game popu-
4 lation may not be taken under subsistence regulations, but may be
5 taken under other regulations. The Board of Fisheries may shift
6 subsistence use of a fish stock to a suitable prior or contempora-
7 neous stock of the same or a different species. The Board of Game may
8 shift subsistence use of a game population to another population if a
9 suitable alternative population of the same or a different species is
10 available.

11 [(i) Each board may adopt regulations, under the Administrative
12 Procedure Act (AS 44.62), that prohibit the taking of fish or game for
13 subsistence uses by persons who have not qualified previously for
14 subsistence takings.]

15 (j) The subsistence preference shall provide a reasonable oppor-
16 tunity for subsistence fishing or subsistence hunting. The preference
17 may vary, may be graduated, and may be balanced against the degree of
18 economic and traditional dependence on the resource in question. If
19 dependence on the resource in question is high, the preference shall
20 provide a full opportunity for satisfaction of subsistence needs,
21 including potentially exclusive subsistence use when a resource
22 shortage occurs. If dependence on the resource in question is low,
23 the preference may be less and need not be potentially exclusive. As
24 the degree of dependence varies, the degree of the preference may vary
25 accordingly.

26 [Sec. 16.1
27 and the Board
28 procedure for
29 or hunting r.

New Section requiring aggrieved
persons to request Board to
change or reconsider regulation
before challenging regulation
in court. - Retain requirement for
exhaustion of any appeals procedure that may

heries
appeal
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1 administrative remedy before bringing a legal action challenging the
2 adoption or repeal of the regulation.]

3 * Sec. 6. AS 16.05.330 is amended by adding new subsections to read:

4 (c) The Board of Fisheries and the Board of Game may adopt
5 regulations, under the Administrative Procedure Act (AS 44.62), pro-
6 viding for the issuance and expiration of subsistence fishing permits,
7 subsistence hunting permits, and combination subsistence fishing and
8 hunting permits as needed for authorizing, regulating and monitoring
9 the subsistence harvest of fish and game. The boards shall adopt
10 these regulations when the subsistence preference requires a reduction
11 in the harvest of a fish stock or game population by nonsubsistence
12 users, or when special seasons, bag limits or other provisions are
13 necessary, to provide a reasonable opportunity for subsistence tak-
14 ings. A permit program need not be established in any particular area
15 of the state or for any particular fish stock or game population
16 unless circumstances warrant.

17 (d) Each board may establish programs [to] ^{for}issuance ^{of} subsistence
18 permits. [to individuals, groups, communities, villages, or areas].
19 Nothing in this section shall be construed as altering other require-
20 ments of state or federal law for licenses, permits, stamps, tags, or
21 seals.

22 (e) With the assistance of the department, the boards shall
23 provide reasonable public notice of the following information: [to users
24 of a group, community, village, or area subsistence permit:]

25 (1) the terms of the permit;

26 (2) the fish stocks and game populations authorized to be
27 taken under the permit;

28 (3) ^{to} ^{specify} ^{of} the subsistence use areas covered by the permit.

29 (f) The Board of Fisheries and the Board of Game may use village

1 and regional corporations formed under 43 U.S.C. 1601 - 1628 (Alaska
2 Native Claims Settlement Act) and community, postal, media, or other
3 services appropriate for providing notice under (e) of this section.]

4 (g) [The commissioner shall administer subsistence permit pro-
5 grams t The commissioner may appoint state
6 employe For purposes of administration permits and
7 tag. of distribution and sale of permits nister oaths
8 for pe ~~state~~ parallel - dept of revenue appropriate
9 board administration. ncerning the
10 time, he kinds and
11 quanti histering the
12 fish: employees, a
13 person on is entitled
14 to compensation of tag issued,
15 whichever is greater.]

16 [(h) A person who holds a limited entry permit may not engage in
17 subsistence fishing for a species of fish authorized under the limited
18 entry permit unless the person proves to the satisfaction of the
19 commissioner's appointee that

20 (1) the limited entry permit was not and will not be used
21 during the season in which the subsistence fishing occurred or is to
22 occur;

23 (2) the species of fish was not taken under the limited
24 entry permit for personal or family consumption; or

25 (3) if a species of fish taken under the limited entry
26 permit was used or kept for personal or family consumption, the person
27 needs additional subsistence fish of the same species for reasons
28 approved by the department.]

29 [* Sec. 7. AS 16.05.930(e) is amended to read:

1 (e) This chapter does not prevent the traditional trade or
2 barter of fish and game taken by subsistence hunting or subsistence
3 fishing, except that the commissioner may prohibit the trade or barter
4 of subsistence-taken fish and game by regulation, emergency order, or
5 otherwise, if a determination on the record is made that the trade or
6 barter is resulting in a waste of the resource, damage to fish stocks
7 or game populations, or circumvention of fish or game management
8 programs.]

9 * Sec. 8. AS 16.05.940(22) is amended to read:

10 (22) "subsistence fishing" means the nonwasteful taking of,
11 fishing for, or possession of fish, shellfish, or other fisheries
12 resources by a person qualified *Resident at a rural subsistence area as determined by the boards*
13 uses with gill net, seine, fish wheel, long line, or other methods and
14 means defined by the Board of Fisheries;

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

16 (23) "subsistence uses" means the nonwasteful, customary and
17 traditional uses by a resident of rural [IN] Alaska of wild, renewable
18 resources for direct personal or family consumption as food, shelter,
19 fuel, clothing, tools, or transportation, for the making and selling
20 of handicraft articles out of nonedible by-products of fish and wild-
21 life resources taken for personal or family consumption, and for the
22 customary trade, barter, or sharing for personal or family consump-
23 tion; in [FOR THE PURPOSES OF] this paragraph, "family" means [ALL]
24 persons related by blood, marriage, or adoption, and a [ANY] person
25 living in [WITHIN] the household on a permanent basis;

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

27 (28) "fish stock" means a species, subspecies, geographic
28 grouping or other category of fish manageable as a unit [that, at any
29 time during any season of the year, may be found in water subject to

1 state jurisdiction];

2 (29) "game population" means a group of game animals of a
3 single species or ^{geographic} subgroup [whose members in whole or in part use, or
4 may be found at any time or during any season of the year in or on,
5 land, air, or water subject to state jurisdiction];

6 (30) "nonwasteful" means making reasonable use of a har-
7 vested fish or game animal or most of its parts;

8 (31) "resident of rural Alaska" means a state resident,
9 [engaged in customary and traditional subsistence as a way of life];

10 (32) "subsistence hunting" means the nonwasteful taking of
11 ^{Remove} game animals by a person qualified under AS 16.05.258 for subsistence
12 ^{includ} ^{bias.} uses by methods and means defined by the Board of Game.

13 * Sec. 11. AS 16.05.251(b), 16.05.255(b), and 16.05.257[h] are re-
14 pealed.

15 * Sec. 12. This Act takes effect June 1, 1986.

16

→ domiciled in a rural area of the state that is determined to be a customary and traditional subsistence use area by the Boards of Fisheries and Game under AS 16.05.258.

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The Alaskan Subsistence Myth

Everyone can agree that earlier white men were not always forthright and fair in their dealings with Alaska's natives. But does this mean we should now overcompensate for our ancestors' sins?

By Ron Dalby

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Few things are more contentious in Alaska than the use of the word "subsistence." Except for temporarily ambivalent newcomers, everyone in Alaska is either for or against subsistence. How they feel depends largely on the culture from which they have descended. Native groups adamantly support subsistence as the expression of their own interests. Other groups don't see the situation quite the same way.

Defining subsistence is the core of the

problem. The Alaska Legislature, with the help of the political winds, has decided on a bland, safe statement concerning traditional and customary uses of naturally occurring resources; the statement leaves a lot to be desired. Both the state and federal governments are keenly aware of the potential political backlash if a stronger definition is adopted.

There is no middle ground to be taken when defining subsistence. One side of the

PHOTO BY ERVIN AND PEGGY BAUER



ALASKAN SUBSISTENCE MYTH

continued from page 73

the other is going to be extremely displeased with the still-unknown final determinant. Both sides are potent political forces.

The dictionary defines "subsistence" as "the act, state, or a means of subsisting." "Subsist" is defined as "to exist; to be sustained, nourished, etc.; live." Combining the two, we can view subsistence as a means of existing, a means of sustaining, a means of nourishing, or a means of life.

Considering that subsistence in Alaska refers to millions of pounds of fish and game each year, the definition is far-reaching in its impact. The potential for fraud is massive. Alaskan native groups, for example, have convoluted subsistence into meaning a lifestyle, which is obviously the most favorable interpretation for their goals.

Two other words that reappear in any subsistence discussion are "tradition" and "customary." The former is defined as "communal custom or usage." "Customary" is defined as "commonly practiced."

Customs and traditions are not created overnight. Every culture adopts its own only after generations of experience.

Archaeologists talk in terms of 10,000 years when discussing the development of the native cultures in Alaska. Most of us are used to reading such numbers and hardly give them a second thought. Think, though, of 10,000 years as 500 generations, quite an adequate length of time for developing customs and traditions. Then look at the white man's history in America. It's been about 10 generations since the Declaration of Independence was signed. In that sense, the white man in North America has few traditions when matched against an Eskimo culture that was active at the time the pyramids were built in Egypt. Then again, maybe the white man does in fact have a traditional subsistence culture.

Accepting, for the moment, the concept of subsistence as a lifestyle going back 100 centuries or more for the Eskimo, an immediate reaction is that subsistence is a bona fide claim. But wasn't the white man of 10,000 years ago also practicing subsistence? If you take one of the cultures back 10,000 years, it's only fair to do the same for the other. Only during the past few centuries has white man's technology become a cultural factor in Western civilization.

That technology was necessary for the survival of European society. Long before Alaskan native cultures faced, or would face, the problem, Europeans ran out of range. A barely inhabited New World discovered at the end of the Middle Ages was indeed fortunate for Europeans; they needed to expand. Technology transported their culture westward, beginning a 500-year saga of conflict with the scattered bands of peoples populating the Americas.

Columbus called the people he met Indians, assuming his navigation to be better than it really was. But who were these Indians, and how did they get here? Most scientists agree that the first men in the Americas came across a Bering Sea land bridge that existed during the Ice Age, probably following roving herds of game.

Their tools for making a life in the world were few and crude. Weapons were of stick and stone. Killing animals to sustain life was an all-consuming occupation. One

killed animals to sustain life and nourish the body. From the time of the crossing until the relatively recent contact with the white man, this was the native culture in Alaska. Subsistence was indeed a lifestyle.

Archaeologists suggest that in Alaska it was an all-pervasive lifestyle because little evidence exists indicating war or other social contact between native groups within the region. This is diametrically opposed to most native cultures elsewhere in the Americas. Cultures that flourished in milder climates had time to war and to socialize between feuds. Alaskan natives did not have that luxury except, to a certain extent, in milder southeastern Alaska.

Think for a moment what this subsistence lifestyle must have been like. If you were a coastal Eskimo, you spent long days on the frozen ocean waiting for a seal to come within range of your crude spear. Or you spent days trying to herd caribou into a killing pen so that your arm's-length weapons could be effectively used. Each animal killed provided food, clothing, and other necessities. Little was wasted. The more that was wasted, the sooner another animal would have to be acquired for the table.

Five hundred years ago, the subsistence lifestyle took every waking moment of every day. If you didn't work at it all day, every day, you died. There was no middle ground.

Farther inland, the Athapaskan Indians faced a slightly different environment but a similar challenge. Again, subsistence was a lifestyle, as a man's entire being was required to provide the necessary nourishment and materials for survival.

The men that followed Columbus came to settle a wild land and make it productive. As always when two cultures confront each other, one gives way more than the other, although neither remains unchanged. Slowly, over four centuries, the Indian and the Eskimo yielded much to the white man's ways. Some changes were forced, but many were eagerly embraced.

By the time Western civilization reached Alaska, most white men were more or less out of the habit of eliminating native tribes just because they were there. (The early Russians in the Aleutian Islands were an exception.) To be sure, natives were treated as second-class citizens in every sense of the word, but at least they weren't subject to politically inspired military campaigns

Where Greed May Lead

In 1971, the U.S. government enacted the Alaska Native Claims Settlement Act. Part of that legislation specifically stated that Alaskan natives had to surrender all future aboriginal claims in exchange for 44 million acres of land and \$982 million. Ever since native leaders agreed to accept the money and the land, they have been screaming that it isn't enough. The only persons so far enriched by the scheme are the lawyers paid to grab more through the court system for the native corporations organized to manage the land and the money.

Approximately 75,000 natives (persons having one-quarter or more Alaska-native blood) qualified under the terms of ANCSA. Thus, each pro-rated share of the settlement was 587 acres of land and more than \$13,000. Natives got first choice of the 90-plus percent of Alaska that was then federally owned.

The world's population is now past the four billion mark and is expected to double in 75 years or less. It's absurd for anyone in today's world to be entitled to nearly 600 acres of ground because of an ancestor's chance choice of campsite, and then to scream that it's not enough.

Recently, another idea has generated headlines—that Indian/Eskimo bands should become sovereign nations. They then could enter into treaties with the United States, thus controlling their own destinies. That is a preposterous argument. Anyone who accepts it is unwittingly suggesting that we carve up the entire country into isolated mini-nations centered around localized cultural/racial majorities. Instead of a single powerful nation able to shape our own destiny, we would become little more than a collection of economic and social basket cases.

Perhaps we should give one group a chance to make it as a separate nation

—the village of Venetie. The villagers have done a lot of complaining recently. Cast them adrift without state police services, without state-supported educational services, without qualified wildlife managers, and most of all, without state and federal welfare programs. Let them maintain their own airport, and allow them unrestricted access to the game on their lands. Two years from now, when they've shot all the animals and failed as a Third World country, ask them how they like it.

The issue of native sovereignty is a thorn in everyone's side, natives and others alike. It's a no-win proposition for all but the lawyers who argue any ridiculous position as long as their outrageous fees are met. Alaska's native peoples have much more pressing needs for their money, realistic problems that could be solved with the money indiscriminantly thrown at lawyers.

How many Indian and Eskimo children could have used money paid in legal fees for a college scholarship? How many natives in small villages suffer from a lack of local medical care—care that could be provided by building clinics and hiring doctors with some of the money used to buy lawyers?

And, perhaps most important of all, how many native corporations are in financial trouble—1991, when the corporations go public as mandated by the ANCSA, is only five years away. The millions squandered for legal battles will loom large when some of the fiscally troubled corporations are forced to sell out to private investors because they are financially unable to prevent a takeover. The Alaska natives' title to their lands now exists in the form of corporate stock, stock which soon can be sold by the owners to anyone wishing to buy it. When the stock is sold, the land is gone forever.

aimed at their extinction.

Limited, sporadic contact with European cultures began during the 18th century for Alaskan natives. Initially, the food-gathering clans that met the great sailing ships were reasonably content with their first experiences with an "advanced" culture. After all, these fair-skinned men brought trading objects that warmed a hunter's heart: steel knives, pots, and guns. Subsistence, though still fitting the natives' earlier idea of a lifestyle, became a little easier. This continued as more ships visited Alaska and the products they carried got better all the time. No longer was it necessary to be within arm's length of an animal to kill it. Bears could be challenged from safe distances. Just as automation had an impact on the manufacturing world, machines began reducing the amount of time it took to "earn a living" in Alaska.

Not all contact between Alaskan natives and white men went so smoothly, however. Besides a treasure trove of useful objects, the white man also brought disease, alcohol, and other social ills to the North. Our conscience and various vocal native groups won't let us forget that.

Still, it would be hard to think of village life in Alaska today as anything remotely resembling the past. Airplanes, jet boats, snowmobiles, and all manner of mechanical contrivances have eliminated the subsistence burden. Why walk when you can ride? Why spend two weeks stalking caribou when you can fly out and fill an airplane with meat in a couple of hours? Subsistence as a lifestyle in the 1980s is hard

to justify. One is forced to look closely at whether this is used as the only means of maintaining life.

The situation is more problematic when you realize that a remote northern Alaska village of 400 people imported 212,000 cans of soda pop in 1976. It has been pointed out that a village that can afford to pay air freight for 80 tons of soda and the resulting dental bills can certainly afford a sim-

Airplanes, jet boats, snowmobiles, and all manner of mechanical contrivances have eliminated the subsistence burden.

ilar tariff on protein. Now ask yourself again if a subsistence lifestyle is necessary as a means of nourishing, of existing, or of sustaining. This is the key question.

The problem of subsistence began to confront Alaskans seriously as America reached the height of its liberal thinking during the 1960s and early 1970s. After World War II, many Americans led the good life, materially at least. But as this more comfortable way of living became more prevalent, our national conscience began bothering us. There were some people in the United States who didn't enjoy the same burgeoning prosperity. One group

many persons zeroed in on was the American Indian and, by association, the Eskimo—the descendants of the nonwhite groups who met Columbus.

Probably one of America's failings on the international scene is its national conscience. In the case of American natives, it just took us a little longer to see what lay on our doorstep. But when we did see it, we outdid ourselves with pangs of grief in the form of land grants and monetary awards to the native groups within our borders. Not that some of this wasn't justified; the white man's record in the New World is not unblemished. In keeping with our growing tradition of assistance, however, we may have overdone it with the Alaska Native Claims Settlement Act of 1971.

On December 18, 1971, President Nixon signed ANCSA into law. With a stroke of his pen, approximately 75,000 natives (only one-quarter native blood was all it took to qualify) gained fee-simple title to 44 million acres of land and \$982 million. Overnight, the natives of Alaska came to own more land than is held in trust by all the other Indian tribes in the United States. It works out to more than \$13,000 and nearly 600 acres of land per person, by far the most generous settlement ever granted. Historically, there is no precedent.

As all landowners may do, native groups holding title may restrict access and activities, and even create their own law enforcement. It is their land, and much of it is the best Alaska has to offer. Under the provisions of ANCSA, natives were able to se-

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lect the lands they wanted from the more than 90 percent of Alaska that was then federally owned.

In recent years, the hue and cry over land use and ownership has assumed even greater dimensions. In 1980, at the urging of President Carter, Congress enacted legislation setting aside huge tracts of Alaska that covered nearly as much land as the state of California. These areas are administered by various departments of the National Park Service, Bureau of Land Management, and the Forest Service. In about half of this restricted land, hunting is outlawed, with one exception. Alaska natives who have "traditionally" used this ground have more or less free rein to practice their "customary" lifestyle. In simple terms, they have exclusive rights to shoot game animals in several national parks in addition to exclusive rights on the 44 million acres they already own.

The old adage that "possession is nine-tenths of the law" is a strong factor in the current battle over subsistence. The native groups own the land, land that is the source of the subsistence lifestyle they say they must practice.

Natives comprise about 15 percent of Alaska's population. There is considerable concern about such a minority owning and having exclusive access to a disproportionate share of the available resources. There are more than four billion people in the world today, a population that will double within 75 years. It's tough to argue logically that 75,000 people should be entitled to 600 acres of ground each, in addition to

special privileges on federal land otherwise closed to hunting for most Americans, just because of an ancestor's chance choice of campsite. Why should one special group be allowed as much as 100 percent of an available resource?

Separate laws govern subsistence gatherers in Alaska. Are these laws really necessary?

The time it takes in modern Alaska to gather enough wildlife to live on has been drastically reduced in the past couple of centuries. Thus, living a strictly subsistence lifestyle can either provide much more game than a person so engaged requires, or give the individual a lot of free time to pursue this lifestyle. And many who practice a subsistence lifestyle also collect a significant share of the various welfare monies available to those whose income is not up to a certain standard. Because this standard is based entirely on measurable quantities of money, there may well be a certain unfairness in paying someone cash and food stamps when this person and his family are eating a balanced diet, living in a government-built house, and spending their lives on land deeded to them.

In light of this problem and the enactment of separate laws governing those who fish and hunt for subsistence, consider just the sportfishing and sport-hunting regulations and their respective bag limits. Assume a subsistence family to be four people: husband, wife, and two children.

Taking the bag limits—which vary depending on the units hunted—for only one of the four family members, we find that it

is possible to take one moose, one to 10 caribou (unlimited caribou in one unit), one to three black bears, one to three Dall sheep, one or two mountain goats, one to five deer, and various other big-game animals. To this, add bag limits of five to 15 grouse and 10 to 20 ptarmigan daily for an eight-month-long season. In the fall, add seven to 10 ducks and six snow geese daily. There are also no closed seasons or limits on snowshoe hares in most parts of Alaska. The amount of meat available to a single hunter reaches astronomical proportions under sporting regulations alone.

Consider the hunter who, during the appropriate seasons, bags only one moose, one caribou, one black bear, 45 ducks, and 100 other birds and small-game animals. After butchering, that's at least 1,500 pounds of edible meat—almost one pound for each person in the family per day. And this is only a fraction of one family member's legal limit of game.

Sportfishing limits are also quite generous. Freshwater fishermen can take at least 30 fish or more each day if they seek more than a single species. There are many places in Alaska where it is possible to catch three or more kinds of fish in a single body of water. Even if the fish are small, this can easily be 15 pounds of fish a day. By only using a part of the allowable bag limits under sporting regulations for one person, it is possible to provide each member of a four-person family a pound of meat and a pound of fish daily. How many of us purchase 3,000 pounds of meat and fish annually to feed our family? →

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As a last note, using the bag limits available to the entire family, enough meat/fish protein should be available to support a large dog team, another of the reasons advanced by subsistence users seeking special status, though many now ride snowmobiles instead of sleds.

Not everyone can hunt each of the animals listed because they don't range everywhere in the state. And not everyone is going to catch a limit of fish every time out, either. Still, when the sporting regulations are balanced with the types of fish and game available in the various regions of the state, 3,000 pounds per family per year is not at all unrealistic for the true practitioner of a subsistence lifestyle. All one has to do is part with a few dollars for the required licenses. Subsistence regulations are redundant and encouraged only by special interest groups looking for an easy way out.

Earlier we noted that a subsistence lifestyle occupied all of a man's time and energy 500 years ago. Restricting subsistence users to sporting regulations would tend to make subsistence a similar lifestyle once again. Those choosing such a lifestyle should be willing to spend the hours necessary to practice their way of life.

Native special interest groups, however, are fighting to continue the confusing overregulation that makes it easier for their members to get away with more than a fair share of dwindling or finite natural resources. This may be a key thought in the

entire subsistence argument. With the world's population escalating past the four billion mark, what gives a minority of a population in any area the right to a disproportionate share of the resources?

Sportsmen in Alaska generally agree that subsistence has been grossly mishandled by the state and federal governments. Most Alaskans supplement their diets with the fish and game they collect in their limited spare time. Why should a declared subsistence user with unlimited time to fish and hunt be allowed mass killing methods, more liberal bag limits, and greater access to land, all under the guise of a single word?

There are problems with implementing a sporting-regulations-only system in Alaska. It couldn't happen overnight; instead, it would require considerable conditioning. The end, however, could well justify the means. And if the declared subsistence hunter failed for any reason, he or she could then fall back on the welfare system, much as would anyone else laid off from a job or otherwise unable to work.

Limiting welfare payments to subsistence users is a powerful argument. People living in free housing on free land and who gather more than enough food to meet their needs are obviously in a different league than those to whom a welfare check is a sole means of support. More succinctly, if subsistence provides life's necessities, why should taxpayers living in the money economy fund the luxuries, especially when the choice of a subsistence lifestyle is made by

the individual? Subsistence is a job rewarded materially, not with money that can be exchanged for those materials.

Subsistence users are after the best of both worlds. They can have the personal satisfaction of providing for their own daily needs, yet someone else provides them with the money necessary to fit into another culture that they say is not theirs. This dualism, recognized or otherwise, is a fact of life in rural Alaska.

Few people have the option of choosing the best of two worlds; in fact, many don't have a chance to gain the best of one. Yet small groups in Alaska and elsewhere in the country are demanding and getting everything they want from our modern industrial society while claiming they belong to and practice another culture. Given the choice, there's probably no one who would decline the opportunity to have the best of two worlds.

There are no easy answers. Everyone can agree that earlier white men were not always forthright and fair in their dealings with natives. But are we now overcompensating for our past? Those natives who currently benefit say that all they receive is still not enough as they battle in court for more. Those who realize only higher taxes and limited access to land as a result are beginning to realize that the cost is far too much. It might be worth noting that the latter group is by far the larger in terms of numbers. And numbers are political power in a democracy.



PICK OF PICKUPS

continued from page 75

and body design are all similar. Two and four-wheel-drive are available (75 percent of all mini sales nationwide are 2x4s).

There is a new 2.5-liter, four-cylinder fuel-injected gas engine as standard for the Comanche/Cherokee/Wagoneer. It produces a maximum of 117 hp at 5,000 rpm compared with 105 hp in the old four-banger. Options include GM's 2.8-liter V6 (110 hp) and the 2.1-liter turbocharged diesel engine (85 hp) introduced in early '85. A four-speed manual transmission is standard, with a three-speed automatic and five-speed manual optional (the diesel gets only the five-speed).

Selec-Trac or Command-Trac 4x4 is available, as are options like Trac-Lok limited slip rear axle, power steering, larger gas tank (23.5 gallons), skid plates, and a maximum 2,205-pound payload (larger than that of either Ford or Chevy's minis).

AMC uses uni-frame construction with the two side beams welded directly to the cab floor pan. Two lateral cross members in the rear of the Cherokee frame were replaced by an "X" cross member to create more torsional rigidity. The box is bolted on. The result is a mini with the longest wheelbase of any domestic or import (119.7 inches), and a pickup box that is the industry's widest (43.8 inches) and matches the Chevy S-10 for longest (88 inches).

There are three trim levels: Custom (base), X, and XLS, with interior and exterior sport decor groups. Cruise control, power windows and door locks, tinted glass, intermittent windshield wipers, and tilt steering wheel are all optional.

Miles per gallon? EPA ratings are a re-

spectable 24 city/27 highway for the 2x4 four-cylinder engine; it's 23/26 in the 4x4 version. The 2x4 diesel with the five-speed rates 28/31 mpg.

The venerable J-10 and J-20-series full-size Jeep pickups have changed little for '86. A new instrument panel and column-mounted controls (lights, beams, wipers) have been incorporated. The 4.2-liter six-cylinder gas engine is standard in the J-10, as usual, with the 5.9-liter V8 optional. The bigger engine is standard in the J-20.

Order the optional Selec-Trac full-time 4x4 system (in the J-10 only) this year, and you can also add the Trac-Lok limited slip rear differential.

Chevrolet (GMC)

Chevy's changes for 1986 are mostly under the skin, looking toward a re-skin of the full-size truck line next year. There's a new V6 engine, a reworked four-cylinder power plant, and a new, more efficient generator.

The S-10 (GMC S-15) first.

Both gas engines have been improved. The 2.5-liter four-cylinder standard power plant incorporates new lightweight pistons for cooler operation and valve seat changes to promote durability. Chevy's 2.8-liter V6 version is now electronically fuel-injected

to create economy while still boosting the horsepower by 9 percent to 125 hp at 4,800 rpm.

A new Delcotron generator has been added—smaller and lighter, as well as having a higher charging rate and being more durable. Also added was a redesigned instrument panel with a new cluster group, relocated instruments and controls, and trim plates.

Insta-Trac allows shifting to or from the 4x4 high setting at any speed. Both 2x4 and 4x4 come in the regular cab or Maxi-Cab series.

There are long and short-bed models (108.3 and 122.9-inch wheelbases, respectively) and a four-speed manual transmission standard, as well as an optional five-speed manual and four-speed automatic. A third engine is the 2.2-liter diesel—30 mpg in the city compared with the L-4's 24 mpg.

Fully 46 different models—count 'em, 46!—of Chevy's full-size C-Series (2x4) and K-Series (4x4) can be ordered. All of the gas engines this year feature a new five-ribbed poly-vee generator accessory belt drive. It's more flexible and durable and

Toyota minis now offer gas turbocharging, independent front suspension for 4x4s.



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